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1989, No. 46

An Act to amend the Income Tax Act 1976

[26 July 1989]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Income Tax Amendment Act (No. 2) 1989, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).

PART I
RESIDENT WITHHOLDING TAX

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "New Zealand company", the following definition:

"Non-cash dividend" means any dividend, other than a dividend to the extent to which it is—

“(a) Paid in money; or

“(b) A taxable bonus issue (as that term is defined in section 4 (3) of this Act):”.

(2) Section 2 of the principal Act is hereby amended by repealing the definition of the term "interest" (as inserted by section 3 (1) of the Income Tax Amendment Act 1983), and substituting the following definition:

"Interest", in relation to the deriving of income, resident withholding income, or non-resident withholding income by any person (hereafter in this definition referred to as the 'first person'), means every payment (not being a repayment of money lent and not being a redemption payment), whether periodical or not and however described or computed, made to the first person by any other person (hereafter in this definition referred to as the 'second person') in respect of or in relation to money lent to the second person making the payment or to any other person:".

(3) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "withholding payment", the following definition:

"'Working day' means any day of the week other than—

"(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

"(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year:".

(4) This section shall apply with respect to the tax on income derived on or after the 1st day of October 1989.

3. Meaning of term "dividends"—(1) Section 4 (1) of the principal Act (as substituted by section 31 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (b), the following paragraph:

"(ba) In the case of any loan (as that term is defined in section 336N(1) of this Act) which is owed by a shareholder to the company, any amount payable by the shareholder in respect of that loan where—

"(i) The shareholder has been discharged from the obligation to pay that amount without fully adequate consideration; or

"(ii) The shareholder has been released from the obligation to pay that amount by the operation of the Bankruptcy Act 1908 or the Insolvency Act 1967 or the Companies Act 1955 or by any deed of composition with the shareholder's creditors; or

“(iii) The amount has become irrecoverable or the obligation to pay it has become unenforceable by action through the lapse of time,—

and the discharge, release, or lack of action on the part of the company in allowing the amount to become irrecoverable or the obligation to pay it unenforceable is virtually a distribution of profits or a distribution of an amount capitalised by way of bonus issue where the bonus issue—

“(iv) Was made by the company after the 31st day of March 1982 and before the 1st day of October 1988 and within the period of 78 months immediately preceding the date of the release or discharge or upon which the amount became irrecoverable or the obligation to pay it unenforceable; or

“(v) Is a non-taxable bonus issue.”.

(2) Section 4 (1) of the principal Act (as so substituted) is hereby further amended by omitting from paragraph (e) the words “, in the opinion of the Commissioner,.”.

(3) Section 4 of the principal Act (as so substituted) is hereby further amended by adding the following subsection:

“(10) For the purposes of subsection (1) (e) of this section, where the making available of any property of the company for the benefit of any shareholder of the company is a loan (as that term is defined in section 336N (1) of this Act),—

“(a) The amount of the dividends arising shall be determined in respect of each quarter (as that term is defined in section 336N (1) of this Act) during which any amount of the loan is owing and, in relation to each such quarter, shall be deemed to be derived by the shareholder on the last day of that quarter; and

“(b) In relation to any quarter, the amount of the dividend shall be the amount (if any) by which the amount of interest that would have accrued on that loan in respect of that quarter had that interest been calculated on the daily balance of that loan at the rate of interest specified in paragraph (c) of this subsection for that quarter exceeds the amount of interest that, whenever it accrues, in respect of that loan to the shareholder during that quarter; and

“(c) For the purposes of this subsection, in relation to any quarter, the rate of interest specified shall be—

“(i) In the case of any loan where all amounts payable to the lender in relation to the loan are

expressed in New Zealand currency, the prescribed rate of interest (as that term is defined in section 336N(2) of this Act) for that quarter; and

“(ii) In the case of any loan where all amounts payable to the lender in relation to the loan are payable in any currency other than New Zealand currency, such rate of interest as the Commissioner may prescribe in respect of that currency and that quarter or, if the Commissioner has not so prescribed in respect of that currency and that quarter, such rate of interest as is a market rate of interest for persons acting at arm's length determined as at the end of that quarter for a loan granted on the same terms as that loan expressed in that currency; and

“(iii) In the case of any other loan, such rate of interest as is a market rate of interest for persons acting at arm's length determined as at the end of that quarter for a loan granted on the same terms as that loan.”

(4) This section shall apply in relation to income derived on or after the 1st day of October 1989.

4. Rebate in certain cases for children—(1) Section 50A of the principal Act (as inserted by section 4(1) of the Income Tax Amendment Act 1978) is hereby amended by omitting the expression “\$156”, and substituting the words “an amount equal to the lesser of—

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

$$(x - y) \times \frac{15}{100}$$

where—

x is an amount equal to the assessable income of the taxpayer for that income year; and

y is an amount equal to the resident withholding income derived by the taxpayer in that income year:

“(d) \$156.”

(2) Notwithstanding anything in the principal Act, section 50A of the principal Act (as amended by subsection (1) of this section) shall, in respect of income derived in the income year that commenced on the 1st day of April 1989, apply as if the expression “resident withholding income derived” in the said

section 50A were the expression "resident withholding income derived on or after the 1st day of October 1989".

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

5. Incomes wholly exempt from tax—(1) Section 61 of the principal Act is hereby amended by repealing paragraph (13), and substituting the following paragraph:

“(13) Income derived by any person during the period that commenced on the 1st day of April 1989 and ended with the 30th day of September 1989 from interest, dividends, or investment society dividends:

“Provided that the amount of the exemption under this paragraph shall not exceed \$100:

“Provided also that this paragraph shall not apply to—

“(a) Income derived by an absentee, a company, a public authority, a Maori authority, an unincorporated body, or a trustee assessable and liable for income tax under any of the provisions of sections 227 to 232F of this Act:

“(b) Interest on Post Office National Development Bonds or New Zealand Savings Certificates, in respect of the period from the date of issue to the date of maturity or earlier surrender of those bonds or those certificates, deposits in income equalisation reserve accounts, or interest that is exempt from income tax under any other provision of this section.”

(2) Section 61 of the principal Act is hereby further amended by inserting, after paragraph (12), the following paragraph:

“(12A) Any non-cash dividend paid (as that term is defined in section 327A of this Act) or otherwise made available to a shareholder on or after the 1st day of October 1989 to the extent to which fringe benefit tax is payable in relation to that dividend pursuant to section 336N(8) of this Act.”

(3) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989.

(4) Subsection (2) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1989 and in every subsequent year.

6. Exemption of dividends from tax—(1) Section 63 (3) of the principal Act is hereby amended by adding the following paragraph:

“(e) Dividends within the meaning of section 4 (1) (ba) of this Act.”

(2) This section shall apply with respect to the tax on income derived on or after the 1st day of October 1989.

7. Income and expenditure where financial arrangement redeemed or disposed of—(1) Section 64F (2) of the principal Act is hereby amended by omitting item c of the formula, and substituting the following item:

“c is—

“(i) In the case of a holder, all amounts that are income derived, less the aggregate of amounts of expenditure deemed to be incurred under section 64c or section 64i of this Act or deemed to be an allowable deduction under section 64d of this Act by the person in respect of the financial arrangement in all previous income years since the acquisition of the financial arrangement; and

“(ii) In the case of an issuer, all amounts of expenditure incurred in respect of the financial arrangement in all previous income years since the issue of the financial arrangement, less the aggregate of—

“(A) All amounts that are income deemed to be derived under section 64c or section 64d or section 64i of this Act by the person in respect of the financial arrangement in all previous income years since the issue of the financial arrangement; and

“(B) All amounts that are dividends (within the meaning of section 4 (1) (ba) of this Act) derived by the person in respect of the financial arrangement.”

8. Distribution of trading stock to shareholders of company—(1) Section 197 (3) of the principal Act is hereby amended by omitting the words “, in the opinion of the Commissioner.”.

(2) This section shall apply in relation to income derived on or after the 1st day of October 1989.

9. Interpretation—(1) Section 245A (1) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting paragraphs (a) and

(b) of the definition of the term "close of trading spot exchange rate", and substituting the following paragraphs:

"(a) The rate of a spot contract for the purchase of New Zealand dollars using the foreign currency at any time on that day on a market approved, and obtained from the sources of information approved, by the Commissioner in determination G6A (or any determination issued in substitution therefor) made under section 64E of this Act and if no such rate can be ascertained in relation to that day then such a rate on the next succeeding day (before a day not later than 5 working days after that day) upon which such a rate is able to be ascertained; or

"(b) If, in relation to any foreign currency, no such rate of a spot contract can be so ascertained, the cross rate determined as at 3 p.m. New Zealand time on that day by applying the method outlined in paragraph 6 (4) (c) of the said determination G6A (or in any corresponding paragraph of any determination issued in substitution therefor); or".

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

10. Date for payment of non-resident withholding tax—(1) Sections 315 (1), 316 (as substituted by section 27 (1) of the Income Tax Amendment Act 1986), 319, and 320 of this Act are hereby amended by omitting the expression "20th day" wherever it appears in those sections, and substituting the expression "14th day".

(2) This section shall come into force on the 1st day of October 1989, and apply to all non-resident withholding tax payable on or after that date.

11. Non-resident withholding tax deducted in error—
(1) The principal Act is hereby amended by inserting, after section 326, the following section:

"326A. (1) Where—

"(a) Any deduction is made by a person in accordance with the procedure set out in this Part of this Act; and

"(b) The amount so deducted is paid to the Commissioner; and

“(c) The amount so deducted exceeds the non-resident withholding tax deduction (if any) required in accordance with this Part of this Act—

the Commissioner shall, subject to this section, pay by way of refund to the person who derived the amount from which deduction was made an amount equal to that excess.

“(2) Any person who becomes entitled to a refund under this section may make an application therefor and any such application shall be in such form as may be approved by the Commissioner.

“(3) The Commissioner shall not pay a refund under this section unless the Commissioner receives such evidence as the Commissioner considers necessary that the requirements of subsection (1) of this section have been met.

“(4) Where any amount (hereafter in this subsection referred to as the ‘amount due’) is due to be paid to the Commissioner in accordance with any provision of this Act by any person to whom any refund is payable at that time in accordance with this section, the Commissioner may apply the refund in satisfying (so far as that refund extends) the obligation of the person to pay the amount due.

“(5) Where the Commissioner is satisfied that any amount refunded to a person under this section is in excess of the amount properly refundable, the Commissioner may recover the amount of the excess in the same manner, with any necessary modifications, as if it were income tax payable by that person due,—

“(a) In any case where the person by wilful default or neglect led the Commissioner to pay the refund, on the date upon which the refund was paid; or

“(b) In any other case, on the 7th day of the month following the month in which the person is notified that the excess is payable.

“(6) All money payable by the Commissioner in accordance with this section shall be paid without further appropriation than this section.”

(2) This section shall come into force on the 1st day of October 1989, and shall apply to any payment due to be made to the Commissioner on or after that date.

12. New Part IXA inserted—(1) The principal Act is hereby amended by inserting, after Part IX, the following Part:

“PART IXA

“RESIDENT WITHHOLDING TAX DEDUCTIONS

“327A. **Interpretation**—(1) For the purposes of this Part of this Act, unless the context otherwise requires,—

“‘Accounting year’, in relation to any person, means a year or other period ending with the date of the annual balance of that person’s accounts, being a year or other period in respect of which that person is required by this Act to furnish a return of income:

“‘Certificate of exemption’ means a certificate of exemption issued in accordance with section 327M of this Act:

“‘Close of trading spot exchange rate’ has the meaning assigned to that term by section 245A of this Act:

“‘Company’ includes a group investment fund (as defined in section 211A (1) of this Act) in so far as the group investment fund pays any dividends in respect of shares of an investor (as defined in section 211A (1) of this Act) in that group investment fund:

“‘Dividend withholding payment credit’ means a dividend withholding payment credit attached to a dividend in accordance with section 394zx of this Act:

“‘Exempt interest’ means interest that is—

“(a) Interest payable in respect of any debt made in accordance with generally accepted commercial practice for the purchase of goods or services, being a purchase made in the ordinary course of the purchaser’s taxable activity; or

“(b) Interest payable in accordance with any hire purchase agreement (as defined in section 2 of the Hire Purchase Act 1971); or

“(c) Interest exempt from tax pursuant to section 61 (18) or section 61 (50) of this Act; or

“(d) Interest payable in accordance with any specified lease (as defined in section 222A (1) of this Act); or

“(e) Interest payable in respect of any bonus bonds or Post Office bonus bonds (as each of those terms is defined in section 2 of the Post Office Bank Act 1987); or

“(f) Interest which is an inflation premium payable in respect of an inflation adjusted savings bond issued by the New Zealand Government; or

“(g) Interest payable by the Commissioner in accordance with section 413A of this Act or section 46 of the Goods and Services Tax Act 1985:

“‘Financial arrangement’ has the meaning assigned to that term by section 64B (1) of this Act:

“‘Foreign withholding tax’, in respect of any amount of resident withholding income, means any tax (other than New Zealand tax) that—

- “(a) Is deducted from that amount of resident withholding income; and
- “(b) Is of substantially the same nature as non-resident withholding tax:

“‘Holder’ has the meaning assigned to that term by section 64B (1) of this Act:

“‘Imputation credit’ means an imputation credit attached to a dividend in accordance with section 394F of this Act:

“‘Interest’ includes a redemption payment:

“‘Issued’ and ‘issuer’ have the meanings assigned to those terms by section 64B (1) of this Act:

“‘Paid’, in relation to resident withholding income, includes distributed to, credited to, applied on account of, or dealt with in the interest of, or on behalf of, any person; and ‘pay’ and ‘payment’ have corresponding meanings:

“‘Payer’ means a person who makes a payment of resident withholding income:

“‘Resident withholding income’ has the meaning assigned to that term by section 327B of this Act; and, unless the context otherwise requires, in relation to any amount of resident withholding income, includes any amount of resident withholding tax required to be deducted therefrom in accordance with this Part of this Act:

“‘Resident withholding tax’ has the meaning assigned to that term by section 327C of this Act:

“‘Resident withholding tax deduction certificate’ means a certificate provided pursuant to section 327H of this Act:

“‘Resident withholding tax deduction reconciliation statement’ means a statement required to be furnished to the Commissioner in accordance with section 327I of this Act:

“‘Shares’ includes the investment of an investor (as defined in section 211A (1) of this Act) in a group

investment fund (as defined in section 211A (1) of this Act);

“‘Taxable activity’ has the meaning assigned to that term by section 6 of the Goods and Services Tax Act 1985, except that subsection (3) (d) of that section shall not apply;

“‘Taxable bonus issue’ has the meaning assigned to that term by section 4 (3) of this Act;

“‘Tax file number’ means any identification number that has been allocated to a person by the Commissioner either generally for the purposes of this Act or specifically for the purposes of issue to that person of a certificate of exemption.

“(2) For the purposes of this Part of this Act, dividends paid by any friendly society in relation to shares in that friendly society to its members shall be deemed to be interest and not dividends.

“(3) For the purposes of sections 327D (3), 327F, 327H, 327I, 327K and 327L of this Act, the term ‘specified dividends’ means dividends that are—

“(a) Paid in relation to shares issued by a company which is at the time of payment—

“(i) A company not resident in New Zealand; or

“(ii) A company whose constitution prohibits all of its income or property from being distributed to any proprietor, member, or shareholder of the company; or

“(iii) A company the income of which is wholly exempt from income tax otherwise than under section 63 of this Act; or

“(iv) A company to which section 204 of this Act applies that, in New Zealand, is engaged solely in the business of life insurance or reinsurance referred to in subsection (2) of that section (not being a company which at that time maintains a dividend withholding payment account by virtue of an election made pursuant to section 394ZT of this Act); or

“(b) Dividends in relation to the amount of which a deduction has been allowed by the Commissioner pursuant to section 194 (5) of this Act; or

“(c) Dividends within the meaning of section 236 (2) of this Act.

“327B. Application of this Part—(1) This Part of this Act shall apply notwithstanding anything in any other Part of this Act.

“(2) This Part of this Act shall apply to any amount paid on or after the 1st day of October 1989, being an amount (in this Part of this Act referred to as resident withholding income) that consists of—

“(a) Interest, not being interest that is—

“(i) Exempt interest (as that term is defined in section 327A of this Act); or

“(ii) Interest derived by a person who holds a valid certificate of exemption issued pursuant to section 327M of this Act; or

“(iii) Interest which constitutes non-resident withholding income; or

“(iv) Interest derived from outside New Zealand by a person not resident in New Zealand; or

“(v) Interest paid by a company during an income year and derived by another company where both companies would, by virtue of the application of section 191 of this Act, be assessable and liable for income tax in respect of that income year in accordance with the said section 191 as being members of the same group of companies if the date of payment were, for the purposes of the said section 191, the end of that income year; or

“(vi) Interest derived by a non-resident investment company from development investments within the meaning of section 5 of this Act:

“(b) Dividends, not being—

“(i) Any non-cash dividend to the extent to which fringe benefit tax is payable in relation to that dividend pursuant to section 336N (8) of this Act; or

“(ii) Dividends that are derived by a company as income exempt from income tax by virtue of the application of section 63 (2) of this Act or as income which would be so exempt but for the application of paragraph (e) of section 63 (3) of this Act; or

“(iii) Any amount that is deemed to be a dividend pursuant to section 97 or section 190 or the proviso to section 199 (6) of this Act; or

“(iv) Dividends derived by a person who holds a valid certificate of exemption issued pursuant to section 327M of this Act; or

“(v) Dividends that constitute non-resident withholding income; or

“(vi) Dividends, other than dividends derived from New Zealand, derived by a person not resident in New Zealand; or

“(vii) Dividends exempt from income tax pursuant to section 61 (50) of this Act:

“Provided that, for the purposes of each of the subparagraphs of paragraphs (a) and (b) of this subsection, where any amount is derived by a person (hereafter in this proviso referred to as ‘the trustee’) in that person’s capacity as trustee for any other person or persons and that amount is beneficiary income (as that term is defined in section 226 (1) of this Act) that amount shall be deemed not to be derived by the trustee.

“327C. Deduction of resident withholding tax—

(1) Subject to this section, where a person makes a payment which consists in whole or in part of resident withholding income, that person shall, at the time of making the payment, make a deduction of tax (in this Act referred to as resident withholding tax) therefrom—

“(a) To the extent to which that payment consists of interest, of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

a is the rate of resident withholding tax, expressed as a percentage, specified in clause 1 of the Nineteenth Schedule to this Act; and

b is the amount of interest paid (before the deduction of resident withholding tax); and

c is the amount of foreign withholding tax paid or payable in respect of that amount of interest paid; and

“(b) To the extent to which that payment consists of dividends, of an amount calculated in accordance with the following formula:

$$(a \times (b + c)) - c$$

where—

a is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to this Act; and

b is the amount of dividend paid (before the deduction of resident withholding tax) or, in the case of dividends being a taxable bonus issue, inclusive of the deduction of resident withholding tax; and

c is—

“(i) In the case of any dividend paid in relation to shares issued by a company that is at the time of payment not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of that amount of dividend paid; or

“(ii) In the case of any other dividend, the aggregate of the amounts of—

“(A) Any imputation credit attached to the dividend; and

“(B) Any dividend withholding payment credit attached to the dividend:

“Provided that in no case shall the amount of resident withholding tax to be deducted be less than zero.

“(2) Where any company in any month pays in respect of its shares resident withholding income, being dividends that are a taxable bonus issue from which resident withholding income that company is required, in accordance with this Part of this Act, to deduct resident withholding tax, that company shall not make any deduction of resident withholding tax therefrom in accordance with subsection (1) of this section, but shall be liable to pay to the Commissioner an amount (which shall be treated as a deduction of resident withholding tax made from those dividends for the purposes of this Act) equal to the resident withholding tax that, but for this subsection, would have been required to be deducted and to pay that amount in the same manner in all respects as if it were the resident withholding tax that, but for this subsection, would have been required to be deducted.

“(3) Where any resident withholding tax deduction is required to be made in accordance with this Part of this Act in relation to any amount of resident withholding income and that resident withholding income is in a currency other than New Zealand currency, for the purposes of—

“(a) Calculating the amount of resident withholding tax required to be deducted and paid to the Commissioner in accordance with this Part of this Act; and

“(b) Calculating the amount of resident withholding tax deduction to be credited against income tax assessed or treated as a dividend withholding payment credit in accordance with this Part of this Act,—

that resident withholding income shall be converted into New Zealand currency either at—

“(c) The close of trading spot exchange rate on the day upon which the resident withholding tax deduction is required to be made or, where the person required to make the resident withholding tax deduction so elects in the case of a payment of resident withholding income made outside New Zealand, on the next succeeding day; or

“(d) Where the resident withholding income has been converted for the purposes of payment into New Zealand currency at an exchange rate which is a market rate for transactions entered into at arm's length, that exchange rate.

“(4) A person shall be liable to deduct resident withholding tax from any payment of resident withholding income only if—

“(a) That person is, at the time of the payment, either—

“(i) Resident in New Zealand for the purposes of this Act; or

“(ii) Not resident in New Zealand for the purposes of this Act but carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand:

“Provided that, for the purposes of this paragraph only, no person shall be treated in relation to any payment as being resident or carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand where the person establishes to the satisfaction of the Commissioner that—

“(A) In the case of a payment of interest or dividends, the payment is attributable to or effectively connected with a fixed establishment of that person outside New Zealand or, in the case of a payment of dividends payable in respect of shares issued by that person, being a company, that company is not resident in New Zealand for the purposes of this Act; and

“(B) All amounts payable in relation to the money lent or shares to which the payment

relates are payable in a currency other than New Zealand currency; and

“(b) Either—

“(i) That person holds at the time of payment a valid certificate of exemption issued to that person; or

“(ii) That payment is made wholly or partly in the course of or furtherance of a taxable activity, whether that person is acting in the capacity of agent or trustee for any other person or persons or otherwise howsoever; or

“(iii) That payment is a payment by a company of dividends in relation to shares issued by that company.

“(5) Notwithstanding subsection (4) (b) (i) of this section, any person who makes a payment of resident withholding income, being interest, and—

“(a) Is either—

“(i) A person who does not hold at the time of payment a valid certificate of exemption; or

“(ii) A person who holds at the time of payment a certificate of exemption issued in accordance with paragraph (h) or paragraph (i) of section 327M (1) of this Act or in accordance with section 327M (12) of this Act; and

“(b) Has made payments of resident withholding income, being interest, totalling less than \$5,000 in the year immediately preceding the year during which the time of payment falls—

shall be liable to deduct resident withholding tax from that payment only if and to the extent to which that payment exceeds (when aggregated with earlier or contemporaneous payments of resident withholding income being interest paid by that person in the year in which the time of payment falls) a total of \$5,000.

“(6) Where any person (hereafter in this subsection referred to as the ‘first person’) makes or receives a payment which consists in whole or in part of resident withholding income and resident withholding tax has already been deducted by any person in accordance with this Part of this Act from that resident withholding income, the first person shall not be required to deduct resident withholding tax from the payment to the extent to which resident withholding tax has already been deducted.

“(7) Where any person (hereafter in this subsection referred to as the ‘first person’) in relation to any other person (hereafter in this subsection referred to as the ‘second person’) —

- “(a) Makes a payment to the second person; or
- “(b) Receives a payment as agent or bare trustee for that second person —

for the purposes only of determining the first person’s liability to make a deduction of resident withholding tax from that payment in accordance with this Part of this Act, that payment shall be deemed not to constitute resident withholding income if —

- “(c) In the case of a payment of either interest or dividends —

- “(i) Either —

- “(A) The first person has taken reasonable steps to confirm that the second person is a person to whom at the time of payment any of paragraphs (a) to (d) of section 327M (1) of this Act applies; or

- “(B) Except in any case where the second person is a person to whom either paragraph (h) or paragraph (i) of section 327M (1) of this Act applies or a person holding a certificate of exemption issued in accordance with subsection (12) of section 327M of this Act, the first person has been provided with the second person’s tax file number and has been notified by the second person that the second person holds a certificate of exemption; or

- “(C) The first person has sighted a certificate of exemption issued to the second person and has taken reasonable steps to confirm that the second person is the person named in that certificate; and

- “(ii) There has been no notice of cancellation of a certificate of exemption held by the second person published in any issue of the *Gazette*, in the case of a payment of interest, more than 5 working days before the time when the money was lent or, in the case of a payment of dividends, more than 5 working days before the day on which the payment is made or, if such notice of cancellation has been so published, either the first person has sighted a certificate of exemption issued, on a date subsequent to the date of the issue of the *Gazette*

including the notice of cancellation, to the second person; and

“(iii) In the case of a payment of interest made on or after the 1st day of April 1991, no notice of cancellation of a certificate of exemption held by the second person has been published in any issue of the *Gazette* on or after the 1st day of April 1991 more than 5 working days before the day on which the payment is made or, if such notice of cancellation has been so published, either—

“(A) There has been published in any issue of the *Gazette* subsequent to the publication of the notice of cancellation and more than 5 working days before the day on which payment is made, notice of issue of a further certificate of exemption to the second person; or

“(B) The first person has sighted a certificate of exemption issued, on a date subsequent to the date of the issue of the *Gazette* including the notice of cancellation, to the second person; and

“(iv) The first person has not been advised by the Commissioner or the second person of cancellation of a certificate of exemption issued to the second person more than 5 working days before the day on which payment is made or, if the first person has been so advised, either—

“(A) There has been published in any issue of the *Gazette*, subsequent to the date of that advice being received and more than 5 working days before the day on which payment is made, notice of issue of a further certificate of exemption to the second person; or

“(B) The first person has sighted a certificate of exemption issued, on a date subsequent to the date of that advice being received, to the second person; and

“(v) The first person does not have any other grounds for believing that the second person is a person not eligible to be issued with a certificate of exemption; and

“(vi) The first person does not have any grounds for believing that the interest or dividends are

income derived by any person other than the second person; or

“(d) In the case of a payment to the extent to which it consists only of dividends, the first person has taken reasonable steps to confirm that the second person is a company (being a company which, if it derived those dividends, would be able to treat those dividends as income exempt from tax by virtue of the application of section 63 (2) of this Act or which would have been so able but for the application of paragraph (e) of section 63 (3) of this Act) and the first person does not have any grounds for believing that the dividends are income derived by any person other than the second person.

“(8) Where any person (hereafter in this subsection referred to as the ‘first person’), being a person to whom any of paragraphs (a) to (c) of section 327M(1) applies, in relation to any other person (hereafter in this subsection referred to as the ‘second person’),—

“(a) Receives a payment from that second person; or

“(b) Makes a payment at the request of that second person,—

for the purposes only of determining the first person’s liability to make a deduction of resident withholding tax from that payment in accordance with this Part of this Act and without affecting the liability of the second person or any other person to make a deduction of resident withholding tax from that payment in accordance with this Part of this Act, that payment shall be deemed not to constitute resident withholding income if and to the extent that the first person could not reasonably be expected to be aware that the payment constituted resident withholding income.

“327D. Requirement for agents or trustees to make resident withholding tax deductions on receipt of payments—(1) Where—

“(a) A payment which consists in whole or in part of resident withholding income has been made; and

“(b) The payer of that payment was liable to deduct resident withholding tax from that payment (or would have been so liable had it not been for the application of section 327C (7) of this Act); and

“(c) Resident withholding tax was not deducted from that payment or was not deducted in full in accordance with this Part of this Act; and

“(d) The recipient of that payment is, in relation to that payment, an agent or a trustee for another person or persons,—

the recipient of that payment shall (subject to this section and section 327C of this Act) at the time of receiving that payment make a deduction therefrom of the amount of the resident withholding tax or, as the case may be, the amount of the deficiency in that tax and shall pay to the Commissioner the amount of that deduction no later than the 14th day of the month following the month in which the payment is received.

“(2) Subsection (1) of this section shall not apply to require a recipient of a payment of resident withholding income to make a deduction of resident withholding tax where that recipient—

“(a) Holds at the time of the payment a valid certificate of exemption issued to that person; and

“(b) Receives that payment as trustee of a trust (not being a bare trust).

“(3) Where any person is required in accordance with this section to make a deduction of resident withholding tax from a dividend (not being a specified dividend), that resident withholding tax deduction shall for the purposes of this Part of this Act (including in particular but without limiting the generality of the foregoing sections 327F, 327H, 327I, 327K, and 327L of this Act) be treated as being a resident withholding tax deduction made in respect of a specified dividend.

“(4) Where any person is required in accordance with this section to make a deduction of resident withholding tax from resident withholding income, being dividends which are a taxable bonus issue, that person shall not make a deduction of resident withholding tax therefrom but shall be liable to pay to the Commissioner an amount (which shall be treated as a deduction of resident withholding tax for the purposes of this Act) equal to the resident withholding tax that, but for this subsection, would have been required to be deducted and to pay that amount in the same manner in all respects as if it were the resident withholding tax that, but for this subsection, would have been required to be deducted.

“(5) Subject to section 327C (6) of this Act, the provisions of this section shall not restrict the application of section 327C of this Act to require any person to make a deduction of resident withholding tax when making a payment, whether acting in the capacity of agent or trustee for another person or persons or otherwise howsoever.

"327E. Payment of deductions of resident withholding tax to Commissioner—(1) All persons who estimate that they will be required by this Part of this Act to make resident withholding tax deductions of \$500 or more in aggregate in relation to payments of interest during each month of any year, shall pay to the Commissioner the amount of all resident withholding tax deductions made during that year in accordance with this Part of this Act on a monthly basis, with the deductions made during any month being paid to the Commissioner no later than the 14th day of the following month.

"(2) Subject to subsections (3), (6), and (7) of this section, all persons who estimate in relation to any year that they will be required by this Part of this Act to make resident withholding tax deductions of less than \$500 in aggregate in accordance with this Part of this Act in relation to payments of interest during each month of any year shall pay to the Commissioner the amount of all resident withholding tax deductions made during that year in accordance with this Part of this Act to the Commissioner in 2 instalments as follows:

"(a) The first instalment shall be due and payable on the 14th day of October in that year and on that date all resident withholding tax deductions made in relation to payments of interest made during the period beginning on the 1st day of April in that year and ending with the 30th day of September in that year shall be paid to the Commissioner; and

"(b) The second instalment shall be due and payable on the 14th day of April in the following year and on that date all resident withholding tax deductions made in relation to payments of interest made during the period beginning on the 1st day of October in that year and ending with the 31st day of March in that following year shall be paid to the Commissioner.

"(3) If, as at the end of any month (hereafter in this subsection referred to as 'the specified month') in any income year, any person has made resident withholding tax deductions, in relation to payments of interest, of more than \$500 in aggregate since the beginning of the last month (hereafter in this subsection referred to as 'the month of prior payment') during which that person was required in accordance with this section to pay to the Commissioner an amount of resident withholding tax deductions made in relation to payments of interest, that person shall pay to the Commissioner all resident withholding tax deductions made in

relation to payments of interest since the beginning of the month of prior payment until the end of the specified month no later than the 14th day of the month following the specified month.

“(4) All persons who make resident withholding tax deductions in accordance with this Part of this Act in relation to payments of dividends shall pay all such deductions to the Commissioner on a monthly basis, with the deductions made during any month being paid to the Commissioner no later than the 14th day of the following month.

“(5) Every person who at any time is required to make a deduction of resident withholding tax shall, at the time at which such deduction was (or, in the case of a failure to make such a required deduction, would have been) required to be paid to the Commissioner or within such further time as the Commissioner may allow, deliver to the Commissioner a statement in a form authorised by the Commissioner showing such details in relation to those deductions of resident withholding tax as the Commissioner may prescribe.

“(6) Where any person (not being a person who continues to hold a valid certificate of exemption issued to that person, notwithstanding the cessation in carrying on a taxable activity) in any month—

“(a) Ceases to carry on any taxable activity in respect of which that person has been required to make any resident withholding tax deductions; or

“(b) Ceases to carry on any such taxable activity in New Zealand,—

that person shall pay to the Commissioner all resident withholding tax deductions made by that person with respect to that taxable activity and not earlier paid to the Commissioner no later than the 14th day of the following month.

“(7) Where any person in any month ceases to be a person holding a valid certificate of exemption issued to that person (not being a person who continues to be required to make resident withholding tax deductions by virtue of making payments in the course of or furtherance of a taxable activity notwithstanding such cessation in holding a valid certificate of exemption), that person shall pay to the Commissioner all resident withholding tax deductions made by that person and not earlier paid to the Commissioner no later than the 14th day of the following month.

“327F. Resident withholding tax deductions varied to correct errors—(1) Where any person (hereafter in this subsection referred to as the ‘first person’) required to make a deduction of resident withholding tax from any payment of—

“(a) Interest; or

“(b) Specified dividends,—

to any person (hereafter in this subsection referred to as the ‘second person’) has failed to make such a deduction or has failed to make it in full, the first person may (except to the extent to which a deduction of resident withholding tax has already been made by any other person to correct the deficiency) either—

“(c) Deduct a sufficient amount or amounts to correct the deficiency from any subsequent payment of such interest or dividends to the second person in the same year in which the first payment was made; or

“(d) Otherwise recover from the second person a sufficient amount or amounts to correct the deficiency.

“(2) Where a person deducts from any payment of—

“(a) Interest; or

“(b) Specified dividends,—

on account of resident withholding tax an amount in excess of the amount of resident withholding tax required to be deducted in accordance with this Part of this Act due to an error on the part of that person, that person may pay the excess to the recipient of the payment of such interest or dividends before the date upon which the resident withholding tax deduction is required to be paid to the Commissioner, which excess shall thereupon cease to be for the purposes of this Act to be a resident withholding tax deduction, and in that event shall (where any resident withholding tax deduction certificate including the amount of the excess has been given to the recipient), give to that recipient an amended resident withholding tax deduction certificate.

“(3) Where a person deducts from any payment of dividends (other than specified dividends) on account of resident withholding tax an amount in excess of the amount of resident withholding tax required to be deducted in accordance with this Part of this Act due to an error on the part of that person, that person may pay the excess to the recipient of the payment of the dividends before the date upon which the resident withholding tax deduction is required to be paid to the Commissioner, which excess shall thereupon cease to be for the purposes of this Part of this Act a resident withholding tax deduction, and in that event shall give to that recipient an

amended shareholder dividend statement for the purposes of section 394zzB of this Act.

“(4) Where a person deducts from any payment on account of resident withholding tax an amount in excess of the amount of resident withholding tax required to be deducted in accordance with this Part of this Act due to an act or omission on the part of the recipient of that payment, the person shall pay the full amount of the resident withholding tax deducted to the Commissioner in accordance with section 327E of this Act, and shall, upon such payment, not be liable to refund the amount of that excess to the recipient of that payment or any other person.

“327G. **Refunds of deductions**—(1) Where—

“(a) Any deduction is made by any person in accordance with the procedure set out in this Part of this Act; and

“(b) The amount so deducted is paid to the Commissioner; and

“(c) The amount so deducted exceeds the resident withholding tax deduction (if any) required in accordance with this Part of this Act—

the Commissioner shall, subject to this section, pay by way of refund to the person deriving the amount from which the deduction was made an amount equal to that excess.

“(2) Any person who becomes entitled to a refund under this section may make an application therefor and any such application shall be in such form as may be approved by the Commissioner.

“(3) The Commissioner shall not pay a refund under this section unless the Commissioner receives such evidence as the Commissioner considers necessary that the requirements of subsection (1) of this section have been met.

“(4) Where any amount (hereafter in this subsection referred to as the ‘amount due’) is due to be paid to the Commissioner in accordance with any provision of this Act by any person to whom any refund is payable at that time in accordance with this section, the Commissioner may apply the refund in satisfying (so far as that refund extends) the obligation of the person to pay the amount due.

“(5) Where the Commissioner is satisfied that any amount refunded to a person under this section is in excess of the amount properly refundable, the Commissioner may recover the amount of the excess in the same manner, with any

necessary modifications, as if it were income tax payable by that person due,—

“(a) In any case where the person by wilful default or neglect led the Commissioner to pay the refund, on the date upon which the refund was paid; or

“(b) In any other case, on the 5th working day of the month following the month in which the person is notified that the excess is payable.

“(6) All money payable by the Commissioner in accordance with this section shall be paid without further appropriation than this section.

“327H. Resident withholding tax deduction certificates—(1) Except as provided in this section, every person who makes a deduction of resident withholding tax from resident withholding income, being either—

“(a) Interest; or

“(b) Specified dividends,—

paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by any other person shall prepare a resident withholding tax deduction certificate in such form as the Commissioner may approve and containing the information set out in subsection (6) of this section.

“(2) Every person (hereafter in this section referred to as the ‘the payer’) who is required to prepare a resident withholding tax deduction certificate in respect of any amount of resident withholding income paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by any other person (hereafter in this section referred to as the ‘recipient’) shall, at the discretion of the payer, either—

“(a) Prepare that resident withholding tax deduction certificate with respect to all such amounts of resident withholding income of that type (being either interest or dividends) paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by the recipient during the relevant income year; or

“(b) Prepare that resident withholding tax deduction certificate with respect to each such amount of resident withholding income of that type paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by the recipient,—

and in either case shall provide the tax deduction certificate to the recipient not later than the 20th day of May following the end of the relevant year.

“(3) Notwithstanding the provisions of subsection (2) of this section, the recipient may at any time during the relevant year request the payer to prepare and provide a resident withholding tax deduction certificate in relation to any deduction of resident withholding tax made during that year if the financial arrangement in relation to which the deduction of resident withholding tax was made has matured, been remitted, or been disposed of by the recipient, and in such event the payer shall prepare the tax deduction certificate and provide it to the recipient not later than 20 working days after the receipt by the payer of the request:

“Provided that in no case shall the payer be obliged to provide a tax deduction certificate by virtue of this subsection before the 20th day of May 1990 except where the Commissioner so requires.

“(4) Notwithstanding the provisions of subsection (2) of this section, where any person (not being a person who continues to hold a valid certificate of exemption issued to that person notwithstanding the cessation in carrying on a taxable activity) in any month—

“(a) Ceases to carry on any taxable activity in respect of which that person has been required to make any resident withholding tax deductions; or

“(b) Ceases to carry on any such taxable activity in New Zealand,—

that person shall prepare and provide to the recipients any resident withholding tax deduction certificates required to be prepared by that person with respect to that taxable activity not later than the 20th day of the following month.

“(5) Notwithstanding the provisions of subsection (2) of this section, where any person in any month ceases to be a person holding a valid certificate of exemption issued to that person (not being a person who continues to be required to make resident withholding tax deductions by virtue of making payments in the course of or furtherance of a taxable activity notwithstanding such cessation in holding a valid certificate of exemption) that person shall prepare and provide to the recipients any resident withholding tax deduction certificates required to be prepared by that person not later than the 20th day of the following month.

“(6) Every resident withholding tax deduction certificate prepared in accordance with this section shall include the following information:

- “(a) The full name and relevant address of the payer;
- “(b) The full name and last known address of the recipient (except where, after making reasonable inquiries, the payer is unable to obtain such details of the recipient);
- “(c) The type of resident withholding income (being either interest or specified dividends) to which the deduction certificate relates;
- “(d) The date on which the deduction was made or, as the case may be, the year in which the deductions were made to which the certificate relates;
- “(e) The amount of the resident withholding tax deduction or deductions and the amount of resident withholding income to which the deduction or deductions relate;
- “(f) Such further information as may be required by the Commissioner.

“(7) Notwithstanding any other provision of this section, no person shall be required to prepare and provide a resident withholding tax deduction certificate with respect to resident withholding income, being interest, paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by any recipient in any year if the total amount of resident withholding income, being interest, paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by that recipient does not exceed in total \$20 for the relevant year, unless the recipient gives notice in writing to the payer requesting such a certificate, in which case the certificate shall be prepared and provided to the other person within 20 working days of receipt of that notice.

“(8) Every resident withholding tax deduction certificate shall be retained by the person to whom it is provided for a period of 3 years after the end of the year to which it relates, unless the Commissioner otherwise permits.

“(9) Where any resident withholding income is paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by 2 or more persons jointly, any payer shall be entitled to treat those persons as one person and accordingly issue only one resident withholding tax deduction certificate in the name of any one or more of those persons who may be nominated by those persons

for this purpose or, in the absence of any such nomination, in the name of those persons jointly.

“(10) For the purposes of this section, a resident withholding tax deduction certificate shall be deemed to have been provided to a recipient where the certificate—

“(a) Is given to the recipient personally; or

“(b) Is sent by post addressed to the recipient at the recipient's last known place of abode or business; or

“(c) Is given personally to any other person authorised to act on behalf of the recipient; or

“(d) Is sent by post addressed to that other person at that other person's last known place of abode or business.

“(11) The Commissioner may, in the Commissioner's discretion, with regard to resident withholding tax deductions made in the year commencing on the 1st day of April 1989 where the Commissioner is satisfied that the person (or class of persons) is unable to comply with the requirements of this section, vary the requirements of this section in relation to any person (or class of persons) in any one or more of the following ways:

“(a) Reducing the nature or amount of information required to be included in resident withholding tax deduction certificates;

“(b) Extending the time within which the payer must prepare and provide resident withholding tax deduction certificates;

“(c) Relieving the payer from the obligation to prepare and provide resident withholding tax deduction certificates,—

and in every such case the section shall apply as so varied.

“3271. Resident withholding tax deduction reconciliation statements—(1) Every person who in any year makes a deduction of resident withholding tax (or is required by this Part of this Act to make such a deduction and fails to do so) from resident withholding income, being either—

“(a) Interest; or

“(b) Specified dividends,—

paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by any other person, shall, by not later than the 31st day of May following the end of that year, furnish to the Commissioner, in such form as the Commissioner may

prescribe, such information as the Commissioner may require in relation to that deduction.

“(2) Every person (hereafter in this subsection called the ‘first person’) who is required to furnish a statement in accordance with subsection (1) of this section shall, if requested by the Commissioner in relation to any year and in such form as the Commissioner may approve, provide the Commissioner with—

“(a) Copies of all tax deduction certificates required to be provided by the first person in relation to that year in accordance with section 327H of this Act or any information contained therein that the Commissioner may require;

“(b) The following information in relation to any other person and in relation to each of interest and specified dividends where the first person has in that income year paid interest or specified dividends to that other person and not deducted resident withholding tax because that other person holds a valid certificate of exemption, issued pursuant to section 327M of this Act:

“(i) The full name and last known address of that other person; and

“(ii) The total interest or specified dividends paid to that other person; and

“(iii) In the case of any payments of interest or specified dividends made on or after the 1st day of April 1990 to a person (other than a person to whom at the time of payment any of paragraphs (a) to (d) of section 327M (1) of this Act applies), that other person’s tax file number; and

“(iv) Such further information as the Commissioner may require.

“(3) Where any person is required to provide any information to the Commissioner pursuant to subsection (2) of this section, that person shall provide such information to the Commissioner—

“(a) In any case where the Commissioner has requested such information, not less than 30 days before the date upon which that person is required to furnish a statement in accordance with subsection (1) of this section, with that statement; or

“(b) In any other case, within 30 days of the request from the Commissioner.

“(4) Notwithstanding any provisions of this section, where any person in any month of any year—

“(a) Ceases to carry on any taxable activity in relation to which that person (not being a person who continues to hold a valid certificate of exemption issued to that person notwithstanding the cessation in carrying on a taxable activity) has been required to deduct resident withholding tax from payments made to any other person; or

“(b) Ceases to carry on any such business in New Zealand,— that person shall provide to the Commissioner the information required to be provided by virtue of the application of this section as if the end of that month were the end of that year and within 40 working days after the end of that month.

“(5) Notwithstanding the provisions of this section, where any person in any month in any year ceases to be a person holding a valid certificate of exemption issued to that person (not being a person who continues to be required to make resident withholding tax deductions by virtue of making payments in the course of or furtherance of a taxable activity notwithstanding such cessation in holding a valid certificate of exemption), that person shall provide to the Commissioner the information required to be provided by virtue of the application of this section as if the end of that month were the end of the year and within 40 working days after the end of that month.

“(6) The Commissioner may vary any of the requirements of this section in relation to any person or class of persons in such cases and to such extent as the Commissioner thinks fit and in every such case this section shall apply as so varied.

“327J. Disclosure of interest payments where no resident withholding tax deduction required—(1) Any payer who in any year commencing on or after the 1st day of April 1990 makes a payment of resident withholding income, being interest,—

“(a) In respect of which no resident withholding tax deduction is required to be made by reason of the fact either that—

“(i) The payment was not made by the payer in the course of or furtherance of a taxable activity; or

“(ii) Section 327c (5) of this Act applies; and

“(b) Claimed as a deduction by that person or any other person when calculating assessable income for the purposes of this Act; and

“(c) Paid to a person other than a person who holds a valid certificate of exemption,—

shall, in the return of income that the payer is required under this Act to furnish in relation to that year, provide the Commissioner with the following information in relation to each person (hereafter in this section called 'the recipient') to whom such a payment was made in that year:

- “(d) The full name and last known address of the recipient; and
- “(e) The total resident withholding income, being interest, paid by the payer to the recipient in that income year; and
- “(f) The tax file number of the recipient; and
- “(g) Such further information as the Commissioner may require.

“(2) Every recipient who receives from any payer a payment of resident withholding income, being interest, in respect of which no resident withholding tax deduction is required to be made because the payment was not made by the payer in the course of or furtherance of a taxable activity or because of the application of section 327c(5) of this Act shall, within 10 working days of receiving any request from the payer, provide the payer with the recipient's tax file number.

“327k. Resident withholding tax deductions to be credited against income tax assessed—(1) Where a person derives an amount, being either—

- “(a) Interest; or
- “(b) Specified dividends,—

from which any amount has been deducted on account of resident withholding tax, the interest or specified dividends derived shall, for the purposes of this Act, include such amount deducted.

“(2) Subject to this section, where any resident withholding tax, not being additional tax or penal tax, has been deducted from any amount, being either—

- “(a) Interest; or
- “(b) Specified dividends,—

derived by any person in any income year, the Commissioner shall credit the resident withholding tax deducted in payment successively of—

- “(c) The income tax (if any) payable by the person for that income year;
- “(d) The income tax (if any) due by the person and unpaid in respect of any year before that income year;
- “(e) The income tax (including provisional tax) (if any) due by the person and unpaid in respect of any year after

that income year and, if more than one, in the order of those years,—

and shall refund to the person an amount equal to the excess of the resident withholding tax deducted over the amounts which are so credited in accordance with Part XIV of this Act as if it were tax paid in excess.

“(3) Any credit of tax to which a person is entitled under this section shall be credited so far as it extends, after allowing for any credit of tax allowable in accordance with section 293 and section 394ZE of this Act.

“(4) The Commissioner shall not allow a credit of tax or pay a refund in accordance with subsection (2) of this section with respect to any resident withholding tax deducted, unless the Commissioner has received—

“(a) The resident withholding tax deduction certificate relating to that resident withholding tax or other evidence in writing satisfactory to the Commissioner evidencing the deduction; and

“(b) Such other information as the Commissioner may require.

“(5) Where the Commissioner is satisfied that the amount of any tax credit or refund claimed in accordance with this section is in excess of the amount properly allowable in accordance with this section, the Commissioner may refuse to allow the credit or make the refund to the extent of the excess.

“(6) Where the Commissioner is satisfied that any tax credit allowed is in excess of the amount properly allowable in accordance with this section (hereafter referred to in this subsection as the ‘excess tax credit’), the Commissioner may recover the excess tax credit from the person to whom the excess tax credit was allowed in the same manner, with any necessary modifications, as if it were income tax payable by that person under this Act and the amount of the excess tax credit shall be due,—

“(a) Where and to the extent to which the excess tax credit has been paid as a refund,—

“(i) In any case where the person by wilful default or neglect led the Commissioner to allow the excess tax credit, on the date upon which that refund was paid; or

“(ii) In any other case, on the 5th working day of the month following the month in which the person is notified by the Commissioner that that refund is payable to the Commissioner; and

“(b) Where and to the extent to which the excess tax credit has been allowed as a credit against income tax payable by that person, on the date upon which was payable the income tax in respect of which the excess tax credit was allowed.

“(7) For the purposes of giving effect to this section, the Commissioner may at any time alter any assessment or any determination, notwithstanding anything in section 25 of this Act.

“327L Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits—(1) In this section,—

“‘Dividend withholding payment account company’ means a dividend withholding payment account company as defined in section 394zk of this Act:

“‘Dividend withholding payment account return’ means an annual dividend withholding payment account return required to be furnished pursuant to section 394zzc of this Act:

“‘Imputation credit account company’ means an imputation credit account company as defined in section 394A of this Act:

“‘Imputation return’ means an annual imputation return required to be furnished pursuant to section 394j of this Act.

“(2) Where any resident withholding tax deduction is made by a company in accordance with this Part of this Act from a dividend (not being a specified dividend) paid in relation to shares issued by that company, that deduction shall be deemed to be a dividend withholding payment credit attached to that dividend by the company and that company shall be deemed to be a dividend withholding payment account company for the purposes of the following provisions of this Act:

“(a) Paragraph (h) of the definition of the term ‘residual income tax’ in section 375 of this Act:

“(b) Section 394zc:

“(c) Section 394zd:

“(d) Section 394zp (except for subsections (4) and (5));

“(e) Section 394zq;

“(f) Section 394zr;

“(g) Section 394zzb.

“(3) Where any resident withholding tax deduction is in any year made by a company in accordance with this Part of this Act from a dividend (not being a specified dividend) in relation

to shares issued by that company, that company shall provide to the Commissioner such information as the Commissioner may require in relation to that deduction, and such information shall be provided—

“(a) In the case of any company required to furnish an annual dividend withholding payment account return, in that return;

“(b) In the case of any company (not being a company to which in relation to that year paragraph (a) of this subsection applies) required to furnish an annual imputation return, in that return.

“(4) Where any company pays in any year any dividend (not being a specified dividend) in relation to its shares from which dividend any resident withholding tax is deducted in accordance with this Part of this Act, that company shall at the time of paying that dividend complete such information in relation to that dividend as the Commissioner may require and such information shall,—

“(a) If the company is an imputation credit account company in that year, be included in the company dividend statement prepared in accordance with section 394H of this Act; and

“(b) In any other case, be included in such form as the Commissioner may approve, containing also the information set out in paragraphs (a), (b), (c), and (f) of section 394H (1) of this Act, and be furnished to the Commissioner not later than the 31st day of May following the end of that year.

“327M. **Certificates of exemption**—(1) Any of the following persons may apply to the Commissioner to be issued with a certificate of exemption:

“(a) Any registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1964 and any person who is either referred to or is within any of the categories of persons referred to in Part A of the First Schedule to that Act;

“(b) Any building society (as defined in section 2 of the Building Societies Act 1965);

“(c) Any company formed under section 4 of the Trustee Banks Restructuring Act 1988;

“(d) Any of the Public Trustee or the Maori Trustee or a trustee company (as that term is defined in section 2 of the Trustee Companies Act 1967);

“(e) Any person whose principal form of business is—

“(i) The borrowing of money or accepting of deposits, whether on demand or for a fixed term, or the receiving of credit or the selling of any credit instrument; and

“(ii) The lending of money or granting of credit or buying or discounting of any credit instrument:

“(f) Any person who has furnished all returns of income that that person is required to furnish under this Act within the time period prescribed in this Act (or within such further time as the Commissioner has allowed), and who has derived in the year to which that person's most recently furnished income tax return relates total assessable income in excess of \$2,000,000, before any deductions allowable under this Act:

“(g) Any person in any accounting year who has reasonable grounds for believing that the total assessable income before any deductions allowable under this Act that will be derived by that person in the next accounting year of that person will exceed \$2,000,000:

“(h) Any person whose income is wholly or partly exempt from tax by virtue of any of paragraphs (2), (23), (24), (25), (26), (27), (28), (29), (30), (32), (33), and (44) of section 61 of this Act in relation to the activities of that person in the capacity in which that person's income is so exempt:

“(i) Any person to whom section 61 (34) of this Act applies and who has, in that person's most recently completed accounting year, derived income of an amount less than the amount for the time being specified in the proviso to section 61 (34) of this Act, and has not, in respect of that year, been assessed as having derived income of more than that amount.

“(2) Any application under subsection (1) of this section shall be made in writing in the form prescribed by the Commissioner, and shall state which paragraph of subsection (1) of this section applies to the applicant (the requirements of the paragraph specified in the application being referred to hereafter in this section and in section 3270 of this Act as the 'basis of exemption'), and shall be accompanied by a declaration made by the applicant or any duly authorised officer of the applicant stating that the applicant comes within the basis of exemption.

“(3) An applicant for a certificate of exemption shall provide such further information as the Commissioner may require in relation to the application, including any books of account or other accounting information or records of or relating to the applicant.

“(4) Where the Commissioner has received an application under subsection (1) of this section, and any further information that may be required under subsection (3) of this section in relation to that application, and the Commissioner is satisfied that the applicant is a person to whom subsection (1) of this section applies, the Commissioner shall issue a certificate of exemption to the applicant for such period as the Commissioner determines (if any), which certificate shall—

“(a) Be a valid certificate of exemption from such date as the Commissioner shall determine and state in the certificate; and

“(b) Bear the date of issue of the certificate and the date of termination of the certificate (if any); and

“(c) Bear that applicant's tax file number.

“(5) In the event that any certificate of exemption issued is lost or destroyed, on receipt of satisfactory evidence of that fact the Commissioner may issue a replacement certificate of exemption.

“(6) Any person to whom is issued a certificate of exemption on the basis that paragraph (g) of subsection (1) of this section applies to that person shall, within 3 months after the end of the accounting year last referred to in that paragraph, furnish to the Commissioner evidence to the satisfaction of the Commissioner, of that person's total assessable income before allowable deductions derived by that person during the relevant accounting year, and shall provide such supporting information or further evidence as the Commissioner may require for the purposes of this section and section 327o of this Act.

“(7) In the event that any person to whom subsection (6) of this section applies has during the relevant 12 month period derived less than \$2,000,000 of total assessable income before allowable deductions, that person (hereafter in this subsection referred to as the 'first person') shall be chargeable with additional tax in relation to amounts received or derived by the first person that would, had the first person not held that certificate of exemption, have been deducted under this Part of this Act from payments made by any other person, and section 327u of this Act shall apply to the first person as if the first person had failed to make a deduction under this Part of this

Act, and as if that default had occurred on each day that the first person received or derived a payment from which a deduction would otherwise have been made under this Part of this Act.

“(8) When calculating the total assessable income of any company for the purposes of paragraph (f) of subsection (1) of this section, being a company that was for the relevant year pursuant to section 191 of this Act, a member of a group of companies, the total assessable income before allowable deductions of that company is deemed to include all such assessable income in that year of any other members of that group.

“(9) When calculating the estimated total assessable income of any company for the purposes of paragraph (g) of subsection (1) and subsections (6) and (7) of this section, being a company which anticipates that it will be a member of a group of companies pursuant to section 191 of this Act for the relevant 12-month period, the estimated total assessable income before allowable deductions in that period of that company is deemed to include the estimated total assessable income of all other companies in that group.

“(10) For the purposes of paragraphs (f) and (g) of subsection (1) and subsections (6), (7), (8), and (9) of this section, when calculating the total assessable income of any company, there shall be excluded from the total assessable income calculations any assessable income derived by that company (or derived by another company in the same group of companies) from any transaction or series of related or connected transactions with another company in the same group of companies.

“(11) The Commissioner may, in the Commissioner’s discretion,—

“(a) Issue a certificate of exemption; or

“(b) Permit the retention of a certificate of exemption; or

“(c) Remit the whole or any part of any additional tax

payable by virtue of subsection (7) of this section,— notwithstanding the failure of the applicant for the certificate or the holder of the certificate (as the case may be) to satisfy the basis of exemption in paragraph (f) of subsection (1) of this section or to derive during the relevant 12 month period referred to in subsection (7) of this section total assessable income before allowable deductions of at least \$2,000,000, where the Commissioner is satisfied that the failure is solely as a consequence of extraordinary circumstances that are—

“(d) Beyond the reasonable control of the applicant or holder of the certificate of exemption; and

“(e) Not likely to be repeated in subsequent years; and
“(f) In the case of any remission of additional tax payable by virtue of subsection (7) of this section, circumstances which the applicant for the certificate of exemption could not reasonably have been expected to foresee at the time of application.

“(12) Notwithstanding any other provision of this section, the Commissioner may, in the Commissioner's discretion, at any time issue to a person, being a person to whom at that time subsection (1) of this section does not apply, a certificate of exemption which shall be valid until the date of termination (if any) specified in the certificate where the Commissioner is satisfied that in the period of validity of any certificate of exemption issued to that person either—

“(a) The person will or is likely to incur a loss or will or is likely to be entitled to claim aggregate deductions in accordance with this Act not less than the aggregate of any assessable income derived by that person; or

“(b) The person would, but for the application of this subsection, in each income year any part of which income year falls within the period of validity of the certificate of exemption, be or be likely to be entitled to claim aggregate resident withholding tax credits in accordance with section 327k of this Act exceeding the income tax liability of that person for such income year by an amount not less than \$500:

“Provided that the Commissioner shall not issue to any person a certificate of exemption in accordance with this subsection unless the Commissioner has received from that person an application in writing in the form prescribed by the Commissioner, which application shall be accompanied by—

“(c) A declaration made by the applicant or any duly authorised officer of the applicant stating that the applicant is a person to whom either paragraph (a) or paragraph (b) of this subsection applies for the proposed period of validity of the certificate of exemption; and

“(d) A set of budgeted accounts detailing the projected income, deductions, resident withholding tax credits, and income tax liability of the person for the proposed period of validity of the certificate of exemption; and

“(e) Such further information in relation to the person or the budgeted accounts as the Commissioner may require.

“(13) Where any certificate of exemption issued in accordance with subsection (12) of this section ceases to be a valid certificate of exemption at the date of termination specified in the certificate and is not immediately thereafter replaced by a valid certificate of exemption in substitution, the provisions of section 327o of this Act shall apply as if the certificate were on the date of termination cancelled in accordance with that section, and such cancellation on that date notified by the Commissioner to the holder of the certificate.

“(14) No person (hereafter in this subsection referred to as ‘the first person’) issued with a certificate of exemption in accordance with subsection (12) of this section shall notify any other person that the first person holds that certificate of exemption without providing the other person with a copy of that certificate of exemption.

“327N. Unincorporated bodies—(1) For the purposes of this section,—

“‘Body’ means an unincorporated body of persons; and includes—

““(a) A partnership;

““(b) A joint venture;

““(c) The trustees of a trust;

“‘Member’ means a partner, a joint venturer, a trustee, or a member of any body;

“‘Partnership’ and ‘partner’ have the same meanings as in the Partnership Act 1908.

“(2) Where any body that carries on any taxable activity is issued with a certificate of exemption in relation to the carrying on of that taxable activity,—

““(a) The members of that body shall not themselves be issued with a certificate of exemption in relation to the carrying on of that taxable activity; and

““(b) Any payments made in the course of carrying on that taxable activity shall be deemed for the purposes of this Part of this Act to be made by that body, and shall be deemed not to be made by any member of that body; and

““(c) Any payments to any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity shall be deemed for the purposes of this Part of this Act to be payments to that body, and shall be deemed not to be payments to that member; and

“(d) That certificate of exemption shall be in the name of the body, or where that body is the trustee of a trust, in the name of the trust; and

“(e) Subject to subsection (3) of this section, any change of members of that body shall have no effect for the purposes of this Part of this Act.

“(3) Notwithstanding anything in this section, every member is liable jointly and severally with any other members for all resident withholding tax payable by the body while that member remains a member of that body, and, where that member is an individual, after that member’s death, that member’s estate shall be severally liable in due course of administration for such resident withholding tax payable as far as it remains unpaid:

“Provided that where any such body is a partnership, joint venture, or the trustees of a trust, a member shall not cease to be a member for the purposes of this section until the date on which any change of membership of that body is notified in writing to the Commissioner.

“(4) For the purposes of this Part of this Act, any notice served in accordance with this Part of this Act which is addressed to a body by the name in which it is issued with a certificate of exemption registered pursuant to this Act, shall be deemed to be served on that body and on all members of that body.

“(5) Subject to subsection (6) of this section, where anything is required to be done pursuant to this Part of this Act by or on behalf of any body, it shall be the joint and several liability of all members to do any such thing:

“Provided that any such thing done by one member shall be sufficient compliance with any such requirement.

“(6) Notwithstanding anything in this section, but subject to subsection (3) of this section, where anything is required to be done pursuant to this Part of this Act by or on behalf of any body, not being a partnership, joint venture, or trustees of a trust, the affairs of which are managed by its members or a committee or committees of its members, it shall be the joint and several responsibility of—

“(a) Every member holding office as president, chairman, treasurer, secretary, or any similar office; or

“(b) In default of any such member, every member holding office as a member of a committee:

“Provided that if it is done by any official or committee member, referred to in paragraph (a) or paragraph (b) of this

subsection, that shall be sufficient compliance with any such requirement.

“327o. Cancellation of certificates of exemption—

(1) Where any person who holds a certificate of exemption issued in accordance with section 327M of this Act ceases to be a person who comes within the basis of exemption that was specified in that person’s application for that certificate, that person shall, within 5 working days after the first day upon which that person became aware of that fact,—

“(a) Inform the Commissioner in writing of that fact; and

“(b) Deliver to the Commissioner any certificate of exemption held by that person; and

“(c) If requested by the Commissioner and within 5 working days after that request, provide the Commissioner with the full names and last known addresses of all persons to whom that person has shown the certificate of exemption for the purpose of obtaining an exemption from the deduction of resident withholding tax under this Part of this Act.

“(2) The Commissioner may cancel any person’s certificate of exemption at any time in the following circumstances:

“(a) If the Commissioner has reason to believe that the person no longer satisfies the basis of exemption that was specified in the application made for that certificate of exemption; or

“(b) If that person is not within the basis of exemption specified in the application made by that person for that certificate of exemption and obtained that certificate of exemption on the basis of misleading information or otherwise should not have been issued with a certificate of exemption; or

“(c) Where the basis of exemption for that certificate of exemption was paragraph (g) of subsection (1) of section 327M of this Act, if—

“(i) The evidence required to be furnished by that person under subsection (6) of section 327M of this Act shows that that person did not derive total assessable income before allowable deductions in excess of \$2,000,000 in the relevant accounting year; or

“(ii) That person fails to furnish satisfactory evidence of total assessable income before allowable deductions as required under subsection (6) of section 327M of this Act; or

“(iii) The Commissioner has reason to believe the evidence furnished by that person under subsection (6) of section 327M of this Act is incorrect in any material respect or is misleading; or

“(d) If that person has not made payment of any income tax which is payable by that person under this Act by the due date for payment of that tax,—

and in each such event the Commissioner shall notify the person of the fact that that person's certificate of exemption has been cancelled and that person shall, within 5 working days of receiving the notification, deliver up that person's certificate of exemption to the Commissioner, if not delivered up previously, and shall, if requested by the Commissioner, provide the Commissioner with the full names and last known addresses of all persons to whom that person has shown the certificate of exemption for the purpose of obtaining an exemption under this Part of this Act:

“Provided that, except in the circumstance specified in paragraph (d) of this subsection, in any case where the Commissioner is satisfied that the person is a person to whom section 327M (1) of this Act applies in relation to a further basis of exemption other than that specified in the application made for the certificate of exemption, the Commissioner shall not cancel the certificate of exemption except to issue with immediate effect a certificate of exemption in substitution therefor.

“(3) The Commissioner may inform any persons of the fact of cancellation of any certificate of exemption at any time.

“(4) Any person who receives notification from the Commissioner that that person's certificate of exemption has been cancelled shall, within 5 working days of receipt of that notification, inform in writing all persons to whom that person has shown that certificate of exemption for the purpose of obtaining an exemption under this Part of this Act and from whom that person expects to receive further payments of resident withholding income, of the cancellation of that certificate.

“(5) The Commissioner shall publish in the *Gazette*—

“(a) On or before the 30th day of June in each year—

“(i) A list of all certificates of exemption that were cancelled during the immediately preceding year (not including any such certificates of exemption held prior to cancellation by a person to whom a further certificate of exemption was issued subsequently in that year); and

“(ii) A list of all certificates of exemption that were issued during the immediately preceding year to persons who had previously held a certificate of exemption (not including any such certificates of exemption that were issued to a person who previously in that year held a certificate of exemption which was cancelled); and

“(b) In April, July, October, and January (hereafter in this subsection referred to respectively as the month of publication)—

“(i) A list of all certificates of exemption that were cancelled during the 3-month period ending with the last day of the month immediately preceding the relevant month of publication (not including any such certificates of exemption held prior to cancellation by a person to whom a further certificate of exemption was issued subsequently in that 3-month period); and

“(ii) A list of all certificates of exemption that were issued during the 3-month period ending with the last day of the month immediately preceding the relevant month of publication to a person who had previously held a certificate of exemption (not including any such certificates of exemption that were issued to a person who previously in that 3-month period held a certificate of exemption which was cancelled).

“(6) Where any person is required to deliver up a certificate of exemption held by that person, that person shall deliver up all original copies of that certificate of exemption issued to that person by the Commissioner.

“(7) A certificate of exemption shall cease to be a valid certificate of exemption on the 5th working day after the date of publication of the cancellation of that certificate in the *Gazette*, and, in relation to persons who are informed by the Commissioner or the previous holder of that certificate that a certificate of exemption has been cancelled, a certificate of exemption shall cease to be a valid certificate of exemption as from the day which is 5 working days after the date the person is so informed.

“327P. **Records to be kept**—(1) For the purposes of this section, the term ‘records’ has the same meaning as in section 428 of this Act.

“(2) Every person required, in accordance with this Part of this Act, to make deductions of resident withholding tax from resident withholding income paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by any other person shall keep in English proper records sufficient to enable the Commissioner to ascertain readily at any time the following information in relation to each such amount of resident withholding income:

- “(a) The amount of the resident withholding income before making any resident withholding tax deduction;
- “(b) The amount of the resident withholding tax deduction;
- “(c) The date on which the resident withholding tax was required to be deducted;
- “(d) The full name and last known address of the recipient of the payment or the person deriving the resident withholding income, as the case may be;
- “(e) In the case of a payment of interest, any number used by the person to identify the financial arrangement in relation to which the interest was paid;
- “(f) Such other information as the Commissioner may require.

“(3) Every person liable in accordance with this Act to deduct resident withholding tax from any amount paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327D of this Act) by any other person had that other person not held a valid certificate of exemption issued pursuant to paragraphs (h) and (i) of section 327M (1) of this Act shall keep in English proper records in relation to such amount sufficient to enable the Commissioner to ascertain readily at any time the following information in relation to each such amount—

- “(a) The amount and the date upon which a resident withholding tax deduction would have been required; and
- “(b) The full name and last known address of the other person; and
- “(c) The other person’s tax file number.

“(4) Every person required to keep records by virtue of the application of subsections (2) and (3) of this section shall record at the end of each year, in relation to each recipient to whom interest or specified dividends were paid by that person during that year, sufficient information to enable the Commissioner to ascertain readily—

- “(a) The total amount of interest and specified dividends paid; and

“(b) Details of all other financial arrangements under which interest has been paid by that person to that recipient at any time during that year.

“(5) Every person required by section 327J or section 327ZD of this Act to provide information to the Commissioner shall keep in English proper records to allow verification readily by the Commissioner of such information.

“(6) Every person required by this section to retain records shall—

“(a) Take all reasonable precautions for the safe custody of all records that the person is required to keep under this section; and

“(b) Retain those records for not less than 10 years after the end of the year in which were made the payments to which they relate, except to the extent that—

“(i) The Commissioner has given notice in writing that retention is not required; or

“(ii) Those records are required by law to be delivered to any other person; or

“(iii) The person is a company which has been wound-up and dissolved.

“(7) The Commissioner may, in the Commissioner's discretion, on application made in writing in that behalf, authorise any person, by notification in writing, to keep such records required by this section as the Commissioner determines in a language other than English.

“327Q. Recovery of resident withholding tax deductions—(1) The amount of every resident withholding tax deduction made in accordance with this Part of this Act by any person shall be held in trust for the Crown, and any amount so held in trust shall not be property of the person liable to execution, and, in the event of the bankruptcy or liquidation of the person or an assignment for the benefit of the person's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation, or assignment.

“(2) The provisions of section 365 (2) of this Act shall apply to any amount of resident withholding tax deduction made in accordance with this Part of this Act by any person as if it were a 'tax deduction' to which that section refers and as if the person were 'the employer' to which that section refers.

“(3) This section shall apply notwithstanding anything in any other Act, and in particular section 308 of the Companies Act 1955 shall apply subject to this section.

"327R. Unpaid resident withholding tax deductions constitute charge on payer's property—(1) Where a person fails wholly or in part to make any tax deduction in accordance with that person's obligations under this Part of this Act, or is liable to pay any sum to the Commissioner under this Part of this Act, an amount equal to the total for the time being unpaid to the Commissioner in respect of that tax deduction or that sum (including any additional tax or penal tax), and in respect of any judgment obtained therefor (including any costs, fees, or expenses included in the judgment or otherwise payable by the person to the Commissioner in respect thereof) shall be a charge on all the real and personal property of the person.

"(2) Subject to subsection (3) of this section, the provisions of section 367 of this Act (except subsection (11)) shall apply to every charge created by this section as if that charge were a charge created by section 367 (2) of this Act.

"(3) Any amount secured by a charge under this section shall rank in any liquidation or receivership of a person that is a company, or any bankruptcy or assignment for the benefit of creditors of a person that is an individual, equally with any amounts secured under section 367 of this Act.

"327s. Person failing to make resident withholding tax deductions—(1) Where a person fails to make any resident withholding tax deduction in accordance with that person's obligations under this Part of this Act, the amount in respect of which default has been made shall constitute a debt payable by that person to the Commissioner, and shall be deemed to have become due and payable to the Commissioner on the day on which it would have been due to be paid to the Commissioner had the deduction correctly been made.

"(2) The right of the Commissioner to recover from the person the amount in respect of which default has been made shall be in addition to any right of the Commissioner to recover from the recipient of that amount any income tax payable by that recipient in respect of the resident withholding income of which that amount formed part; and nothing in this Part of this Act shall be construed as preventing the Commissioner from taking such steps as the Commissioner thinks fit to recover that amount from both of those persons concurrently, or from recovering that amount wholly from one of those persons, or partly from one and partly from the other of those persons.

"(3) Notwithstanding subsections (1) and (2) of this section, where and to the extent to which any person (hereafter in this subsection referred to as 'the first person') otherwise liable to

make payment of any amount in accordance with this section can satisfy the Commissioner that any other person has made a deduction of resident withholding tax from the resident withholding income in relation to which the first person failed to make such a deduction, for the purposes of this section and section 327R of this Act only in determining any liability of the first person under this section or section 327R of this Act, that deduction made by the other person shall be deemed to be made by the first person.

“327T. Assessment of resident withholding tax deductions to be made under this Part—(1) The Commissioner may make an assessment of any amount that, in the Commissioner’s opinion, any person is liable to account for or pay to the Commissioner under this Part of this Act, and any person who is so assessed shall be liable to pay the amount so assessed, except so far as that person establishes on objection that the assessment is excessive or that that person is not liable to account for or pay the amount so assessed.

“(2) Sections 23, 25, 26, 27, 28, and 29 of this Act shall apply, so far as may be, with respect to every assessment made under subsection (1) of this section, as if—

“(a) The term ‘tax already assessed’ in section 23 included an amount already assessed under subsection (1) of this section; and

“(b) The term ‘taxpayer’ in sections 23, 27, and 29 included a person who is assessed or is liable to be assessed under subsection (1) of this section; and

“(c) The term ‘income tax for any year’ in section 25 (1) included an amount assessed under subsection (1) of this section and the term ‘income’ in section 25 (2) included an amount of resident withholding income.

“(3) An assessment made under this section shall be subject to objection in the same manner as an assessment of income tax levied under section 38 of this Act, and Part III of this Act shall apply, so far as may be, to an objection to an assessment made under this section as if the terms ‘income tax’ and ‘tax’ used in that Part included an amount assessed under subsection (1) of this section and as if the term ‘taxpayer’ used in that Part included a person who is assessed under subsection (1) of this section.

“327U. Additional tax for defaults—(1) Where—

“(a) Any person fails wholly or in part to make any resident withholding tax deduction that the payer is required to make under this Part of this Act; or

“(b) Any person who has made a resident withholding tax deduction under this Part of this Act fails wholly or in part to pay, by the last day of the time prescribed and in the prescribed manner, the amount of the tax deduction to the Commissioner,—

that person shall, on the expiry of the day on which that failure occurs, be liable, without conviction, in addition to any other penalty to which that person may be liable, to pay to the Commissioner, by way of additional tax, an amount equal to—

“(c) Ten percent of the amount in respect of which default has been made (that amount being referred to hereafter in this subsection as ‘the amount in default’); and

“(d) Ten percent of the amount of so much, if any, of the amount in default and the additional tax added thereto in accordance with the provisions of paragraph (c) of this subsection as remains unpaid at the expiry of the day on which there expires the period of 6 months immediately following the day on which the said failure occurred; and

“(e) Ten percent of the amount of so much, if any, of the amount in default and the additional tax added thereto in accordance with the provisions of paragraphs (c) and (d) of this subsection, and of the additional tax, if any, theretofore added thereto in accordance with the provisions of this paragraph, as remains unpaid at the expiry of any of the periods of 6 months that, consecutively, succeed the period of 6 months referred to in paragraph (d) of this subsection.

“(2) For the purposes of subsection (1) (b) of this section a resident withholding tax deduction shall be deemed to have been made if and when payment is made of the net amount of any resident withholding income.

“(3) Notwithstanding subsection (1) of this section, where and to the extent to which, in relation to any failure to make a resident withholding tax deduction or pay the amount of the tax deduction to the Commissioner, any person (hereafter in this subsection referred to as ‘the first person’) otherwise liable to pay an amount by way of additional tax in accordance with this section can satisfy the Commissioner that any other person has made a deduction of resident withholding tax from the resident withholding income in relation to which that failure occurred or has paid to the Commissioner an amount of resident withholding tax deducted from the resident

withholding income in relation to which that failure occurred (as the case may be), for the purposes of this section only in determining any liability of the first person to additional tax, that deduction or payment (as the case may be) made by the other person shall be deemed to have been made by the first person.

“(4) Any penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly, but shall not give rise to any additional credit under section 327k (2) of this Act or any additional dividend withholding payment credit.

“(5) Subject to this Part of this Act, the other Parts of this Act shall apply with respect to the amount of any penalty imposed under this section as if it were additional tax imposed under section 398 (2) of this Act and as if the person liable to pay the penalty tax were the taxpayer.

“327v. Offences—(1) Without limiting the application of section 416 or section 416A of this Act, it is hereby declared that every person commits an offence against this Act who—

“(a) Being a payer, fails wholly or in part to make any deduction that the payer is required to make under this Part of this Act; or

“(b) Knowingly applies or permits to be applied the amount of any tax deduction required to be made under this Part of this Act or any part thereof for any purpose other than the payment of the tax deduction to the Commissioner; or

“(c) Makes a false or misleading application for a certificate of exemption or gives any false information in relation to any such application, or misleads or attempts to mislead or gives any false information to the Commissioner or any other officers of the Inland Revenue Department or any other person, in relation to any matter or thing affecting a resident withholding tax deduction required to be made under this Part of this Act (including its payment to the Commissioner) or any certificate of exemption; or

“(d) Alters any certificate of exemption or falsely claims to be the recipient named in any such certificate, or, without lawful excuse or justification, has in his or her possession any imitation of any such certificate, or, in contravention of this Act, causes or attempts

to cause any person to refrain from making a resident withholding tax deduction or to make a reduced deduction, by the production of any document or otherwise; or

“(e) Obtains or attempts to obtain for that person’s own advantage or benefit, credit with respect to, or a payment of, the whole or any part of the amount of a resident withholding tax deduction made from any resident withholding income derived by another person; or

“(f) Being a person who holds a certificate of exemption, fails to inform the Commissioner of the fact that that person is no longer within the basis of exemption specified in that person’s application for that certificate of exemption, or being a person who was the holder of a certificate of exemption fails to inform all persons required to be so informed that the certificate of exemption has been cancelled, in accordance with section 327o of this Act; or

“(g) Fails to provide a resident withholding tax deduction certificate in accordance with section 327h of this Act.

“(2) For the purposes of subsection (1) (b) of this section a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any resident withholding income, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof to the Commissioner if the amount of the tax deduction is not paid to the Commissioner by the due date for payment:

“Provided that no person shall be convicted of an offence under paragraph (a) or paragraph (b) of subsection (1) of this section if that person satisfies the Court that the amount of the tax deduction has been accounted for, and that the failure to account for it within the prescribed time was due to illness, accident, or other cause beyond that person’s control.

“(3) Notwithstanding paragraph (a) of subsection (1) of this section, no person shall be convicted of an offence under paragraph (a) of subsection (1) of this section where the failure to make a deduction results from that person, on reasonable grounds, concluding that that person was not making a payment in the course of or furtherance of a taxable activity.

“327w. Penal tax for default in making or paying resident withholding tax deductions—(1) Where—

“(a) Any person fails wholly or in part to make any resident withholding tax deduction that that person is required to make under this Part of this Act; or

“(b) Any person knowingly applies or permits to be applied the amount of any resident withholding tax deduction or any part thereof for any purpose other than the payment of the tax deduction to the Commissioner,—

that person shall be chargeable by way of penalty, in addition to any other penalty to which that person may be liable, with an additional amount (in this section referred to as *penal tax*) not exceeding an amount equal to treble the amount in respect of which default has been made (in this section referred to as the ‘*deficient deduction*’).

“(2) For the purposes of subsection (1) (b) of this section, a resident withholding tax deduction shall be deemed to have been made if and when payment is made of the net amount of any resident withholding income, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof if the amount of the tax deduction is not paid to the Commissioner by the due date for payment:

“Provided that no person shall be chargeable with *penal tax* under subsection (1) of this section if that person satisfies the Commissioner that the amount of the tax deduction has been accounted for, and that that person’s failure to account for it within the prescribed time was due to illness, accident, or other cause beyond that person’s control.

“(3) *Penal tax* imposed by this section shall for all purposes be deemed to be of the same nature as the *deficient deduction* and shall be recoverable accordingly, but shall not give rise to any additional credit under section 327k (2) of this Act or any additional dividend withholding payment credit.

“(4) Subject to this Part of this Act, the other Parts of this Act, as far as they are applicable and with any necessary modifications, shall apply with respect to all *penal tax* imposed under this section as if—

“(a) It were *penal tax* under section 420 of this Act; and

“(b) The person chargeable with the *penal tax* imposed under this section were the taxpayer; and

“(c) The *deficient deduction* were *deficient tax payable* for the same year of assessment as that in which the *deficient deduction* became due and payable to the Commissioner.

"327x. Agreements not to make resident withholding tax deductions to be void—Where a resident tax withholding deduction is required to be made under this Part of this Act, any agreement not to make the tax deduction in accordance with this Part of this Act shall be void.

"327y. Consequence of inability to provide tax file numbers—Where any person at any time—

“(a) Is required in accordance with section 327J, section 327ZB, or section 327ZD of this Act to provide the Commissioner with any other person's tax file number; and

“(b) Having made reasonable efforts to obtain that tax file number, is unable to do so,—

that person shall, notwithstanding any other provision of this Part of this Act, be relieved from that obligation to provide the Commissioner with that tax file number.

"327z. Non-resident withholding tax deducted in substitution for resident withholding tax—(1) No person shall be liable to pay any amount to the Commissioner by virtue of any of the provisions of this Part of this Act where, in relation to any payment or (in any case where that person is acting as agent or trustee for another person) receipt, that person—

“(a) On reasonable grounds and having made all reasonable inquiries, concluded that that payment or receipt constituted non-resident withholding income as being an amount derived by a person not resident in New Zealand and was for that reason not resident withholding income; and

“(b) Complied with all the obligations on the part of that person which would have been applicable under this Act had that payment or receipt constituted non-resident withholding income.

“(2) Where any person has, by virtue of the application of this section, been relieved from liability under this Part of this Act, for the purposes only of determining any liability of that person under this Part of this Act, the payment or (in any case where that person is acting in relation to that receipt as agent or trustee for any other person) receipt in question shall be deemed to be derived by a person not resident in New Zealand.

"327za. Amount of resident withholding tax deduction deemed to have been received—Where any amount has been deducted by way of resident withholding tax deduction

under this Part of this Act from any payment, the amount so deducted—

- “(a) As between the payer and the recipient shall be deemed to have been received by the recipient at the time of receiving the payment from which the tax deduction was made; and
- “(b) For the purposes of this Act, shall be deemed to have been derived at the same time and in the same way as the payment from which the tax deduction was made.

“327ZB. Disclosure of transactions in financial arrangements—(1) Where, in relation to any year commencing on or after the 1st day of April 1990,—

- “(a) Any person (hereafter in this section called ‘the exempt person’) holds at any time during that year a certificate of exemption; and
- “(b) The exempt person either acquires from or disposes to any other person a financial arrangement during that year, where that other person was not either—
 - “(i) The issuer of that financial arrangement; or
 - “(ii) A person holding at the time of acquisition or, as the case may be, at the time of disposition a valid certificate of exemption; and
- “(c) The financial arrangement is one in relation to which interest is payable, which interest, if derived by the exempt person, would have been subject to resident withholding tax had the exempt person not held a certificate of exemption,—

the exempt person shall, in the return of income which that person is required under this Act to furnish in relation to that year, provide the Commissioner with the following information in relation to each such other person (hereafter in this section called ‘the non-exempt person’) and each such acquisition or disposition made during that year:

- “(d) The full name and last known address of the non-exempt person;
- “(e) The date of the acquisition or disposition;
- “(f) The consideration paid or received by the exempt person in respect of the acquisition or disposition, exclusive of any fees;
- “(g) The tax file number (if any) of the non-exempt person;
- “(h) Such further information as the Commissioner may prescribe:

“Provided that, except where the Commissioner otherwise requires, the information specified in paragraphs (d), (e), (f), (g), and (h) of this subsection may, with respect to each such non-exempt person and that year, be provided in the form of—

“(i) Summary totals in relation to all such acquisitions;

“(j) Summary totals in relation to all such dispositions.

“(2) Every non-exempt person who enters into any acquisition or disposition of the type specified in paragraphs (a) and (b) of subsection (1) of this section and who has a tax file number shall, within 10 working days of receiving any written request from the exempt person, provide the exempt person with the non-exempt person’s tax file number.

“(3) Where any exempt person is not required under this Act to furnish a return of income in relation to any income year during which is made an acquisition or disposition to which subsection (1) of this section applies, that exempt person shall furnish to the Commissioner the information described in subsection (1) of this section in such form as the Commissioner may prescribe and within 2 months after the end of that income year.

“327zc. Application of other provisions to amounts payable under this Part—Subject to this Part of this Act, the other Parts of this Act shall apply with respect to every amount that any person is liable to account for or pay to the Commissioner under this Part of this Act as if the amount were income tax and, in particular without limiting the generality of the foregoing, section 99 (3) of this Act shall apply as if the term ‘assessable income’ were replaced by the words ‘liability to resident withholding tax’ and the Commissioner were specifically entitled to have regard to such resident withholding tax as, in the Commissioner’s opinion, the person referred to in section 99 (3) of this Act would have, or might be expected to have, or would in all likelihood have, been liable to pay if the arrangement referred to in section 99 (3) of this Act had not been made or entered into.

“327zd. General disclosure of tax file numbers—(1) Any person (hereafter in this section called the ‘payer’) who in any year commencing on or after the 1st day of April 1992 is required to make a deduction of resident withholding tax in respect of any amount of resident withholding income paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section 327d of this Act) by any other person (hereafter in this section called ‘the recipient’) shall in such form and at such time as the Commissioner may

require, provide the Commissioner with the following information in relation to each recipient:

- “(a) The full name and last known address of the recipient;
- “(b) The total resident withholding income of the recipient in that income year in respect of which a resident withholding tax deduction was required to be made by the payer;
- “(c) The tax file number (if any) of the recipient;
- “(d) Such further information as the Commissioner may require.

“(2) Every recipient who receives resident withholding income in respect of which a resident withholding tax deduction is required to be made by a payer and who has a tax file number shall, within 10 working days of receiving any written request from the payer, provide the payer with the recipient's tax file number.

“(3) The Commissioner, in the Commissioner's discretion, may exempt any person or persons from any or all of the requirements to furnish information to the Commissioner under this section and in the case of any such exemption this section shall apply subject to that exemption.”

(2) The principal Act is hereby amended by adding the Nineteenth Schedule set out in the Schedule to this Act.

(3) This section shall come into force on the 1st day of October 1989 and shall apply to any dividend or interest paid on or after that date.

13. Transitional provisions in relation to resident withholding tax—(1) Notwithstanding any provision of Part IXA of the principal Act, the Commissioner may, in the Commissioner's discretion, in relation to any person or class or classes of persons (hereafter in this section referred to as “the qualified applicants”) who have made application in accordance with section 327M of the principal Act on or before such date (being a date not later than the 30th day of September 1989) as the Commissioner may, in the Commissioner's discretion, determine, for the issue of a certificate of exemption (as that term is defined in section 327A of the principal Act), permit the qualified applicants to elect to make a written declaration and in such event,—

- (a) The written declaration shall be in such form and contain such details as the Commissioner shall require including—
 - (i) Confirmation that the qualified applicant has made application for issue of a certificate of

exemption in accordance with section 327M of the principal Act; and

(ii) Confirmation that the qualified applicant believes that the qualified applicant is a person to whom subsection (1) of section 327M of the principal Act applies; and

(iii) Confirmation that, as at the date of the declaration, the qualified applicant has neither been issued with a certificate of exemption nor been advised by the Commissioner that the Commissioner will not be issuing a certificate of exemption to the qualified applicant; and

- (b) For the purposes of Part IXA of the principal Act but with respect only to dividends or interest (as those terms are defined in section 327A of the principal Act) paid on or before the 31st day of January 1990, the declaration shall be deemed to be a valid certificate of exemption issued to the qualified applicant; and
- (c) No qualified applicant shall notify any person that the qualified applicant holds a valid certificate of exemption where such certificate of exemption is the declaration referred to in this section without providing that person with a copy of the declaration.

(2) Notwithstanding any provision of section 327C(7) of the principal Act, where any person has been notified by any qualified applicant that the qualified applicant holds a valid certificate of exemption, being a declaration made in accordance with this section, or provided with a copy of that declaration, the person shall be deemed to have been notified of the cancellation of that certificate of exemption with respect to any resident withholding income paid on or after the 1st day of February 1990.

14. Interpretation—(1) Section 336N of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by adding the following subsection:

“(8) For the purposes of this Part of this Act, where any person pays (as that term is defined in section 327A of this Act) in relation to shares issued by a company resident in New Zealand or otherwise makes available to any shareholder in that company any non-cash dividend—

- “(a) That non-cash dividend shall be deemed to be a fringe benefit within the meaning of subsection (1) of this section, notwithstanding anything contained in the

definition of fringe benefit in the said subsection (1); and

“(b) That person shall be deemed to be an employer of that shareholder in relation to that non-cash dividend; and

“(c) That shareholder shall be deemed to be an employee of that person in relation to that non-cash dividend; and

“(d) In any case where the non-cash dividend is a dividend within the meaning of section 4 (1) (e) of this Act by virtue of any loan to any shareholder, the loan which gives rise to that non-cash dividend shall be deemed to be an employment related loan:

“Provided that—

“(e) The foregoing provisions of this subsection shall not apply to any dividend to which any of subparagraphs (ii) to (vii) of section 327B (2) (b) of this Act applies; and

“(f) Section 336N (5) and (6) and the proviso to section 336s of this Act shall not apply to any fringe benefit that is a non-cash dividend.”

(2) This section shall apply in relation to dividends paid or otherwise made available on or after the 1st day of October 1989.

15. Interpretation—(1) The principal Act is hereby amended by repealing section 356, and substituting the following section:

“356. (1) For the purposes of this section the term ‘interest’ means interest as defined in section 327A of this Act.

“(2) For the purposes of this Act, a taxpayer shall, subject to subsection (3) of this section, be a pay-period taxpayer in relation to any year if, in that year, the taxpayer did not derive any income other than—

“(a) Income from employment; or

“(b) Income in the nature of interest or dividends; or

“(c) A combination of any of those classes of income,— and, in relation to that taxpayer and that year,—

“(d) The total income derived—

“(i) Did not exceed \$9,500; or

“(ii) Did not exceed \$20,000 and did not include any income from employment; or

“(iii) Did not exceed \$20,000 and did not include more than \$1,500 of income in the nature of interest; and

“(e) A tax deduction was made in respect of all income from employment at the time of payment of that income, in accordance with this Part of this Act; and

“(f) A resident withholding tax deduction was made in respect of all income in the nature of interest or dividends at the time of payment of that income, in accordance with Part IXA of this Act; and

“(g) In respect of a taxpayer who was during that year a national superannuitant (as defined in section 336A of this Act), the aggregate of the total income derived from employment and from income in the nature of interest and dividends did not exceed \$6,006.

“(3) Notwithstanding anything in subsection (2) of this section a taxpayer shall not be a pay-period taxpayer in relation to any year where,—

“(a) In that year, the taxpayer derived any income as a shearer or as a shearing shed hand; or

“(b) In relation to that year, the taxpayer was an absentee as defined in section 37 of this Act; or

“(c) Either the taxpayer or any other person who was a spouse (as defined in section 374A of this Act) of the taxpayer was, in relation to any specified period (as defined in section 374A of this Act) in that year, issued with a certificate of entitlement that entitled either the taxpayer or the spouse (as the case may be) to a credit of tax under Part XIa of this Act; or

“(d) The Commissioner is of the opinion that—

“(i) Subsection (2) of this section would not have applied to the taxpayer in relation to that year had not the income from employment derived by the taxpayer in that year been diminished by reason of the occurrence in that year of the retirement of the taxpayer from employment or of some other event, including, but not limited to, the employee's death, disability, or absence from New Zealand, that caused the termination or suspension of the taxpayer's employment; and

“(ii) Either the taxpayer is not a person to whom subsection (2) of this section would normally apply or it appeared at any time during the year that

subsection (2) of this section would not apply to the taxpayer in relation to that year.

“(4) For the purposes of subsection (2) of this section, where the amount of resident withholding tax deduction required to be made in respect of any dividend is nil by virtue of the application of the formula contained in section 327c (1) (b) of this Act, a tax deduction shall be deemed to have been made in respect of that dividend at the time of payment of that dividend.”

(2) Section 357 (1) of the principal Act (as substituted by section 37 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby consequentially amended by inserting, after the words “this Part”, the words “or Part IXA”.

(3) Section 358 of the principal Act is hereby consequentially amended by inserting in paragraphs (a) and (b), after the words, “this Part”, the words “or Part IXA”.

(4) The following enactments are hereby consequentially repealed:

- (a) Section 13 (1) of the Income Tax Amendment Act 1980:
- (b) Section 21 (1) of the Income Tax Amendment Act 1982:
- (c) Sections 3 (7) and 17 (4) of the Income Tax Amendment Act 1984:
- (d) Section 13 of the Income Tax Amendment Act (No. 2) 1986:
- (e) Section 9 (4) of the Income Tax Amendment Act (No. 3) 1988.

(5) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

16. Interpretation—(1) Section 375 of the principal Act (as substituted by section 17 of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by repealing the definitions of the terms “provisional income” and “provisional taxpayer”, and substituting the following definitions:

“‘Provisional income’, in relation to any person and to any income year, means the assessable income derived by the person in the income year (before the deduction of any losses under section 188 or any deduction under section 191 of this Act) less the aggregate of—

- “(a) Any source deduction payments; and
- “(b) Any non-resident withholding income; and
- “(c) In any case where that person is an individual, any resident withholding income, being dividends derived by that person in that income year in relation

to which dividends any resident withholding tax required to be deducted in accordance with Part IXA of this Act has been deducted:

“‘Provisional taxpayer’, in relation to any income year, means any person who derives, in that income year, provisional income exceeding the sum of \$3,000, other than—

“(a) A company that does not have a fixed establishment in New Zealand and that is not deemed to be resident in New Zealand; or

“(b) A pay-period taxpayer, as defined in section 356 of this Act.”.

(2) Section 375 of the principal Act is hereby further amended by adding to the definition of the term “residual income tax” the following paragraph:

“(j) The amount of any resident withholding tax deductions credited against that income tax in accordance with section 327K of this Act.”

(3) This section shall apply to any provisional tax payable on or after the 1st day of April 1990.

17. Transitional provisions in relation to provisional tax for the 1991 income year—(1) Notwithstanding section 377 (1) of the principal Act, where in respect of income derived in the income year that commences on the 1st day of April 1990 a person (not being a person holding at any time during that income year a valid certificate of exemption) is required by virtue of section 377 (1) of the principal Act to pay an amount of provisional tax equal to 110 percent of the residual income tax (hereafter in this subsection referred to as “the 1990 residual income tax”) payable by that person in respect of income derived in that income year that commenced on the 1st day of April 1989, for the purposes of determining the amount of provisional tax payable by that person in respect of income derived in the income year that commenced on the 1st day of April 1990, the 1990 residual income tax shall be deemed to be equal to the greater of—

(a) Nil; and

(b) The actual 1990 residual income tax less an amount equal to an amount calculated in accordance with the following formula:

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

where—

- a is the amount of income being interest (not being interest of any of the kinds specified in section 327B (2) (a) (i) and (iii) to (vi) of the principal Act) derived by the person on or before the 30th day of September 1989 in the income year that commenced on the 1st day of April 1989; and
- b is the rate of resident withholding tax, expressed as a percentage, specified in clause 1 of the Nineteenth Schedule to the principal Act; and
- c is the amount of income being dividends (not being dividends of any of the kinds specified in section 327B (2) (b) (i) to (iii) and (v) to (vii) of the principal Act) derived by the person on or before the 30th day of September 1989 in the income year that commenced on the 1st day of April 1989; and
- d is the rate of resident withholding tax, expressed as a percentage, specified in clause 2 of the Nineteenth Schedule to the principal Act; and
- e is the aggregate of—
 - (i) Any dividend withholding payment credits attached to any of the dividends included in item c of this formula in accordance with section 394zx of this Act; and
 - (ii) Any imputation credits attached to any of the dividends included in item c of this formula in accordance with section 394F of this Act.

18. Shareholder dividend statement—(1) The principal Act is hereby amended by repealing section 394I (as inserted by section 55 of the Income Tax Amendment Act (No. 5) 1988), and substituting the following section:

“394I. (1) A company that pays to a shareholder a dividend with an imputation credit or a dividend withholding payment credit attached, shall at the time of payment of the dividend, give to the shareholder a shareholder dividend statement in a form approved by the Commissioner, showing—

- “(a) The name of the company;
- “(b) The date of payment of the dividend;
- “(c) The name and address of the shareholder to whom the dividend is paid;

- “(d) The amount, if any, deducted by way of non-resident withholding tax;
- “(e) The amount of the dividend paid to the shareholder;
- “(f) The amount of any imputation credit attached to that dividend;
- “(g) The aggregate of the amount of the dividend and the amount of any imputation credit attached to that dividend;
- “(h) Where a dividend withholding payment credit is attached to the dividend, the information required to be included in the shareholder dividend statement in accordance with section 394zzB of this Act;

“(i) Such other information as may be required by the Commissioner.

“(2) A shareholder dividend statement shall be deemed to have been given to a shareholder where the statement—

- “(a) Is given to the shareholder personally; or
- “(b) Is sent by post addressed to the shareholder's usual or last known place of abode or business; or
- “(c) Is given personally to any person authorised to act on behalf of the shareholder; or
- “(d) Is sent by post addressed to that other person at that other person's last known place of abode or business.”

(2) This section shall apply with respect to any dividend paid on or after the 1st day of October 1989.

19. Statement to shareholder when dividend paid—

(1) The principal Act is hereby amended by repealing section 394zzB (as inserted by section 55 of the Income Tax Amendment Act (No. 5) 1988), and substituting the following section:

“394zzB. Where a dividend withholding payment account company attaches a dividend withholding payment credit to a dividend pursuant to section 394zx of this Act or is deemed to attach such a credit by virtue of the application of section 327L of this Act, the company shall include in the shareholder dividend statement required to be given in accordance with section 394i of this Act, the following information:

- “(a) The amount of the dividend withholding payment credit;
- “(b) The aggregate of—
 - “(i) The dividend paid to the shareholder; and

“(ii) The sum of the imputation credit and the dividend withholding payment credit:

“(c) The aggregate of the imputation credit and the dividend withholding payment credit.”

(2) This section shall apply to any dividend paid on or after the 1st day of October 1989.

20. Power of Commissioner in respect of small amounts—(1) Section 411 of the principal Act is hereby amended by omitting from paragraph (a) the expression “\$2”, and from paragraph (b) the expression “50c”, and substituting in each case the expression “\$5”.

(2) This section shall come into force on the 1st day of April 1990.

21. Interest on tax overpaid—(1) Section 418A (1) of the principal Act (as inserted by section 20 of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by adding to the definition of the term “residual income tax” the following paragraph:

“(j) The amount of any resident withholding tax deductions credited against that income tax in accordance with section 327k of this Act.”

(2) This section shall come into force on the 1st day of October 1989.

22. Penalties for offences—(1) Section 416B of the principal Act is hereby amended by inserting in subsection (1) of that section, after the word “against”, the words “section 324 (1) (b), section 327v (1) (b), or”.

(2) This section shall come into force on the 1st day of October 1989.

23. Publication of names of tax evaders—(1) Section 427 (1) (ba) of the principal Act (as substituted by section 43 (2) of the Income Tax Amendment Act (No. 3) 1986) is hereby amended by inserting, after subparagraph (i), the following subparagraphs:

“(ia) Paragraph (a) or paragraph (b) of section 324 (1) of this Act; or

“(ib) Paragraph (a) or paragraph (b) of section 327v (1) of this Act; or”.

(2) Section 427 (1) (c) of the principal Act is hereby amended by inserting, after the expression “section 323”, the expression “or section 327w”.

(3) This section shall come into force on the 1st day of October 1989.

24. Returns of interest paid on deposits—(1) The principal Act is hereby amended by repealing section 429.

(2) This section shall apply to all interest allowed on or after the 1st day of October 1989.

25. Records and returns of specified charitable, benevolent, philanthropic, or cultural bodies—(1) Section 432A of the principal Act (as inserted by section 44 of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) For the purposes of this section the expression ‘specified body’ means—

“(a) Any society, institution, association, organisation, trust, or fund specifically named in any of the paragraphs of section 56A (2) of this Act; or

“(b) Any other person issued with a certificate of exemption in accordance with section 327M of this Act as a result of an application made in which application the basis for exemption claimed is that set out in subsection (1) (h) or subsection (1) (i) of that section, in relation to any income year in which such person holds such a certificate of exemption.”

(2) This section shall come into force on the 1st day of October 1989.

26. Consequential amendment to Estate and Gift Duties Act 1968—Section 75B of the Estate and Gift Duties Act 1967 (as inserted by section 3 (1) of the Estate and Gift Duties Amendment Act 1987) is hereby amended by adding the following subsection:

“(2) Where and to the extent that any transaction is a dividend within the meaning of paragraph (ba) of section 4 (1) of the Income Tax Act 1976, that transaction shall not constitute a gift for the purposes of this Act.”

PART II

MISCELLANEOUS PROVISIONS

27. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “trustee” (as substituted by section 10 of the Income Tax Amendment Act (No. 5) 1988 and amended by section 2 (6) of

the Income Tax Amendment Act 1989), and substituting the following definition:

“‘Trustee’ includes an executor and administrator; and also includes—

“(a) The Public Trustee and the Maori Trustee; and

“(b) In relation to a superannuation scheme that is a trust or that is deemed by this Act to be a trust, a person by whom the investments of that scheme (or any part thereof) are managed or controlled;—

and for the purposes of this Act, in relation to any trust, a reference in this Act to a trustee of that trust means that trustee only in the capacity as trustee of that trust and includes all trustees for the time being of that trust.”.

(2) The following enactments are hereby repealed:

(a) Section 10 of the Income Tax Amendment Act (No. 5) 1988;

(b) Section 2 (6) of the Income Tax Amendment Act 1989.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

28. Exclusions from term “dividends”—(1) Section 4A (2) of the principal Act (as inserted by section 31 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding to the definition of the term “capital gain amount” the following paragraph:

“(c) The amount of any profit or gain that is attributable to—

“(i) Any deduction in respect of livestock revaluation under section 86E of this Act; or

“(ii) Any revaluation of livestock under section 86A of this Act; or

“(iii) Any deduction in respect of the revaluation of trading stocks of wine, brandy, and whisky available under section 87A of this Act.”.

(2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1988 and in every subsequent year.

29. Life insurance and reinsurance companies—

(1) Section 204 (9A) of the principal Act (as inserted by section 11 (3) of the Income Tax Amendment Act 1989) is hereby amended by omitting the words “having the 31st day of March as its annual balance date”.

(2) This section shall, in relation to a company with an income year ending on a day other than the 31st day of March, apply with respect to the tax on income derived in any income year of the company that commences after the 1st day of April 1988 and in every subsequent year.

30. Interpretation provision relating to trusts—

(1) Section 226 (1) of the principal Act (as substituted by section 11 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding to the definition of the term "beneficiary income" the words "— but does not include income derived by a trustee of the trust in any income year during which the trust is a superannuation fund.".

(2) Section 14 (1) of the Income Tax Amendment Act 1989 is hereby repealed.

(3) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

31. Value of loans provided by superannuation fund deemed to be income of fund—Section 232A of the principal Act (as inserted by section 17 of the Income Tax Amendment Act 1989) is hereby amended by omitting the word "scheme" from subsection (1) (in the 3 places where it occurs), subsection (4), and subsection (5) (in the 2 places where it occurs), and in each case substituting the word "fund".

32. Surcharge paid as provisional tax—(1) Section 336I of the principal Act (as inserted by section 17 of the Income Tax Amendment Act 1984 and amended by section 3 (4) of the Income Tax Amendment Act 1985 and section 32 (1) of the Income Tax Amendment Act 1986) is hereby repealed.

(2) Section 336F (2) (a) (i) of the principal Act (as so inserted) is hereby amended by omitting the expression "section 336I", and substituting the expression "Part XII".

(3) Section 336K (2) of the principal Act (as so inserted) is hereby amended by repealing paragraph (a) (as amended by section 3 (5) of the Income Tax Amendment Act 1985).

(4) Section 336K (3) of the principal Act (as so inserted) is hereby amended by repealing paragraph (a).

(5) The following enactments are hereby consequentially repealed:

(a) Section 3 (4) and (5) of the Income Tax Amendment Act 1985;

(b) Section 32 of the Income Tax Amendment Act 1986.

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

33. Value of fringe benefit—(1) Section 336o of the principal Act (as inserted by section 34 (1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) For the purposes of subsection (2) of this section, in calculating the value of any fringe benefit, being a fringe benefit that consists of an employment related loan, where—

“(a) Any employment related loan is owed in any income year by an employee to an employer; and

“(b) At any time after the date upon which that loan was advanced to that employee, that employee is paid (which term shall bear the same meaning as assigned to that term by section 327A of this Act in relation to resident withholding income) by that employer any amount of salary or wages or extra emolument or dividends or interest; and

“(c) The amount of salary or wages or extra emolument or dividends or interest constitutes income of the employee derived in that income year or any previous year; and

“(d) That amount of salary or wages or extra emolument or dividends or interest does not constitute resident withholding income, non-resident withholding income, or an amount paid subject to tax deduction by virtue of Part XI of this Act,—

that amount to the extent to which it is applied in repayment of that loan shall be deemed to be applied in repayment of that loan on the later of the first day of that income year and the date upon which the loan was advanced.

“(2B) For the purposes of subsection (2A) of this section, where the employer furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March,—

“(a) Subject to paragraph (b) of this subsection, every reference in subsection (2A) of this section to an income year shall be deemed to be a reference to that accounting year;

“(b) The reference in paragraph (c) of subsection (2A) of this section to an income year shall be deemed to be a reference to the income year to which that accounting year corresponds.

“(2c) Where the amount of any income derived by an employee and applied in repayment of an employment related loan—

“(a) Would, if it had been derived by the employee in the income year immediately preceding the income year in which it is derived, be an amount deemed by virtue of subsection (2A) of this section to be applied in repayment of that loan on a date earlier than the actual date of repayment; and

“(b) Would not but for the application of this subsection be so treated,—

with the approval of the Commissioner that amount shall, where the employee elects for the purposes of subsection (2A) of this section by notice in writing given to the Commissioner within the time within which the employer is required to furnish a return of income for the income year in which that employment related loan is owed, or within such further time as the Commissioner may allow, be deemed for the purposes of this Act to be derived by the employee in the income year immediately preceding the income year in which that amount would otherwise be treated as being derived.”

(2) This section shall apply in relation to the fringe benefit tax on fringe benefits provided or granted on or after the 1st day of April 1989.

34. Failure to deduct specified superannuation contribution withholding tax—(1) Section 336ZF (a) of the principal Act (as inserted by section 20 (1) of the Income Tax Amendment Act 1989) is hereby amended by omitting the formula and substituting the following formula:

$$\frac{a}{1-a} \times b - c$$

(2) Section 336ZF (a) of the principal Act (as so inserted) is hereby further amended by adding the following item:

“c is the amount (if any) of specified superannuation contribution withholding tax already paid in respect of the contribution; and”.

35. Tax deemed for certain purposes to have been received by superannuation fund—(1) The principal Act is hereby amended by inserting, after section 336ZK (as inserted by section 20 (1) of the Income Tax Amendment Act 1989), the following section:

“366ZL. The amount of any specified superannuation contribution withholding tax payable by an employer in respect of any specified superannuation contribution in accordance with this Part of this Act shall, for the purpose of determining whether the employer has satisfied the employer’s obligations or commitments to pay contributions to a superannuation fund, be deemed to have been paid to and received by the superannuation fund, as a contribution made in satisfaction of the employer’s obligations or commitments, at the same time as the amount of the specified superannuation contribution actually received by the superannuation fund is so received.”

(2) Where an employer has made a specified superannuation contribution to a superannuation fund before the date on which this Act receives the Royal assent, and—

- (a) The aggregate of the amount of the contribution actually received by the superannuation fund and the amount of specified superannuation contribution withholding tax payable in respect of that contribution exceeds the amount of the employer’s obligation or commitment in respect of that contribution; and
- (b) The employer would not, if subsection (1) of this section had been in force at the time the contribution was made, have made that contribution in excess of the amount of that obligation or commitment,—

then, notwithstanding any requirement of the relevant trust deed or of any enactment or rule of law, and if the employer so elects in writing to the superannuation fund before the 1st day of November 1989, the obligation or commitment of the employer in respect of any future specified superannuation contribution required to be made by that employer to that fund shall be reduced by the amount of that excess.

(3) Except as provided in subsection (2) of this section, a superannuation fund shall not be required to refund or credit to an employer the amount of any excess referred to in that subsection.

(4) Subsection (1) of this section shall be deemed to have come into force on the 22nd day of March 1989, and for the purposes of the Superannuation Schemes Act 1989 shall be deemed to have been enacted by the Income Tax Amendment Act 1989 and to be part of the changes in taxation arising as a consequence of the passing of that Act.

36. Determination of assessable income—(1) Section 374B (1) (d) (i) of the principal Act (as inserted by section 17 of the Income Tax Amendment Act (No. 2) 1986) is hereby

amended by inserting, after the words "amount of income", the words "(not being income derived from the sale of a building)".

(2) Section 374B (1) (e) of the principal Act (as so inserted and amended by section 58 (2) of the Income Tax Amendment Act 1989) is hereby amended by adding the following subparagraph—

“(v) Any amount of income derived from the sale of a building that, under section 117 of this Act, is included in the assessable income of the person in the income year; and”.

(3) This section shall apply with respect to tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent income year.

37. Debits arising to imputation credit account—

(1) Section 394E (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988 and amended by section 62 of the Income Tax Amendment Act 1989) is hereby amended by adding the following paragraph:

“(j) The amount of any refundable excess paid pursuant to section 156F (4) of this Act in respect of the income year commencing on the 1st day of April 1988 or any subsequent year.”

(2) This section shall be deemed to have come into force on the 1st day of April 1989.

38. Imputation return to be furnished in certain circumstances—(1) Section 394K of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) An imputation credit account company may furnish to the Commissioner, at any time, an imputation return in respect of the period commencing on the first day of any imputation year and ending with any day specified by the company within that imputation year, being a day that is not more than 7 days earlier than the date on which the imputation return is furnished to the Commissioner.”

(2) Section 394K (3) of the principal Act (as so inserted) is hereby amended by omitting the words "required to be".

(3) Section 394K (3) of the principal Act (as so inserted) is hereby further amended by adding the following paragraph:

“(c) In the case of a return furnished under subsection (2A) of this section, references to the period referred to in that subsection.”

39. Further tax payable where end of year debit balance, or when company ceases to be an imputation credit account company—(1) Section 394L (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, before the words “the company is liable to pay”, the words “then, subject to subsection (4A) of this section”.

(2) Section 394L (3) of the principal Act (as so inserted) is hereby amended by inserting, before the words “the company is liable to pay”, the words “then, subject to subsection (4A) of this section.”.

(3) Section 394L of the principal Act (as so inserted) is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) Where—

“(a) Pursuant to section 156F (4) of this Act a company has been paid any refundable excess in respect of the income year commencing on the 1st day of April 1988 or any subsequent income year; and

“(b) The amount of that refundable excess has in any imputation year arisen as a debit to the company's imputation credit account,—

any amount that the company would otherwise be liable to pay by way of further income tax pursuant to subsection (1) or subsection (3) of this section shall be reduced (so far as it extends) by the sum of all such refundable excesses paid to the company on or before the date on which the relevant debit balance giving rise to the liability to further income tax is determined.”

(4) This section shall be deemed to have come into force on the 1st day of April 1989.

40. Limits on refunds of income tax—(1) Section 394M (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “at the end of the most recently ending imputation year”, and substituting the following words:

“at the later of—

“(a) The end of the most recently ending imputation year; or

- “(b) The last day of any period for which the company furnishes an imputation return pursuant to section 394K (2A) of this Act; or
- “(c) The last day of any period for which the company is required by the Commissioner to furnish an imputation return pursuant to section 394K (1) of this Act.”

41. Refund out of Consolidated Account—Section 394ZR of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the words “dividend withholding payment”, the word “credit”.

42. Interest and additional tax not to be charged in respect of certain superannuation scheme and insurance company income for year ended 31 March 1989—(1) In this section, the term “specified superannuation or annuity income” means—

- (a) In relation to any superannuation category 1 scheme (being a scheme that was or was deemed to be a superannuation category 1 scheme on the 1st day of April 1988), any income of that scheme for the income year ending with the 31st day of March 1989 that is specified in section 31 (1) (a) of the Income Tax Amendment Act 1989 as income in respect of which no provisional tax is payable:
- (b) In relation to any company to which section 204 of the principal Act applies, any income of that company for the income year ending with the 31st day of March 1989 that is specified in section 31 (1) (b) of the Income Tax Amendment Act 1989 as income in respect of which no provisional tax is payable.

(2) For the purposes of section 382 of the principal Act (as inserted by section 17 of the Income Tax Amendment Act (No. 3) 1988)—

- (a) Any income tax payable by a superannuation category 1 scheme or a company to which section 204 of the principal Act applies in respect of any specified superannuation or annuity income shall not be counted for the purposes of subsections (1), (3), (4), and (6) of that section in estimating the residual income tax of the scheme or company for the income year ending with the 31st day of March 1989:

(b) The amount of any specified superannuation or annuity income shall not be counted for the purposes of subsection (2) of that section in determining the provisional income or likely provisional income of any superannuation category 1 scheme or any company to which section 204 of the principal Act applies for the year ending with the 31st day of March 1989.

(3) For the purposes of section 384 of the principal Act (as so inserted), references in subsection (1) and in paragraphs (a) (i) and (b) of subsection (2) of that section to residual income tax shall, in relation to residual income tax for the income year ending with the 31st day of March 1989 of a superannuation category 1 scheme or a company to which section 204 of the principal Act applies, be read as if the residual income tax for that year excluded the amount of income tax payable by the scheme or company in respect of any specified superannuation or annuity income.

(4) Nothing in section 398A of the principal Act (as inserted by section 19 of the Income Tax Amendment Act (No. 3) 1988) shall apply to render any superannuation category 1 scheme or any company to which section 204 of the principal Act applies liable to pay interest on the amount of any unpaid tax payable in respect of any specified superannuation or annuity income.

43. Payment of tax—Section 395 of the principal Act is hereby amended by adding the following subsection:

“(2) Income tax payable on income derived in any income year by any person (other than a company to which subsection (1) of this section applies) and not otherwise due and payable under this Act shall be due and payable on the 7th day of the month specified in the Eighth Schedule to this Act as being the month for payment of terminal tax.”

44. Date for payment of penal tax—The principal Act is hereby amended by inserting, after section 422, the following section:

“422A. Any penal tax payable under an assessment of penal tax shall be payable not later than the 28th day after the date of issue of the assessment.”

45. First Schedule amended in relation to trustees of superannuation category 3 schemes—(1) The First Schedule to the principal Act is hereby amended by omitting from clause 9B (as inserted by section 27 (2) of the Income Tax

Amendment Act 1989) the expression "40.5c", and substituting the expression "33c".

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

SCHE
NEW NINETEENTH SCHEDULE TO PRINCIPAL ACT

Section 12

"NINETEENTH SCHEDULE

Section 327c

"RATE OF RESIDENT WITHHOLDING TAX DEDUCTIONS

1. For the purposes of section 327c of this Act, the rate of the resident withholding tax deduction from payments of resident withholding income, being interest, for every \$1 of those payments shall be 24c.
2. For the purposes of section 327c of this Act, the rate of the resident withholding tax deduction from payments of resident withholding income, being dividends, for every \$1 of those payments shall be 33c."

This Act is administered in the Inland Revenue Department.
