

Version
as at 30 March 2022



Co-operative Dairy Companies Income Tax Regulations 1955 (SR 1955/55)

Co-operative Dairy Companies Income Tax Regulations 1955: revoked, on 30 March 2022, by section 270 of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 (2022 No 10).

C W M Norrie, Governor-General

Order in Council

At the Government Buildings at Wellington this 26th day of April 1955

Present:

The Right Hon S G Holland presiding in Council

Pursuant to the Land and Income Tax Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Inland Revenue Department.

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Regulations

1

- (1) These regulations may be cited as the Co-operative Dairy Companies Income Tax Regulations 1955.
- (2) These regulations apply with respect to income tax for the year of assessment commencing on 1 April 1956 and for every subsequent year.

2

- (1) In these regulations, unless the context otherwise requires,—

Act means the Land and Income Tax Act 1954

Appeal Authority means the Co-operative Dairy Companies Income Tax Appeal Authority established under these regulations

available subscribed capital per share has the meaning given to available subscribed capital in section YA 1 of the Income Tax Act 2007

capital loss, in relation to any company, means any loss incurred by the company on the sale or other realization of any trading assets which has not been taken into account in calculating the trading profit or trading loss of the company

capital profit, in relation to any company, means any profit made by the company on the sale or other realization of any trading assets which has not been taken into account in calculating the trading profit or trading loss of the company

company or **co-operative dairy company** means a co-operative dairy company registered as such under the Co-operative Dairy Companies Act 1949

dairy asset means any asset which is used exclusively for dairy purposes

dairy purposes means the purposes of the collection, handling, manufacture, treatment, sale, and distribution of butter, cheese, casein, dried milk, evaporated milk, and any other dairy produce, or any of those purposes

dual purpose asset means any asset which is used partly for dairy purposes and partly for trading purposes

financial year, in relation to any company, means a year ending with the date of the annual balance of the company's accounts

gross income has the meaning given to income in section YA 1 of the Income Tax Act 2007

ordinary trading income, in relation to any company, means income which is assessable income or non-assessable income as defined in section 2 of the Act; but does not include any amount which is deemed under regulation 5 to be assessable income; and does not include any dividends received from shares which the Commissioner has determined to be dairy assets if the Commissioner is satisfied that the dividends have been applied in acquiring further share capital in the company declaring the dividends

ordinary trading loss means a loss calculated in accordance with the provisions of the Act for the calculation of assessable income

special trading expenditure means all expenditure for trading purposes which is not deductible in calculating the ordinary trading income; but does not include—

- (a) any income tax or social security charge payable in respect of income derived during the income year ending with 31 March 1955 or during any earlier income year; or
- (b) any expenditure incurred in the purchase or acquisition of trading assets

trading asset, in relation to any company, means any asset of the company which is used exclusively for trading purposes; but does not include any amounts owing to the company by its suppliers or its employees, or any cash, or any amount standing to the credit of the company with any bank

trading bank means any bank carrying on business in New Zealand, other than a trustee savings bank and the Post Office Savings Bank

trading purposes means any purposes other than dairy purposes.

- (2) Expressions used in these regulations, unless the context otherwise requires, have the same meanings as in the Act.
- (3) For the purposes of these regulations the amount of the trading balance of any company at the end of any financial year shall be calculated as the amount which in the opinion of the Commissioner is the sum of the following amounts:
 - (a) the net value of the trading assets of the company at the end of the year:

- (b) the amount of any special trading expenditure incurred by the company during the year:
 - (c) the amount of any trading loss incurred by the company during the year:
 - (d) the amount of any capital loss incurred by the company during the year.
- (4) For the purposes of these regulations the amount of the deductible trading balance of any company for any financial year shall be calculated as the amount which in the opinion of the Commissioner is the sum of the following amounts:
- (a) the net value of the trading assets of the company at the beginning of the year:
 - (b) the amount of any ordinary trading income derived by the company during the year:
 - (c) the amount of any capital profit derived by the company during the year:
 - (d) the amount (if any) by which the trading balance of the company at the end of the preceding financial year was less than the deductible trading balance of the company for that preceding financial year:

provided that paragraph (d) shall not apply with respect to the year of assessment commencing on 1 April 1956.

- (5) For the purposes of these regulations the net value of the trading assets of a company shall be calculated by ascertaining the aggregate cost of those trading assets and deducting therefrom the amount of any depreciation properly allowable thereon under the Act and the amount of any mortgage, charge, or liability owing in respect of the purchase or acquisition of any of those trading assets, not being an amount owing to any trading bank:

provided that for the purposes of this subclause—

- (a) the cost of any trading assets being trading stock shall be calculated as the value thereof as taken into account in calculating the ordinary trading income of the company:
- (b) the cost of any trading asset being a debt owing to the company shall be calculated as the amount of the debt owing to the company.

Regulation 2(1) **available subscribed capital per share**: replaced, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Regulation 2(1) **available subscribed capital per share**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Regulation 2(1) **gross income**: replaced, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Regulation 2(1) **gross income**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

3

For the purposes of these regulations the Commissioner may from time to time—

- (a) determine whether any asset of a company (including a share or investment) is a dairy asset or a trading asset or a dual purpose asset:
- (b) determine whether or not any item of expenditure by a company is special trading expenditure:
- (c) determine whether or not any product manufactured, sold, or distributed by a company is dairy produce:
- (d) amend any determination previously made by him under this regulation where he is satisfied that any information supplied to him in relation thereto was incorrect.

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Where the Commissioner is satisfied that any asset of a company is a dual purpose asset, he may for the purposes of these regulations treat the asset as being—

- (a) wholly a trading asset; or
- (b) wholly a dairy asset; or
- (c) partly a trading asset and partly a dairy asset in such proportions as the Commissioner determines.

Assessable income of co-operative dairy companies

5

[Revoked]

Regulation 5: revoked (applying with respect to the tax on income derived in the income year commencing on 1 April 1988 and in every subsequent year), on 16 December 1988, by section 41(3)(a) of the Income Tax Amendment Act (No 5) 1988 (1988 No 225).

6 Allocation of income

Where the Commissioner has under regulation 5 classified any amount as assessable income of a company, the Commissioner may, on the application of the company, allocate the amount to such 1 or more income years as the Commissioner thinks fit, and the amount so allocated to any income year shall be deemed to be assessable income or (in the case of the 1997–98 or any subsequent income year) gross income derived by the company during that income year.

Regulation 6: replaced (applying with respect to the 1997–98 income year and subsequent years), on 18 December 1996, by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

*Assessable income of shareholders***7 Assessable income of shareholders**

Where there is paid to a shareholder of a co-operative dairy company—

- (a) on the surrender of any of the shareholder's shares in the company, any amount in excess of the available subscribed capital per share of the shares surrendered; or
- (b) on the liquidation of the company, any amount in excess of the available subscribed capital per share in respect of all shares held by the shareholder in the company,—

the Commissioner may classify as gross income (other than a dividend) of the shareholder the amount of the excess or such part of it as the Commissioner determines.

Regulation 7: replaced (applying with respect to the 1997–98 income year and subsequent years), on 18 December 1996, by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

*Objections***8**

- (1) Any person affected by any decision made by the Commissioner under section 146 of the Act or under these regulations may object to that decision by delivering or posting to the Commissioner a written notice of objection, stating shortly the grounds of the objection, within 1 month after the date on which notice of the decision has been given.
- (2) No notice of objection given after the time prescribed in subclause (1) shall be of any force or effect unless the Commissioner in his discretion accepts the objection and gives notice to the objector accordingly.

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The Commissioner shall consider all such objections, and may alter any decision objected to; but, if an objection is not allowed by the Commissioner, the objector may, within 1 month after the date on which notice of the disallowance is given to him by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be referred to the Co-operative Dairy Companies Appeal Authority, and in that event the objection shall be heard and determined by the Appeal Authority, which shall for that purpose have all the powers and functions of the Commissioner in making the decision, and the decision of the Appeal Authority shall take effect as if it were the decision of the Commissioner.

Appeal Authority

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- (1) For the purposes of these regulations there is hereby established an appeal authority to be called the Co-operative Dairy Companies Income Tax Appeal Authority.
- (2) The Appeal Authority shall consist of 3 members to be appointed by the Governor-General to hold office during his pleasure, of whom—
 - (a) one shall be the Secretary to the Treasury, who shall be the Chairman of the Appeal Authority;
 - (b) one shall be the Director of the Dairy Division of the Department of Agriculture;
 - (c) one must be a person nominated by the Governor-General on the recommendation of the responsible Minister under the Dairy Industry Restructuring Act 2001.
- (3) If any member of the Appeal Authority dies or resigns or is removed from office the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made.
- (4) In the absence from any meeting of the Appeal Authority of any member who is employed in the service of the Crown, any officer of his department having authority to act in his place during his absence may attend the meeting in his stead, and while so attending shall be deemed to be a member of the Appeal Authority and, if he is an officer of the Treasury, to be the Chairman of the Appeal Authority.

Regulation 10(2)(c): replaced, on 16 October 2001 (being the amalgamation date, published in *Gazette* 2001, p 3635), by section 165(5) of the Dairy Industry Restructuring Act 2001 (2001 No 51).

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- (1) The Appeal Authority shall, within the scope of its jurisdiction, be deemed to be a commission of inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of these regulations, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.
- (2) For the purpose of considering any objection under these regulations, the Appeal Authority shall have free access to all records under the control of the Commissioner relating to the objector.
- (3) On the hearing and determination of any objection under these regulations the burden of proof shall be on the objector, and the Appeal Authority may receive such evidence as it thinks fit, whether or not it would be admissible in a court of law.
- (4) Subject to these regulations, the Appeal Authority may determine its own procedure.

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- (1) The decision of a majority of the members of the Appeal Authority on any matter shall be the decision of the Authority.
- (2) Every decision of the Appeal Authority shall be final and conclusive.

13

There shall be paid out of money appropriated by Parliament for the purpose to the member of the Appeal Authority appointed under regulation 10(2)(c), if not a Crown employee, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if that member were a member of a statutory board within the meaning of that Act.

Regulation 13: amended, on 16 October 2001 (being the amalgamation date, published in *Gazette* 2001, p 3635), by section 165(5) of the Dairy Industry Restructuring Act 2001 (2001 No 51).

T J Sherrard,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 28 April 1955.

Notes

1 *General*

This is a consolidation of the Co-operative Dairy Companies Income Tax Regulations 1955 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 (2022 No 10): section 270

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Income Tax Act 2004 (2004 No 35): section YA 2

Dairy Industry Restructuring Act 2001 (2001 No 51): section 165(5)

Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377): regulation 2

Income Tax Amendment Act (No 5) 1988 (1988 No 225): section 41(3)(a)