rx OK OKEBY, M. Tax incentives for manufacturers.

Mark Okeby

Tax Incentives For Manufacturers

Research Paper For Taxation
LL.M. Laws 531 and 532

Law Faculty
Victoria University Of Wellington

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Introduction

The income tax system serves two basic functions to collect revenue for Government and secondly to provide financial assistance to those the Government chooses to assist in accordance with its policy.

This paper will look at a selected group of provisions which perform that second function, the tax incentives available to manufacturers. Although tax incentives come in a variety of forms, deductions from assessable income, credits against tax, exclusion of income from assessment, preferential tax rates, and deferral of tax, all the tax incentives available to manufacturers take the form of deductions from assessable income.

It has been the policy of successive Governments to assist manufacturers but the reasons for doing so and the particular aspects of manufacturing that have received assistance have varied as the New Zealand economy has developed, and as Governments have changed.

Current Government policy is that manufacturers warrant support for the production of manufactured exports, goods for the local market as import substitutes, to provide employment, and to utilize indigenous resources.(1) The overall aim is to assist those manufacturers with the greatest 'social net return.'

> "For social net return you take the private worth of an industry or company from normal financial records then adjust this - they may export products or use labour in a developing area for example. But then it has costs - it uses fuel and pollutes. The analysis is rated upwards for benefits and downward for costs, and you come out with the net social benefit to New Zealand.'(2)

The first part of the paper examines the tax incentives available to manufacturers excluding the export incentives. The second part

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1. Budget 1977 p.20
2. Better Business Vol.42 No.440 August 1978 p.10

under the general head of tax reform examines the weaknesses of tax incentives which lead to abuse and limit their value as a method of providing Government assistance.

I Specific Tax Incentives Available to Manufacturers

A Depreciation Allowances

1. Introduction

When the form of a depreciation allowance is used as a tax incentive the relationship between the way in which depreciation is allowed and the concept that depreciation reflects the loss of value to an asset from fair wear and tear, or in some cases obsolescence, that cannot be made good by repair, is obscured. The amount of the deduction is set arbitrarily at a higher amount than that which would reflect the loss of value for the very purpose of providing a benefit to the taxpayer.

Even if used as a tax incentive, all depreciation allowances have the common characteristic that the total deductions allowed cannot exceed the total cost of the asset. All the manufacturer is permitted to do is to deduct his depreciation more quickly than the asset is wearing out, that is to accelerate the deduction for depreciation. The tax benefit that arises is that income in the year the deduction is taken is offset against the increased deduction and the tax on that income is deferred until the asset is sold or the total cost of the asset has been depreciated. Because the ordinary rates of depreciation are calculated on a table[3] for administrative ease they do not in fact reflect the accountants

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3. Schedule Depreciation rates - Inland Revenue Department

concept of loss of value through wear and tear and do in many cases accelerate depreciation to a minor extent, although this is not as visible.

2. First Year Depreciation Allowances

The first year depreciation allowance is of broad application being available to a variety of taxpayers including manufacturers, farmers, freezing companies and fish factories for a number of purposes. In relation to manufacturers section 112 of Income Tax Act 1976, permits a special rate of depreciation on new and used plant or machinery and in accommodation built for employees. The rate of depreciation for new or used plant or machinery is 25% of the capital cost[4] deductible in the first year the asset is used.[5] For exployee accommodation the rate is 22%.[6] The first year depreciation allowance is in substitution for all other depreciation allowances in that year.[7]

This provision exists in its present form for historical reasons. Its predecessor which applied from 1 April 1975 to 30 July 1976[8] permitted greater deductions and incorporated a regional development incentive in that there was an additional allowance available where the asset was used outside the Auckland and Wellington urban regions. For example, on new plant or machinery, manufacturers outside the specified urban areas[9] could deduct 60% of their capital expenditure but only 40% if in the Auckland or Wellington urban areas. With secondhand plant and machinery the allowance was 50% and 30% respectively.

When the current first year depreciation allowance was introduced, the above rates were reduced to a flat 25% of capital expenditure

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4. Fifth schedule Income Tax Act 1976
5. S.112(3)(a) Income Tax Act 1976
6. Fifth Schedule Income Tax Act 1976
7. S.112(3)(c) Income Tax Act 1976
8. S.114F Land and Income Tax Act 1954
9. Defined in s.114F(1) Land and Income Tax Act 1954

regardless of location. At the same time selective investment allowances were introduced to 'emphasise both export productions and regional development and to encourage industries to plan their development in a co-ordinated fashion.'[10] When these are taken into account the actual deductions available to manufacturers whose activities qualify for the incentive allowances are on a par with the previous system. However, many who would have obtained the earlier first year depreciation allowance will not get nearly the same benefit under the current allowance.

For transitional situations the taxpayer can elect which regime he wishes to proceed under if either:

(a) New or secondhand plant or machinery was purchased before 29 July 1976, or

(b) If a binding contract for its purchase was entered into prior to that date, but in neither case the asset was not used until after that date.[11]

There was little change to s.112 when it was amended to reflect the above. Those parts of the section that related to the differential rates based on the regional location of the asset were repealed, and a new fifth schedule enacted.

The first year depreciation allowance is available to a manufacturer who satisfies the Commissioner that he has incurred capital expenditure in either:

(a) acquiring or installing any new plant or machinery to be used wholly for the purposes of that business, being any business in New Zealand,[12]

(b) acquiring or installing any secondhand plant or machinery to be used wholly for the purposes of that business,[13]

(c) acquiring or erecting a building for employee accommodation.[14] The allowance cannot be claimed on the cost of altering

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10. 1976 Budget p.17
11. S.30 Income Tax Amendment Act No.43 1976
12. S.112(2)(a) Income Tax Act 1976
13. S.112(2)(b) Income Tax Act 1976
14. S.112(2) Income Tax Act 1976

or improving an existing building.[15]

If the Commissioner is satisfied the building is for the accommodation of the taxpayer, or the wife, husband or child of the taxpayer, or if the taxpayer is a company, for the accommodation of a shareholder or wife, husband or child of such then he can disallow the whole deduction or any part.[16] He can also disallow the deduction if satisfied proper accounts have not been kept.[17]

The Commissioner can also apportion expenditure where it has been only partially incurred for a purpose qualifying for the allowance.[18]

3. Supplementary Depreciation for Plant or Machinery used in Two or Three Shift Industries

This is a recent addition being available from 1 April 1978.[18] The allowance is in addition to both the ordinary depreciation allowances and the first year depreciation allowance, and applied in the second, third, fourth and fifth years in which the asset is used in the production of assessable income.[19]

The incentive gives an extra depreciation allowance of 3% of diminishing value on qualifying plant or machinery used in two shift industry and 6% of diminishing value on plant and machinery used in three shift industry.[20] 'Two shift plant and machinery' and 'three shift plant and machinery' are both defined in the Act,[21] as being plant and machinery that 'in the opinion of the Commissioner is normally in operation for an average of not less than 16 hours each working day (two shifts) or 24 hours each working day (three shift). Normally in operation prevents unavoidable stoppages resulting in non-compliance with the Section.

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15. s.112(1) building defined to exclude these if deduction allowed (under another section.
16. S.112(5)(b) Income Tax Act 1976
17. S.112(5)(a) Income Tax Act 1976
18. S.112(6) Income Tax Act 1976
19. S.113A Income Tax Act 1976 introduced No.81 1977
20. S.113A(4) Income Tax Act 1976
21. S.113A(5) Income Tax Act 1976

The plant or machinery that can be depreciated under this section are restricted by s.113A(2) which excludes:

> "(a) Plant and machinery for use in the refining of petroleum or for use in the smelting of aluminium:
> (b) Any motorcar as defined in section 2(1) of the Transport Act 1962:
> (c) Ships, aircraft, and hovercraft:
> (d) Any plant and machinery in respect of which a deduction by way of fixed rate depreciation is not allowed under section 108 of this Act:
> (e) Any plant and machinery in respect of which the Commissioner has not, in determining the rate of depreciation under section 108 of this Act, prescribed a differential rate for more than one shift operation."

The most significant of these are (d) and (e).

At present the Commissioner has prescribed a differential rate for more than one shift operation on only two classes of plant and machinery.[22] In doing so the Commissioner has presently limited the section to permitting the accelerated depreciation of equipment which is not designed for the long periods of use to which it is subjected.

The existance of both paragraphs (d) and (e) of s.113A(2) seems unnecessary unless the draftsman felt without paragraph (d) it would appear that the section could be interpreted as permitting this allowance to be allowed on equipment for which no schedule rate has been set.

Another drafting quirk is that the deduction is allowed where the Commissioner"is satisfied ... he may, subject to this section and section 117 of this Act ... allow a deduction, as he thinks fit."[23] However the next two subsections set out when the deduction can be taken and the amount of the deduction, negating this aspect of the Commissioners' discretion.

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22. Manufacturing plant and machinery not otherwise mentioned in schedule rate of depreciation which is used between 16 hours and 24 hours a day and is not constructed for the purpose of running for that time,
Water fed evaporating air conditioners used 24 hours a day.

23. S.113A(3) Income Tax Act 1976

4. Deductions for Expenditure on Scientific Research

There are three provisions in the Income Tax Act 1976 that provide deductions as an incentive to research being carried out.

a. Additional Depreciation Allowance

Where the manufacturer has acquired or installed any plant machinery or equipment to be used exclusively for the purposes of scientific research directly relating to that business the Commissioner may in his discretion allow during the five years from the date the asset was first used for purposes of research the cost of the asset to be depreciated.[24] It is up to the Commissioner to 'determine' which of the five years the deduction shall be allowed in, and the 'sum' of the deduction in each year shall be as the Commissioner 'thinks fit'.

This section permits the very rapid amortization of the cost of the asset and accordingly has a substantial effect on tax liability in the years the deductions are allowed.

b. Deduction of Scientific Research Expenditure

The second provision s.144 of the Income Tax Act permits the deduction of the cost of any expenditure incurred by the taxpayer 'in connection with scientific research directly relating to the taxpayers business except for expenditure in relation to an asset on which depreciation is allowable.' Whether the deduction is allowed depends on whether the Commissioner thinks fit to allow the deduction.

c. Deduction of Donations

The third provision s.146 enables companies to deduct donations made to universities, approved research societies, associations or institutes, Medical Research Council or any individual by way of scholarship, fellowship or bursary pursuant to an award scheme approved by the Minister, for the purposes of education, training or research which is of importance in the general economy of New Zealand.

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24. S.113(1) Income Tax Act 1976

The minimum amount of the deduction is $2, the maximum $1,000 or 5% of the assessable income of the company before the deduction under this section or s.147[25] is taken into account. If the gift is in excess of $5,000 to one donee, then the deduction is not available unless the prior approval of the Minister has been obtained.[26] Presumably 'prior' means prior to the deduction being claimed rather than prior to the gift being made. As for the deduction being only available to companies that is a restriction without any logical foundation.

d. General Comments

Apart from minor amendments which have actually expanded the ambit of the deduction, these three provisions are the same as they were when examined by the Ross Committee.[27] They acknowledged the need for an incentive to industry to undertake scientific research but feld the present concession

> 'produces inequities as between taxpayers entitled to the same deductions for research expenditure yet receiving unequal tax relief.'[28]

They felt this could be remedied by granting a rebate from income tax calculated on a flat rate on the amount of the qualifying deduction. To counter the defect of a rebate system, that a taxpayer must first have income tax against which to credit the rebate they felt that where the rebate exceeded the tax payable, the taxpayer would have to be paid a refund. In a nutshell, this system would amount to using the tax system as a mechanism for giving a direct grant to qualifying industries. However there is a further difficulty that prevents this proposal operating equitably. Unless proposed credit is not taxable it has the effect of being of greater benefit to those on a higher marginal tax rate.[29]

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25. s.147 Income Tax Act 1976 - Gifts of money by public companies
26. s.146(1) Income Tax Act 1976
27. Report of the Taxation Review Committee - Government Printer
28. Report of the Taxation Review Committee - Supra (October 1967 para.571
29. Pathway to Tax Reform, Stanley S Surrey, p.98

B Investment Allowances

1. Introduction

Investment allowances by way of a deduction from assessable income have been frequently used in New Zealand as a form of Government assistance to manufacturers.

Prior to the current provisions being enacted there were two incentives of this nature available, a broad provision offering a substantial deduction on new plant or machinery,[30] and an additional allowance for investment in the West Coast of the South Island.[31]

When the current legislation was introduced in 1976 the intention was to more tightly control the range of qualifying expenditure to maximise the 'net social return'.[32] Replacing the above mentioned investment allowances were allowances for new plant and machinery used in slow growth regions, for exports[33] or in accordance with Government planning of industry.[34] The following year another investment allowance was introduced for new plant and machinery used in a high priority activity.[35]

The investment allowances for manufacturers are grouped together, with a general section, section 118 containing the common provisions.

All of these incentive allowances permit a deduction in the first year of use in the production of assessable income. That deduction is additional to depreciation and accordingly have the effect when combined with depreciation, which they can be, of allowing to the manufacturer a deduction in excess of the cost price of the asset. That they are not a form of accelerated depreciation is the most significant tax feature of these investment allowances.

Although provided the manufacturer can show that he has made the requisite expenditure a deduction by way of investment allowance 'shall'[36] be allowed, there are a number of provisions in Section 118

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30. S.117A Land and Income Tax Act 1954
31. S.117C Land and Income Tax Act 1954
32. Supra n2
33. Not covered in this paper
34. S.119, S.120, S.121, Income Tax Act 1976
35. S.121A Income Tax Act 1976
36. S.119(3) and S.119(4), S.121(2), S.121A(2) Income Tax Act 1976

that restrict either in part of in full the availability of the allowances.

The Commissioner may refuse to allow the deduction in whole or in part where the taxpayer has failed to keep complete and satisfactory accounts.(37) If the taxpayer disposes of or ceases to use any plant or machinery within 12 months from the date the asset is first used the Commissioner shall disallow or decline to allow the deduction.(38) This provision overrides Section 25, that section preventing the Commissioner from altering assessments after four years from the year of the assessment. Apart from this limited situation, where the taxpayer stops using the asset on which the allowance is claimed within the first year of use, there is no recapture of the amount deducted by way of an investment allowance.

Accordingly, when the taxpayer realizes the asset, the amount deducted as an investment allowance is treated as capital gain and does not form part of the taxpayers assessable income.

If the plant or machinery on which the deduction is claimed has been used to produce income not liable or exempt from income tax then only part of the deduction that 'is proper' in the opinion of the Commissioner 'is allowed'.(39) This section is designed to allow apportionment of the cost of the asset to reflect the use of that asset in producing assessable and non-assessable income. However there is no statutory direction to the Commissioner on these lines and the actual adjustment is entirely up to him. There is no provision permitting apportionment of the expenditure for the purposes of calculating the deduction where the asset is used in the production of assessable income, but for a non-qualifying purpose as well as a qualifying purpose.

Where the taxpayer is recouped or entitled to be recouped for all or any part of the expenditure, on which the deduction is

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37. S.118(2) Income Tax Act 1976
38. S.118(3) Income Tax Act 1976
39. S.118(4) Income Tax Act 1976

calculated, the expenditure on which the deduction is calculated is reduced by the amount the taxpayer is or will be recouped.(40) It would appear that if the taxpayer sold the plant or machinery within four years of claiming the deduction he could be reassessed.(41 Section 118(6) is an anti-avoidance provision along the lines of section 99 but having application in relation to only sections 119 to 123. The Commissioner may reduce the deduction claimed by way of an investment allowance where he is satisfied that arrangements have been made between the taxpayer and another person with a view to the affairs of the taxpayer and of that other person being arranged so the incentive allowances have more favourable effect to the taxpayer than would otherwise have been the case. This section was enacted to prevent abuse of the investment allowances.(42)

For the same reason the investment allowances are not available to lessors but lessees can deduct the amount of the allowance from the cost price of the leased plant and machinery providing the lease is a qualifying lease. Qualifying lease is defined in s.118(1) as a lease (a) for a period of not less that three years or such shorted period as the Commissioner considers reasonable having regard to the estimated economic life of the new plant or machinery which is the subject of the lease, and

(b) which specifies the cost price and the residual value of the new plant or machinery which is the subject of the lease.

Each incentive allowance has a terminating date. These have been extended in the Income Tax Amendment Bill 1978(43) to:

Regional investment allowance	31 March 1981
Industrial development plan investment allowance	31 March 1981
High priority activity investment allowance	31 March 1982

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40. S.118(8) Income Tax Act 1976
41. S.25 Income Tax Act could prevent reassessment after that time.
42. See Part II (2)(c)
43. At present before the House

All of these incentive allowances require the asset to be used on or before the terminating dates. It is not sufficient for the taxpayer to have purchased or to have entered into a building contract on or before that date. This is a significant departure from prior practice.

2. Regional Development Investment Allowance

Because of the uneven economic development of different parts of New Zealand and its consequential social effects it has been the policy of successive Governments to offer assistance to manufacturers prepared to operate in slow growth regions.(44) The bulk of the assistance is now in the form of Government loans or direct grants(45) and the only regional development assistance found in the income tax system is Section 119. This section provides the taxpayer with an allowance of up to 20% of the cost price of new plant or machinery depending upon the regional location of the plant or machinery. It is available to a lessee who leases under a qualifying lease, the deduction being calculated on the cost price of the asset. In this way in a leasing situation the allowance is available to the user of the asset. The maximum rates of the allowance are as follows.

Regional Location	*Rate of Investment Allowance*
High Comprises — Northland, East Coast (including Gisborne City), West Coast and Buller areas, Otago, Southland and the Chatham Islands.	20%
Medium Comprises — King Country, Taranaki (except New Plymouth), Wanganui, Wairarapa, Marlborough and South Canterbury.	15%
Low Comprises — Bay of Plenty, New Plymouth, Hawke's Bay, Manawatu, Nelson, Christchurch and North Canterbury.	5%
Nil Comprises — Auckland and Wellington Regional areas.	Nil

44. For example, Section 117C Land and Income Tax Act 1954

45. Eleven grants or loans available to encourage regional development in 1978.

In the 1978 Budget it was announced that assets used in the regional location of the New Plymouth urban area, including Bell Block, would be increased on the present 5% of cost price to 25%.(46)

Section 119(1) sets out in detail what assets qualify for the allowance,(47) s.119(2) specifically excludes specific types of plant and machinery.(48) The allowance is available on all new plant and machinery used in manufacturing industry, plant and machinery used in packaging, cleaning, transporting storage or the disposal of wastes provided the latter machinery is used in relation to new plant or machinery which qualifies under s.119(1)(a) or s.119(1)(b). The plant or machinery need not be used exclusively for the qualifying purpose provided it is used directly in and mainly for the qualifying purpose.(49) The investment allowance is available to a taxpayer who used new plant or machinery to perform services for another person who manufactures goods.(50) The allowance cannot be claimed on any plant and machinery in respect of which a deduction by way of fixed rate depreciation is not allowed or if the cost of the unit of the plant or machinery is less that $500.

The Regional Investment Allowance is available in the first year of use of the plant or machinery and is in addition to depreciation. It can also be combined with the investment allowance available on new plant or machinery used for export(51) but not in combination with the investment allowance for new plant and machinery used pursuant to an approved industry development plan, or high priority acitivty.(52) This limits the maximum investment allowance available on any new plant and machinery to 40% of the qualifying expenditure.

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46. Supra n43
47. See appendix 1
48. S.119(2) Income Tax Act 1976
49. S.119(1)(a) 'primarily and principally and directly'
50. S.119(a)(i) Income Tax Act 1976
51. S.119(6) Income Tax Act 1976
52. Idem

3. Industrial Development Plan Investment Allowance

A manufacturer who operates in an industry that has prepared with the Government a development plan for that industry as a whole, can receive an investment allowance of 40% of the qualifying expenditure as part of the development plan. As with the other investment allowances it must be taken in the first year the asset is used in the production of assessable income, and is available to a manufacturer who incurs capital expenditure in acquiring installing or extending new plant or machinery or who leases the asset under a qualifying lease.(53) Unlike the regional development allowance there is no restriction as to what plant of machinery qualifies for this allowance, but this investment allowance cannot be combined with any other investment allowance(54) although it does not affect depreciation allowances in any way.(55) The minimum amount of the allowance can not be less than the amount that would have been available under the other investment allowances that would have been available to the taxpayer in the absence of this section.

Industrial development plan is defined as a plan for the comprehensive development of an industry that is approved by the Minister of Finance jointly with the Minister of Trade and Industry,(56) indicating the division of responsibility for the formulation and operation of the plan.

Although the terminating date of this investment allowance is 31 March 1981, at the present time only one industry development plan has been completed. As the qualifying plant or machinery must have been used in the production of income before that date, not purchased or the subject of a binding contract(57) there are visible difficulties in preparing these plans which may negate

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53. S.121(2) Income Tax Act 1976
54. S.121(3)(a) Income Tax Act 1976
55. S.118(9) Income Tax Act 1976
56. Rather peculiar and possibly onerous provision!
57. S.121(2) Income Tax Act 1976

the validity of the plans. It was because of the lengthy delay in getting a plan into operation that the High Priority Investment Allowance was introduced in 1977.[58] The Department of Trade and Industry are also endeavouring to introduce a streamlined procedure to evaluate industries, however it would appear having a terminating date is detrimental to the whole scheme.

Annexed as Schedule Two is the press statement announcing the first approved plan, the Ceramic Industry Development Plan.[59] That study was initiated by the Ceramics Industry's own industry wide study carried out between July 1974 and August 1975 well prior to the enactment of this section. It can be seen from that report that the investment allowance is only one of a number of forms of Government assistance; tarrif protection, inport licensing and NAFTA consultation, immigration assistance, remission of sales tax and increased profit margins.

However, where the press statement discusses the investment allowances,[60] it appears that the industrial development plan investment allowance is considered only a back-up provision to the export, regional development, and high priority investment allowances. Government appears to be unable to provide for the use of this investment allowance in its own right and it may well be that this is a dead provision, offering nothing in addition to the export, regional development, and high priority investment allowances.

4. <u>High Priority Activity Investment Allowance</u>

This incentive allowance was intorudced a year after the others[61] to remedy the major defect in the Industrial Development Plan investment allowance, the length of time it was taking to prepare the plan. To enable high priority status to be obtained with reasonable speed the qualifying criteria has been set out in detail

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58. See I (B) (4)
59. For a general discussion on this plan see Better Business Vol.42 No.440 August 1978
60. Second schedule p.4
61. 1977 Budget p.21

and applications can be made on a standard form.[62] To qualify, the following criteria must be satisfied:

(a) the activity must be capable of being isolated from other productive activities undertaken by the firm;

(b) all production from the activity must be of a sort that would be eligible for the existing increased exports taxation incentive;

(c) the activity must have, in the preceding year:

(i) had maximum direct and indirect import content of twenty-five percent (excluding capital);

(ii) exported a minimum of 20 percent of its production, based on factory door value, the minimum rising in annual steps of 2 percent to 30 percent over 5 years;

(iii) sold the remainder of its production on the New Zealand market for an ex-factory selling price not more than 10 percent higher than the f.o.b. export price;

(iv) had total energy inputs from outside the company not exceeding 7½ percent of the factory door value of production.[63]

None of the above qualifying criteria is contained in the Income Tax Act 1976. Instead High Priority Activity is defined in a similar manner to the definition of industrial development plan, as an activity which is approved as such from time to time by the Minister of Finance jointly with the Minister of Trade and Industry. At present high priority status will be granted if the objective criteria are satisfied, although the granting of high priority status is discretionary and the criteria can be changed without warning. Once high priority status is granted that status can be reviewed from 'time to time'.[64] Current administrative policy is that once granted, provided returns are filed, the status will be maintained for two years, but in the thrid year a more detailed examination may be required in order to continue with that status.[65] It can be noted that the criteria that must be

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62. High Priority Evaluation Form HP1 plus Form HP2 and Form HP3.
63. Statement, Minister of Finance 25 October 1977
64. Section 121A(1) definition 'high priority activity'
65. Applying for High Priority Status - An Explanatory Guide. Department of Trade and Industry, page 3.

satisfied to obtain high priority status quantifies the concept 'net social return.'(66)

The key aspect of high priority status is that it is granted to an 'activity'. The activity need not be the whole of the taxpayers enterprise, but must be capable of isolation. In this way the benefits of high priority status can be granted to those selected parts that satisfy the criteria while preventing the benefit extending to non-qualifying activities. Because high priority status gives a number of benefits in addition to the investment allowance it has not been possible for this problem to be dealt with by giving the Commissioner the power to apportion the expenditure to reflect qualifying and non-qualifying use.(67)

The benefits of high priority status in addition to the tax incentive are:

Reduced Administrative Control:

* exemption from price control
* adjusted maximum profit ceiling
* priority consideration for import licences
* minimised applications for import licences
* aggregation of import licences
* more liberal response to requests for imported components
* preferential consideration to granting extra import licences in order to rationalise production.

Preferential Access:

* priority treatment by the DFC and the trading banks
* preferential treatment for export suspensory loans
* higher limits for export suspensory loans
* preferential treatment by Trade Commissioners

Other Assistance:

* exemption from the 10 percent sales tax on plant and machinery (68)

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66. Supra n2
67. Contrast Section 112(6) Income Tax Act 1976.
68. Supra n65 pages 1 and 2

The amount of the investment allowance is up to 40% of the qualifying expenditure,[69] which like the other investment allowances can be capital expenditure acquiring, installing, or extending new plant or machinery or, the cost price of new plant or machinery leased under a qualifying lease.[70] The asset must be used primarily and principally and directly in the high priority activity. There is no proviso guaranteeing that the amount of the deduction shall not be less than that which could be obtained under the other investment allowances,[71] and if this investment allowance is obtained, all other investment allowances are excluded.[72] The maximum deduction available is double that of the regional development investment allowance and the export investment allowance. However, these two can be combined to equal the value of this allowance.[73] Accordingly, the high priority activity investment allowance is very attractive to any manufacturer in the Auckland and Wellington urban regions as it negates their exclusion from the regional development investment allowance. It is unlikely that Government intended that this allowance should be twice as valuable to taxpayers in the Auckland and Wellington urban areas and it would appear that it should apply cummulatively to the regional development investment allowance to maintain the value of the latter.

C Miscellaneous Incentives

1. Tax Incentive for Energy Conservation

Section 125 Income Tax Act 1976 allows the taxpayer a deduction for three classes of energy conservation expenditure. The first class of qualifying expenditure is expenditure of any nature incurred on or before 21 July 1977 and approved by the Commissioner of Energy Resources and relating to or following from an evaluation of energy approval by the Commissioner.[74] The second class is

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69. Section 121A(2) Income Tax Act 1976
70. Defined in Section 118(1) Income Tax Act 1976
71. c.f. Section 121(2) Income Tax Act 1976
72. Section 121A(3) Income Tax Act 1976
73. Section 119(6) and Section 120(7) Income Tax Act 1976
74. Section 125(1) def. qualifying expenditure (a) Income Tax Act 1976

restricted to expenditure of a capital nature incurred on or after 22 July 1977 in acquiring, installing or effecting new plant, machinery or equipment

(i) used in the production of energy from waste materials

(ii) for the recovery and use of waste heat

(iii) heat exchange equipment (excluding heat pumps for cooling comfort)

(iv) which uses mostly indigenous energy sources

(v) energy measuring equipment and instrumentation

(vi) process control equipment

(vii) power factor correction equipment

(viii) which is subsidary to any of the above, and which prevents or combats pollution, provided the principal plant, machinery or equipment was installed on or after 22 July 1977,

and improvements or alterations for

(i) conversion from electricity or oil to other indigenous energy sources

(ii) insulation of plant, machinery, equipment of buildings against energy loss or leakage

(iii) sealing of sources or means of energy leakage.[75]

The third class is any specified expenditure approved by the Governor General for the purposes of this section.[76]

All of the second class of expenditure must be for the purposes of energy conservation which is defined as

(a) the reducing of the total amount of energy used of increasing production per energy unit used.

(b) the substitution of one form of energy for another for the purpose of reducing total energy use.

(c) the introduction of the use of indigenous energy sources (other than electricity or oil)[77] or substituting the use of indigenous energy sources for imported sources.

(d) the substitution of one form of energy for another where the new form would otherwise go unused and the old form can remain available for use.[78]

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75. Section 125(1) def. qualifying expenditure (b) Income Tax Act 1976
76. Section 125(1) def. qualifying expenditure (c) Income Tax Act 1976
77. Undue optimism with oil!
78. Energy is also defined in S.125(1)

Under this section the total expenditure shall be deducted in the income year it is incurred.[79] However if expenditure exceeds $20,000 the taxpayer must deliver to the Commissioner 'the certificate of an appropriate registered engineer that the expenditure was incurred for the purpose of energy conservation.'[80] In determining whether a taxpayer is entitled to a deduction the Commissioner of Inland Revenue may obtain the advice of the Commissioner of Energy Resources. The Commissioner of Energy Resource's decision is not conclusive on the question, and the issue would be open for consideration on review or appeal.

As the qualifying expenditure is treated as current expenditure, even if it is purely of a capital nature[81] no further deduction is allowed under any other provision of this Act in respect of that expenditure or by way of depreciation in respect of any asset acquired as a result of that expenditure.[82] It would appear a deduction by way of an investment allowance is excluded and specific provision relating to depreciation allowance does not gives rise to the adverse inference.[83]

If a deduction has been allowed under this section for the cost of any asset which could have alternatively been depreciated, if the asset is sold or otherwise disposed of within five years from the date of acquisition, then the amount it was sold or disposed of is assessable income in the year it was disposed in.[84] Unusually in these inflationary times there is a proviso to this subsection that the maximum amount which shall be assessed as income shall not exceed the cost of the asset.

When Section 125 came into effect, for the 1977 income year the only expenditure for energy conservation that could be deducted

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79. Section 125(2) Income Tax Act 1976
80. Section 125(2) proviso Income Tax Act 1976
81. Section 125(1) def. qualifying expenditure point (b)
82. Section 118(6) Income Tax Act 1976
83. S.125(3) Income Tax Act 1976
84. Section 125(4) Income Tax Act 1976

was that in the first class of qualifying expenditure.(85) From 22 June 1977 the second class of qualifying expenditure became deductable, that is part (b) of the definition of 'qualifying expenditure.'

In the 1978 Budget it was announced that the tax incentive would be widened to include as qualifying expenditure

(a) additional expenditure necessary for the production of electricity by the use of heat currently wasted during processes using indigenous fuels.

(b) the refurbishing of industrial and commercial lighting installations and their control equipment.(86)

These changes are in the Income Tax Amentment Bill 1978.(87) In addition to provisions drafted to give effect to the above mentioned, there are other unannounced amendments that are an endeavour to tighten the availability of this incentive.

First, the introductory part of paragraph (b) of the definition of qualifying incentives(88) has been rewritten to remove the possible interpretation of the existing legislation that if the expenditure had been incurred for the purposes of energy conservation the deduction could be claimed provided the assets or improvements or alterations were for use in that business, but not necessarily actually used for energy conservation. The proposed amendment clears this up, the only expenditure being deductable being that incurred, in the carrying on of any business(89) in New Zealand, in acquiring, installing or effecting, for use for the purposes of energy conservation in that business.(90)

The second significant proposed amendment is the introduction of a proviso to the definition of qualifying expenditure permitting the Commissioner to apportion the expenditure to reflect only

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85. S.125(1)(a) Income Tax Act 1976
86. P.28 Budget speech 1978.
87. Introduced 28 June 1978, Income Tax Amendment Bill, Clause 25
88. Idem
89. Idem
90. Idem

that part which should be allocated to the taxpayers assessable income. 'The Commissioner shall determine the amount of the qualifying expenditure in respect of that asset in such manner as he considers fair and reasonable.'[91]

The third significant proposed amendment is S.125(4) which covers the sale of assets within five years. This section is to have seciont 117(5),(6) and (9)[92] grafted on. These sections enable the Commissioner to determine how much the sale price for an asset is to be assessable income, where the asset is sold with other assets, or below market price or taken out of New Zealand permanently, or acquired by the Crown. These provisions apply where a taxpayer has disposed of a share or interest in property, including formation, dissolution or variation of a partnership.

Some of the other amendments require comment. Part (a) of the definition of qualifying expenditure is to be amended to include expenditure incurred on or before 21 July 1977 approved by the Secretary of Energy and relating to an evaluation of energy by the Secretary. As this amendment is intended to take effect from 1 April 1978, it can only be concluded that expenditure made before 21 July 1977 can be retrospectively approved. The Secretary of Energy is the same person as the Commissioner of Energy Resources, apparently his name has been changed, not a new position created. Finally part (c) of the definition of qualifying expenditure[93] has been amended to enable the Governor General to decline expenditure to be qualifying expenditure. This had been forgotten when the section was first enacted and was necessary so the provision could be used. The nature and form of these amendments can only confirm the suspicions of many that these sections are enacted with undue haste, and are not drafted to the standard expected of income tax legislation. It may well be that rather than amending this section to limit abuse this incentive should have been repealed and a programme of direct Government assistance substituted.

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91. Idem
92. Income Tax Act 1976.
93. Section 125(1) definition qualifying expenditure (c)

2. Expenditure to Battle Pollution

In contrast to the incentive for energy conservation the incentive to encourage expenditure to prevent or combat pollution has a very limited application and has been in its current form since 1972. Section 124 applies to business taxpayers other than those in a farming or agricultural business.(94) The only expenditure that can be deducted is 'expenditure in the construction on land in New Zealand of earthworks, ponds, settling tanks or other similar improvements primarily for the purpose of treating industrial waste.'(95) The expenditure deducted under this section must not be deductable under any other provision, whether by way of depreciation or otherwise.

The qualifying expenditure shall be deducted 20% in the first year exexpenditure incurred and 20% in each of the succeeding four years.(96) The Commissioner can reallocate the deduction so that the minimum amount allowed in respect of any of those years is $1,000 in the aggregate or the balance of the expenditure not yet deducted, whatever is the smaller. This is for administrative ease. It cannot be long with the general concern over pollution that this area is the subject of new provisions. Nevertheless, although it suffers from the defect that it is of value only to taxpayers with sufficient income to offset the deduction, it allows the rapid amortization of the cost of what is capital expenditure.

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94. S.127 Income Tax Act 1976 covers the latter
95. S.124(1) Income Tax Act 1976
96. S.124(2)(a) and (b) Income Tax Act 1976

II The Need for Tax Reform

A The Abuse of Taxation Incentives as Tax Shelters

1. Features of Tax Shelters

Tax Incentives in the form of deductions from assessable income are attractive to the tax planner because the large deductions available can be offset against income. Because a deduction from assessable income is only of value where there is sufficient income to offset the deduction although 'tax lossess' created by these sections can be carried forward[97] it may be more attractive to the person the incentive was intended to benefit, those on the scene and personally involved in the business,[98] to sell the deduction for some other benefit.

For example many of the incentives examined in this paper are available in relation to plant or machinery.[99] In the United States one of the most common methods of high tax bracket investor obtaining deductions available on plant or machinery has been for them to lease the plant or machinery to the manufacturer. The manufacturer will be prepared to do this in exchange for a low rental, which will suit the investor because he wants as little income from the investment as possible to maximise the deduction he can offset against other income.

As a market mechanism for combining a number of investors into a unit that can obtain tax incentive deductions the limited partnership has been used[1] or what is known in New Zealand as a speical partnership[2] between the investors and the person actually involved in the business. By using the special partnership the investors risk is limited to his captial contribution[3] while he endeavours to take on the 'business' colouration of the partnership.[4]

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97. Section 188 Income Tax Act 1976
98. Pathways to Tax Reform, Stanley Surrey p.105
99. For example s.112(1)(a) and (b), s.119, s.131, s.121A Income Tax (Act 1976
1. Pathways to Tax Reform, Stanley Surrey p.105
2. Partnership Act 1908 Part II Section 49
3. Section 50 Partnership Act 1908
4. Pathways to Tax Reform, Stanley Surrey p.105

In this way a group of investors may purchase an expensive machine, lease it to the user and obtain the tax incentives available, in the form of a large deduction. This deduction will be offset against their other income, in effect sheltering their other income from tax liability. These devices are commonly known as 'tax shelters.'

Surrey[5] considered that tax incentives in the form of deductions from assessable income created tax benefits in three ways:

(a) Tax was deferred
(b) The advantage of borrowing
(c) Capital gain treatment

a. Deferral of Tax

When deductions are accelerated, income in the year the deduction is taken equal to the amount of the deduction escapes liability for assessment for tax. This escape is not absolute for when the asset is sold or the maximum deduction on that asset has been allowed the income earnt at that point in time cannot be offset because the deduction has already been taken in full. Accordingly the income then becomes liable for tax. In this situation the fact the deduction has been taken early simply defers the tax liability on that income until the later point in time. A good example of the defering of tax is the effect of the first year investment allowance.[6] In the year the deduction is allowed, the first year of use of the asset, tax on income equal to the amount of the deduction is deferred until the total cost price of the asset has been deducted by way of depreciation. Income earnt after that point in time cannot be offset against this deduction because the deduction has been taken in full, and accordingly, the income becomes liable to tax.

Deferral has a number of advantages to the taxpayer. First in effect the taxpayer receives an interest free loan of the tax that is deferred until he is obliged to pay. Secondly, when the taxpayer does pay, as the amount of the tax payment is fixed, inflation will work to his advantage. Thirdly, the higher the taxpayers

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5. Idem p.108
6. S.119 Income Tax Act 1976

marginal tax rate the greater the value of the deferral as the income deferred carries a higher tax liability. Finally in some cases the postponement of tax and the nature of the shelter operate to switch the deferred income to capital gain reducing or excluding it from tax liability.[7]

b. The Advantage of Borrowing

If a profit can be made from an investment then provided the interest rate is lower than the profit to the borrower, the profit will increase for the profit on the borrowed money will be added to the profit on the investors own funds. The same will occur when the 'profit' is in the nature of a deduction from assessable income because the taxpayer will get the benefit of the deduction on the borrowed funds. The tax system makes no distinction between the taxpayers own funds in calculating the cost of an asset to establish the amount of the deduction[8] and the deduction is calculated on the cost of an asset regardless of the source of funds.

The second benefit from borrowing is that repayments of the borrowed fund will be deductible if they are interest payments and not repayment of borrowed capital. Surrey[9] makes the point that if the tax system was consistent then the only borrowed money that could be treated as expenditure could be that part of the loan repaid. The difficulty here is that it would be almost impossible in many cases to attribute borrowed funds to the purchase of a specific asset rather than to other expenditure in the enterprise.

c. Capital Gain Treatment

When expenditure on an asset has been allowed as a deduction and the asset is subsequently sold, if the sale price is treated as a capital gain then a third benefit can arise to the taxpayer for by taking advantage of the deduction the income deferred has

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7. See Part II A (1)(c)
8. Excluding Government Grants s.169 Income Tax Act 1976.
9. Supra n4 page 119

has become non-assessable income.[10] This benefit is separate from the benefit of deferring tax for that advantage will be obtained even if the gain on sale is taxed as income. On the sale of a depreciated asset Section 117[11] recaptures the sale price as income in the year of sale negating any captial gain benefit.

In contrast there is no recapture as income of the sale price of an asset on which any of the investment allowances have been deducted, unless sold in the first year[12] so that income offset by an investment allowance will be a capital gain on sale.

2. Characteristics of Specific Tax Incentives Available to Manufacturers

a. Introduction

The use of tax incentives as tax shelters is not unknown in New Zealand[13] although export incentives have been used in most. Whether the tax incentives for manufacturers can be used as tax shelters will be considered in this part of the paper. In some sections considerable thought has been devoted to preventing unintended use of the incentives although the whole problem could perhaps be resolved by using another method of providing Government assistance. In addition there are two general barriers to the use of these incentives as tax shelters. First, Section 99,[14] the general anti-avoidance provision may be able to be invoked to knock down such a scheme. Secondly, the Commissioner may successfully challenge the offsetting of income from other sources against the tax loss created by the particular incentive because the enterprise in which the loss has occurred does not satisfy the definition of business.[15]

b. Depreciation Allowances

All three incentives that are available by way of extra depreciation defer income in the year the deduction is allowed from income tax until the asset is sold or the whole of the cost of the asset has

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10. No capital gains tax in New Zealand
11. Income Tax Act 1976
12. S.118(3) Income Tax Act 1976
13. Golightly v. C.I.R. (1972) 1 TRNZ 135
14. Income Tax Act 1976
15. S.2 Income Tax Act 1976

been depreciated.[16] This is what these incentives are designed to do. When the asset is sold the amount that the sale price exceeds book value[17] is treated as income in the year the sale takes place. Accordingly there is no capital gain. Although that profit is treated as income, the payment of tax on that income can be spread over the preceeding three years, provided the amount involved exceeds $1,000 and the taxpayer makes written application to the Commissioner to obtain the benefit.[18] This spreading of tax may enable the taxpayer to take advantage of the lowest marginal tax rate available to him, except where the taxpayer is a company.[19] This provision does not apply where the asset involved is a building.[20] Alternatively, the taxpayer can apply in writing to the Commissioner within six months of the end of the income year in which the asset is sold, or such longer period the Commissioner is prepared to allow to have that portion of the sale price which is assessable income to 'be applied in reduction of the cost, for the purpose of calculating depreciation on a replacement asset.'[21] If this option is exercised then the deferral of the income is continued.

All of these incentives are only available where the taxpayer is engaged in business.[22] However if the taxpayer satisfies the criteria then the deduction can be allowed against any assessable income of the taxpayer, not just that from the venture in which the asset is used. The expenditure on which the deduction is calculated, can include borrowed funds. The first year depreciation allowance and the supplementary depreciation allowance on plant and machinery used in two or three shift industries can be taken by a lessor. However the additional depreciation allowance for plant machinery or equipment used in scientific research is not available being allowed only if the asset is used exclusively for the purposes of scientific research 'directly'[23] relating to that business.

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16. Sections 112, 113 and 113A Income Tax Act 1976
17. Section 117 Income Tax Act 1976
18. Section 117 (1) Income Tax Act 1976
19. Companies taxed at a flat rate of
20. S.117(1)(i) Income Tax Act 1976
21. S.117(2) Income Tax Act 1976
22. See page 34
23. Section 113 Income Tax Act 1976

c. Investment Allowances

The investment allowances offer large deductions for expenditure on new plant and machinery in their first year of use. When the first year depreciation allowance is included up to 65% of the expenditure can be deducted. The potential use of these provisions as shelters has not however gone unnoticed by the Inland Revenue and two provisions exist within Section 118 to restrict the use of the investmentallowances as tax shelters. First the investment allowances are not available to lessors[24] which eliminates leasing. At the same time it would appear that the denial of the incentive to taxpayers entitled to be recouped for their expenditure[25] would exclude the use of hire purchase agreements of either the true or conditional sale variety to fix return on the investment.

Secondly, the Commissioner has the power under a general anti-avoidance provision to alter the amount of the deduction claimed where the Commissioner is satisfied that arrangements have been made between a taxpayer and another person with a view to the affairs of the taxpayer and that other person being so arranged or conducted that the investment allowances would have effect more favourably in relation to that taxpayer than would otherwise have been the case.[26] This is a general anti-avoidance provision in a similar vein to Section 99.

Its existance must exclude the application of Section 99 as a matter of statutory interpretation and on a conceptual basis. Although the words of s.118(6) are general, the ambit of that section extends no further than from section 119 to section 123. Within that sphere it is difficult to accept that transactions could be open to attack under two general anti-avoidance provisions. Secondly, conceptually Section 99 belongs to that part of the income tax system relating to the collection of Government revenue, while section 118(6) is in a different context and exists against a different background.

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24. S.118(5) Income Tax Act 1976
25. S.118(8) Income Tax Act 1976
26. S.118(6) Income Tax Act 1976

The very reason for the existance of the incentive allowance is to encourage taxpayers to take advantage of them and thereby act in accordance with Government policy.

In this atmosphere it is difficult to assess the effect of this section. It has been suggested that the legislative intent of Section 118(6) was to counter arrangements by taxpayers designed to artifically increase their entitlement to the investment allowances,[27] however, if this may be considered a reasonable appraisal of Parliaments' intent then the wording does not make this clear.

Although there has been no New Zealand case on this section, there has been one reported Australian decision, Brambles Holdings Limited v. F.C. of T.[28] There the Australian High Court construed the section against the Commissioner. It must be remembered that the Australian High Court have taken a different philosophical approach to the interpretation of anti-avoidance provisions than our own Courts, being far more inclined to favour the taxpayer.[29]

Section 118(6) gives the Commissioner the right where he is satisfied that arrangements have been made between a taxpayer and another person with a view to the affairs of the taxpayer and that other person being so arranged or conducted that the investment allowances would have effect more favourable in relation to that taxpayer than would otherwise have been the case. The Commissioner can reduce the deduction to the amount which in his opinion the taxpayer would be entitled to if the offending arrangements had not been made.

The major difficulty with its interpretation is what arrangement "would otherwise have been the case." To what alternative arrangement should the taxpayers arrangement be compared? In Brambles case[30] Gibbs J. and Mason J. felt that the section should be

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27. New Zealand Income Tax Law and Practice - Simcock & Rooke CCH paragraph 40-020. See also n28 dissent of Murphy J. p.123, lines 19 - 23

28. 8 ATR p.108

29. This was commented on by Mr Justice Casey in Halliwell v. C.I.R. 1977 2 TRNZ 186, 187

30. Supra n28

limited to situations where 'a person who is already entitled to a rebate ... makes arrangements for the purpose of increasing his entitlement.'[31] However, Jacobs J. and Barwick C.J. felt the section could apply to initial arrangements and the alternative arrangements to which the arrangements were to be compared were those arrangements that would be the 'usual way'[32] in which business or commercial affairs were arranged.

However to be caught the taxpayer making the arrangements had to do so with the intention of taking advantage of the section and the arrangements actually made must only be commercially explicable as being made with a view to the more favourable effect.[33]

The Act is silent as to the nature of the alternative arrangements to which the attacked arrangements are to be compared. It is considered the latter approach in interpretating those words while attempting to limit the effect of the section in a manner that is in harmony with the concept that tax incentives exist to be taken advantage of may still catch transactions not intended to be caught. However the section is not self-executing but requires the Commissioner to be satisfied and to form an opinion as to how much of a deduction the taxpayer should be allowed. Although the Australian High Court did not consider that was significant, a New Zealand Court may be more hesitant before interfering with this exercise of the Commissioner's discretion.

It is difficult to assess with precision the extent that this section would have on the utilization of the incentive allowances as tax shelters. In many cases the arrangement may not be commercially explicable other than having been made with a view to the investment allowance having a more favourable effect and it may be difficult for the Commissioner to invoke. Nevertheless the existance of this provision must affect the use of these incentives as tax shelters. However, the prohibition on lessors obtaining the investment allowances which has the effect of restricting their availability to the user is a more effective barrier

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31. a ATR 108, 115 lines 11 - 13

32. Ibid 120 line 37

33. 8 ATR 108, 120. This approach echoes the 'predication test' of Lord Denning in Newtown v. F.C. of T. (1958) 2 All ER

and also reduces the attractiveness of the first year depreciation allowance.[34]

The incentive allowances treat capital expenditure as current expenditure. As the incentive allowances are in addition to depreciation allowances they are not the acceleration of future deductions but have no future consequence, not deferring any future tax liability. Provided the plant or machinery is sold any time after the expiration of 12 months the income offset by the incentive allowance is treated as a capital gain. If the purchase of the asset is made by using borrowed funds the amount of the deduction is not affected in any way and accordingly borrowing will increase the benefit to the taxpayer.

d. Miscellaneous Allowances

(i) Energy Conservation Expenditure

Expenditure qualifying for deduction under section 125 of the Act can be deducted in full in the year the expenditure is incurred. Where it relates to expenditure on an asset for which depreciation can be allowed the deduction under this section is in substitution for the depreciation allowances[35] and in this situation amounts to the fastest acceleration of depreciation possible. If the asset is not sold within five years of obtaining the deduction then the sale price of the asset is treated as capital gain.[36]

That part of the qualifying expenditure that falls within part (b) of the definition of qualifying expenditure is all that concerns us here.[37] Provided the expenditure is incurred in the carrying on of a business and for the purposes of energy conservation it shall be deducted from the taxpayers assessable income. There is no requirement that the asset be used in the business for energy conservation but the proposed amendment will block that gap.[38] The deduction is available to a lessor and it does not appear this will be affected by the proposed amendments.

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34. Part I A 2

35. S.125(3) Income Tax Act 1976

36. S.125(4) Income Tax Act 1976

37. S.125(1) Income Tax Act 1976

38. Income Tax Amendment Bill 1978

(ii) Expenditure to Combat Pollution

The Section 124 of the Act which permits the deduction of expenditure to prevent or combat pollution offers a deduction in respect of expenditure not otherwise deductible under the Act. The section is limited by the small range of expenditure that qualifies but if a taxpayer can bring himself within the section, the deducition is substantial. The section permits the deduction of capital expenditure at the rate of 20% per annum until the balance not yet deducted drops below $1,000.(39) In addition to permitting the deduction of capital expenditure, there is no recapture of that deduction on sale of the asset so the taxpayer is permitted to convert the income he has offset against the deduction into a capital gain.

3. General Provisions Preventing the Use of Incentives as Tax Shelters

a. The Scope of Section 99

Section 99 of the Act can be invoked by the Commissioner to avoid any arrangement having the purpose or effect of tax avoidance. Tax avoidance is defined to include directly or indirectly avoiding, reducing or portponing any liability to income tax.(40) The scope of Section 99 of the Act in relation to tax incentives that offer a deduction from assessable income has not yet been examined by any New Zealand Court. In Australia(41) and in Canada(42) it would appear that deductions obtained by utilizing a tax incentive are outside the range of their respective anti-avoidance provisions. Also, in the Australian situation, if the arrangement comes within the ambit of the general deduction section then it too will be protected.(43) In New Zealand it is difficult to say whether the situation is the same for there is a clear conflict between the decision of the Court of Appeal in Wisheart MacNab and Kidd v. C.I.R.(44) and that of the Privy Council in Europa Oil N.Z. Ltd v.

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39. S.124(2) Income Tax Act 1976
40. Section 99(1) definition tax avoidance part (c)
41. Mullens v. F.C. of T. 1976 6 ATR 504 Cridland v. F.C. of T. 1977 (8 ATR 169
42. R. v. Alberta & Southern Gas Co Ltd 1977 CTC 388
43. Supra n45
44. (1972) NZLR 319

C.I.R.[45] As to the application of that principle, in the former case the Court of Appeal considered that compliance with the general deduction section could not exclude the application of section 99, while in the Europa case it was held that if the deduction came within section 104 it would be 'incompatible' that the deduction should be still liable to attack under section 99. In the recent case of Halliwell v. C.I.R.[46] Casey J. endeavoured to reconcile the two approaches by excluding the application of section 99 where the expenditure conforms with section 104, unless the need for such expenditure has been contrived.[47] This test has been criticised elsewhere [48] and it is of little help where the deduction available is a tax incentive, intended to encourage the taxpayer to arrange his affairs to take advantage of it. The same problem arises if the 'predication test' laid down by Lord Denning in Newton's case.[49] Any arrangement made to take advantage of an incentive provision must fall into the category of having been implemented in that particular way to avoid tax, that is to take advantage of the incentive.

The argument that if an arrangement comes within the provision of a specific section it is exempt from attack under section 99, is strengthened when the policy behind incentive deductions is considered. The very purpose of the incentives is to offer a benefit by way of a reduction in income tax if the taxpayer is prepared to arrange his affairs to take advantage of the provision. Accordingly transactions falling within a particular incentive are outside the scope of section 99.

b. The Need to be in Business

Of the tax incentives covered in this paper all except the investment allowances[50] require the taxpayer to have incurred the necessary expenditure while in business.[51]

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45. (1976) 1 NZLR 546
46. (1977) 2 TRNZ 186
47. Ibid 195
48. Estate plans and arrangements to avoid Income Tax J.G.Bassett (p.34 - 36
49. (1958) 2 All ER 759
50. Sections 119, 121 and 121A Income Tax Act 1976
51. Sections 112(2), S.113(1), S.113A(3), S.124(1), S.125(2), S.144 offers the option of trade or business, S.146 is only to a company but can be disregarded.

It is a requisite part of the definition of business for tax purposes that the venture must have a prospect of making a profit. If there is no such prospect, the Commissioner may refuse to allow income from other sources to be offset against the deduction obtained. This would negate the use of these provisions as tax shelters. In Golightly v. C.I.R.[52] one of the three classes of deductions claimed by the taxpayer was a tax incentive for the development of farm land. The deductions combined created a tax loss against which the taxpayer sought to shelter his income as a solicitor. It was held that on the facts of that case the taxpayer was in business as he had both the intention and the prospect of making a profit. With regard to the heavy development expenditure, Speight J. was satisfied that is was consistent with the development of the farm for farming purposes. In coming to his conclusion, Speight J. drew a line between 'legitimately' taking advantage of the tax allowance for development costs and indulging in the enterprise as a mode of obtaining taxation exemption while striving for a capital gain.[53] In cases where the investment has been made to simply obtain the deduction available in the hope of using it as a 'tax shelter' it will be difficult for the taxpayer to be on the right side of that line. If the investment was to provide a substantial deduction over a number of years than it would be fatal to limit the potential return by providing for a fixed return under a lease. However, whether a particular scheme is caught by this provision will depend upon the facts of each case.

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52. (1972) 1 TRNZ 135
53. Ibid p.137 lines 44 - 52

B The Limitations of Tax Incentives as a Means of Implementing Government Policy

Tax Incentives available to manufacturers in the form of deductions from assessable income have serious defects as a means of implementing Government policy. The Ross Committee in their report[54] recommended:

> 'As a general principle, concessions based on deductions from assessable income should be replaced wherever practicable and appropriate by tax rebates, direct grants, or loans authorised by a special body responsible to a Minister of the Crown.'[55]

The defects that committee saw were

(a) the difficulty of estimating the national benefit arising from concessions,

(b) the inability to measure the effect on Government revenues of many incentives,

(c) the inability to estimate the effect of the granting of a tax incentive with precision,

(d) that tax incentives led to wasteful expenditure, and that waste meant that the pattern for desired development to which the tax incentives were meant to contribute were either not achieved or achieved uneconomically,

(e) selective tax incentives lead to inequitable treatment of taxpayers.[56]

However, successive Governments have continued to use tax incentives as a means of inplementing Government policy despite the above recommendations. Since 1976, a distinct trend away from tax incentives as the method of providing Government assistance to manufacturers has occurred. Although new tax incentives have been created most Government assistance to manufacturers is now in the form of a loan or a grant, and if direct assistance is obtained the tax incentive is reduced accordingly.[57] Nevertheless, while incentives exist within the tax system, Government has an obligation to the taxpayer to evaluate the efficiency of the incentives as a method of providing assistance.

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54. Supra n 27
55. Ibid p.237 Recommendation 1
56. Ibid paragraph 560
57. See p 39 of this paper.

In the present atmosphere of widespread dissatisfaction with the tax system[58] and the ancillary pressure for reform it is surprising to discover that tax incentives represent a form of Government expenditure, the cost of which escapes measurement. The most recent statistics available for the cost of tax incentives to manufacturers is for the 1974 financial year.[59] Two factors contribute to this failure, first responsibility for the operation of tax incentives may be split between Government departments, and secondly there may be a failure on the part of Government to see tax incentives as expenditure. An example of the first point is that the investment allowances for industrial development plans and high priority activities are operated by the Department of Trade and Industry rather than the Inland Revenue. The former department personnel are unfamiliar with tax law, the latter almost excluded from involvement, and accordingly where final responsibility lies is difficult to assess. Even Ministerial responsibility is shared.[60] To enable financial control to be exercised over the cost of tax incentives it is necessary to recognise tax incentives as Government expenditure using the mechanics of the tax system to effect payment. The preparation of budgets for tax incentives, what Surrey[61] called 'tax expenditure budgets' is necessary not only to measure the cost of the incentive programme but can also reveal other previously hidden features of the tax incentive that are significant in evaluating the value of that particular incentive. For example, with expenditure framed as a deduction from assessable income, the form of all the incentives available to manufacturers' analysis of who is obtaining the incentive will reveal that the deduction offers greater assistance to wealthier taxpayers where graduated marginal tax rates apply, and no benefit to a person with no taxable income.

This is contrary to the usual aims of Government assistance. The

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58. Taxation Reform. Brash and Thompson New Zealand Planning Council, May 1978.
59. See Third Schedule
60. S.121 definition industrial development plan, S.121A definition (High priority activity
61. Pathway to Tax Reform, Stanley S Surrey Chapt. 1

normal aim of Government assistance is to at least treat all qualifying individuals equally, and often to prefer low income taxpayers.

Tax incentives also create inequities. As with all forms of Government expenditure, they have a cost, in this case tax foregone. This contributes to keeping tax rates high, as the deductions constrict the tax base and reduce revenue. This problem is compounded because the cost of tax incentives is difficult to estimate, and because the amount that can be deducted is open ended, being calculated as a ratio of the qualifying expenditure with no fixed ceiling. In addition the availability of tax incentives to a limited range of taxpayers prevents the like treatment of taxpayers in otherwise like circumstances.

Criticism that tax incentives lead to wasteful expenditure is difficult to assess. The Ross Committee[62] were unable to present 'clear evidence'[63] on this point because of the absence of suitable information. Only a subjective assessment can be made on this point and it is countered by proponements of tax incentives with the argument that tax incentives avoid the need for bureaucracies necessary to administer direct grants with their associated tangle of red tape. In the end the answer must be a political one.

If the tax system is to be used to provide Government assistance then budgeting control must be exercised over the programmes. Secondly, it would be better to replace incentives by way of deductions with rebates against tax. Provided, in the event of the taxpayer's rebate exceeding the tax payable, the taxpayer would receive payment of the balance, then unequal treatment of taxpayers as occurs with deductions would be avoided. However, at this point, the tax system is being used to make direct payments and it may be better to remove the whole edifice from the income tax system and provide for it in a separate statute. This would enable the simplification of the tax system, which in itself is recognized as a

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62. Supra n27

63. Ibid paragraph 560

goal of tax reform.[64] It can be seen from an examination of the Income Tax Act 1976, most cumbersome sections of the Act cover tax incentives, and their removal would assist in administration and public acceptance.

C Direct Grants

1. Advantages of Direct Grants as an Alternative to Tax Incentives

If direct grants were used in substitution for tax incentives, then the Government department administering the policy under which the assistance is to be made, would be responsible for all aspects of the programme. Accordingly, if the granting of the assistance is discretionary, each application can be assessed to see if it comes within Government policy. Direct grants offer the same benefit to all qualifying applicants, regardless of their other income. However, the tax treatment of direct grants is important for if they are not taxed as income then that in itself will constitute a form of Government assistance which will operate in favour of taxpayers with high marginal tax rates.

2. Use of Direct Grants in New Zealand and Their Tax Treatment

In New Zealand the trend has been towards the use of direct grants although tax incentives have continued to play a limited role in Government assistance. It would appear that the tax incentives are retained because they are of general application and can offer a limited benefit to manufacturers whose net benefit to the country may be difficult to assess.[65] In contrast the direct grants are discretionary and are the form most Government assistance has taken.

For example, in regaional development there are eleven forms of direct grants while there is only one tax incentive to encourage regional development. Most of the direct assistance is initially in the form of a loan, which will be converted to a grant if certain performance criteria are satisfied.

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64. Ibid paragraph 14, page 16

65. Supra n2

The grants are taxable income. With regard to loans to businesses made by the Development Finance Corporation, if the loan is remitted then the loan is treated as assessable income spread over the year the loan is remitted and the two succeeding years, provided that the taxpayer can, if he gives notice to the Commissioner have the loan assessed as income in one of the earlier of the three income years.[66] Alternatively the taxpayer can elect if the grant is made in relation to expenditure which is deductible under the Act,[67] to have the amount of the 'deduction otherwise allowable in respect of that year or any other income year,'[68] reduced by the grant, and the grant then shall not be assessable income. This applies to depreciation allowances,[69] and incentive allowances.[70]

Because of the delay that occurs between the advancing of the loan and its remittance which operates as a deferral of tax on the grant, with regional development suspensory loans, they have been deemed to be payments which must be deducted from any expenditure qualifying for a deduction as soon as the loan is made. In this way there is no deferral of the loan from taxation. Accordingly, s.173 has to provide for the situation where repayment takes place. If the repayment relates to a grant for expenditure that is allowed as a deduction, then the previous disallowed deduction shall be allowed in the income year in which repayment is required. If the repayment relates to a grant used to obtain an asset on which depreciation has been claimed, then in the same fashion, a deduction is allowed equal to the amount by which the deduction has been reduced. A third situation is specifically covered if the repayment relates to a grant to which s.125AA(4) of the Land and Income Tax Act applied. The amount the deduction allowed under s.117A[71] or section 117C[72] was reduced by, shall be allowed as a deduction in the year the repayment is made.

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66. S.172 Income Tax Act 1976
67. S.169 Income Tax Act 1976
68. S.169(2) Income Tax Act 1976
69. S.169(3) Income Tax Act 1976
70. S.169(4) Income Tax Act 1976
71. S.117A Invested allowance new plant and machinery
72. S.117C West Coast Investment Allowance

However, no provision of a similar nature exists in section 173 to cover the situation where the deduction that has been reduced is the regional investment allowance. If the deduction that has been reduced is a regional investment allowance available under section 119 then if the loan is repaid no subsequent deduction for the amount of the loan is allowed.

The only way the taxpayer can avoid this situation with the deduction, by way of regional investment allowance being reduced by the grant, yet the grant being also taxed is to make sure the grant is used on expenditure which does not qualify for the regional development investment allowance. A statement made by the person making the loan is conclusive for tax purposes as to what expenditure the loan relates to,[73] so the taxpayer to avoid this fate needs to obtain such a statement.

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73. S.173(5) Income Tax Act 1976

SCHEDULE ONE

Regional Investment Allowance

Qualifying assets

The allowance applies to—

(a) New plant and machinery that is used by the taxpayer primarily and principally in—

the manufacture of goods, or components— ("goods" includes liquids, gases, substances, ships, hovercraft and aircraft);

the concentration of metals, i.e., the process by which metals are separated from their ores;

the processing of metals after their concentration;

the milling of timber;

forestry operations;

printing and engraving processes;

canning of foodstuffs;

the production of electricity, steam, gases (other than natural gas), etc., for use by the taxpayer in any of the above operations.

(b) New plant used by the taxpayer to under take the following type of secondary functions in respect of goods which he has manufactured or dealt with as described under (a)—

packaging and labelling of goods;

the cleaning or sterilising of bottles, vats, or other containers used in the storage or delivery or marketing of goods;

the transportation of goods within premises — this would cover plant such as forklift trucks, hoists and cranes;

the storage of goods within premises;

the disposal of waste substances;

assembly, maintenance, cleansing, sterilising or repair of any plant or machinery.

(c) New road transport vehicles including trailers designed for the carriage of goods and used by goods service operators who are licensed under the *Transport Act* 1962.

SCHEDULE TWO

CERAMIC INDUSTRY DEVELOPMENT PLAN

JOINT STATEMENT BY THE NEW ZEALAND GOVERNMENT AND THE NEW ZEALAND CERAMIC INDUSTRIES ASSOCIATION

BACKGROUND

This statement summarises the combined views of the Government and the industry on the broad policy issues relating to the future development plan for the New Zealand Ceramic Industry submitted by the industry and reviewed by the Government within the context of the Government's industry study programme.

Development plan details are set down in the following documents:

a) The study of the existing industry which was carried out from July 1974 to August 1975, by the Ceramic Industries Association, the results of which were presented in a report to the Government in October 1975.

b) The final submission by the industry on the future development of the New Zealand ceramic industry which included updated basic data, a social net return analysis, future objectives, and proposals for action.

c) A working document prepared by government officials for consideration by the industry, and the industry's response.

There have been consultations between the industry and government officials through a joint steering committee and with individual companies on their own development plans.

From these documents and extensive discussions between the parties this joint statement has been prepared.

APPROVED PLAN

The industry, which is regarded as a desirable one and worthy of assistance from the Government, covers a wide range of activities and has a diverse range of both output and outlets. Within the industry elements have been identified which are efficient when measured in terms of New Zealand industry as a whole and also areas where there is scope for productivity improvement. The Government will play its part along with the industry in capitalising on the opportunities in both these areas.

The plan meets the criteria specified in the Government's broad policy objectives for industrial development referred to by the Government in the 1976 and 1977 Budgets. It has performed a very useful role in developing the industry development plan concept by allowing all parties to focus on the requirements of an effective plan. The Government is grateful to the industry for this.

The analysis undertaken during the development of the plan has given both the Government and the industry a clear idea of the present and likely future performance of each sector of the industry. The form and level of any assistance that is given in terms of the Plan will be on a case by case basis and will have particular regard to the present potential efficient use of labour, capital, indigenous resources and energy and will involve consideration of the potential for market expansion, product improvement, exports and development skills as well as of environmental standards. In some instances this assistance may be designed to encourage the expansion of a particular area; in others it may be designed to rationalise a certain area of a manufacturer's production, so as to allow the manufacturer to expand production in an area giving greater national benefit.

INDUSTRY ACTION

Members of the industry will continue action along those lines which will provide the maximum contribution to the most efficient use of New Zealand's resources in the production of goods for export and the domestic market. Within this broad objective the development of the industry will differ from sector to sector, because of the differences in their development potential.

The rate of progress is, however, largely dependent on the general economic climate in New Zealand and internationally; the efforts of the firms in the industry and the use they make of existing assistance and incentives; and the extent to which the Government provides effective assistance to the industry.

The five year industry plan broadly indicates:

* An overall increase in production of 39 percent to $39,000,000

* An increase in exports of 243 percent to $5,700,000

* Capital expenditure of up to $16,000,000.

(All the above figures are expressed in April 1976 dollar terms.)

Where any new specific development or investment proposal arises for which Government assistance is sought and which involves industry rationalisation, industry accepts that such proposals should be discussed with the Government in the context of the overall industry development plan.

Manpower Planning

The industry will examine its future skill requirements and produce a comprehensive manpower plan identifying its needs in the longer term. Appropriate training programmes will be developed on the basis of this plan to minimise the need to obtain skilled personnel overseas.

Research

The industry will ensure that full use is made of the assistance already provided under existing policy.

GOVERNMENT PARTICIPATION

To assist the industry in pursuing the fulfilment of its future development potential, the Government will be prepared to take the following action:

Protection

The Government will follow its stated policy of providing strong and effective protective measures as a basis for a strategy for growth for New Zealand industry. This strategy will, as stated in the 1976 and 1977 Budgets, encourage resources to move into those industries which are more internationally competitive and can make the best contribution to growth and the balance of payments.

The new Customs Tariff will provide as from 1 July 1978 an updated tariff structure with a reasonable level of protection.

In addition the present import licensing or other protective policies for goods made by the ceramics industry will not be changed without prior consultation with the industry.

As part of the review of the ceramics industry development plan which will take place in 1979 the effectiveness of the import protection accorded the industry will be reviewed together with the other forms of government assistance.

Immigration and Productivity

In order to ensure the necessary skilled staff are available, the Government will, in the shorter term, allow the entry of skilled personnel who come within occupational categories approved for overseas recruitment under the Government's immigration policy. Where necessary the industry may approach the Government for special approval when the required skills are not available under existing policy.

The services of the Productivity Centre are available to assist the industry to identify and employ the best ways in which productivity improvements can be achieved.

Industrial Development & Regional Developmemt Policies

The Government in its consideration of industrial and regional development policies will continue to rate indigenous resource utilisation as an important factor in the final assessment of such policies.

Trade Policy

Within the context of the development plan there will be consultation with the industry on decisions affecting the content, or access levels, under Schedules A and B and Article 3:7 arrangements in the NAFTA.

Investment Allowance, Sales Tax and other Incentives

The Government will develop as necessary new policy instruments to assist the industry or sectors of it to expand or restructure as indicated by the development plan. These measures will be granted on a case by case basis where they are shown to be a necessary element of a package designed to encourage the implementation of the approved industry development plan. Within this context assistance could be:

- by way of the investment allowance at an appropriate rate of up to 40 percent
- or by remission of sales tax on plant and machinery
- or by an increase in allowable profit margins
- or by a combination of these or other policy incentives as may be necessary.

The Government will provide assistance to the bricks, pipes, tiles and pavers sector of the industry to improve its efficiency. Such assistance would be for individual projects which are shown to be part of a firm's productivity improvement programme and which relate expansion of capacity to the expected growth in domestic and export markets.

As the main export sector of the ceramic industry - the tableware group - will receive the support and encouragement of the Government. There already exists export incentives including the export investment allowance and export suspensory loans to assist with capital projects. Also the recently introduced high priority activities scheme could benefit part of the tableware group. Where a project for expansion for exports does not qualify for assistance under these schemes, or the assistance is considered to be inadequate, then the Government will consider providing support as is most appropriate. Each project would be considered on its merits.

The Government will be ready to consider support for the sanitary ware manufacturer to further upgrade the plant and equipment by the most appropriate means should assistance be sought sometime in the future. The measures considered would not be confined to those available under development plans but could include, for example, those for regional development.

The production of insulators is in a regional development area and so recourse can be had to investment allowances on this basis.

The Government supports the development of a strong and efficient refractories sector and recognises that worthwhile progress has been made to date.

Research

For approved research projects (approval of objectives, time limits and costs required) designed to assist the industry to attain its development potential, which cannot be accommodated within the research assistance already provided, the Government will investigate what further action may be necessary to facilitate such research.

Export

A proposal for an export incentive based on New Zealand content is being pursued by the Government. This should be of major benefit to the ceramic industry.

Incentives to export will continue on a basis which allows companies to plan for the longer term.

Central & Local Government Buying Policies

The industry has indicated product areas where there is scope for purchasing policies designed to give a measure of priority to products having a high indigenous content.

The Government will maintain its policy of buying from New Zealand sources where the goods are comparable in price, quality and specifications with overseas products. An examination will be undertaken of what action could be taken to give greater emphasis to indigenous content and technological development under present policies and to extending such policies beyond central government purchasing. Such examination would take into account the industry's submission that minimising import content would be a primary criterion to be observed by purchasing authorities.

CONSULTATION AND REVIEW

As the implementation of the industry plan proceeds it is desirable that, in addition to monitoring progress on an industry/government basis, there should be specific consultation on the following aspects:

- quality control
- engergy conservation
- productivity
- research
- manpower training.

Although forecasts have been made about the future, the preparation of this development plan has been conditioned by the present and recent past. Changes are occurring and managements must amend their forward programmes to meet new situations.

The industry and the Government will therefore review and update the plan in 1979 to cover the five-year period to 1984/85.

NEW ZEALAND GOVERNMENT

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NEW ZEALAND CERAMIC INDUSTRIES ASSN

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Date:

SCHEDULE THREE

COMPANIES

TABLE 28 CLASSIFICATION BY INDUSTRY: INCOME, TAX ASSESSED, SPECIAL ALLOWANCES,

Industry	Number of Returns	Assessable Income before Losses	Assessable Income	Returnable Income	Current Net Loss	Ordinary Income Tax Assessed	Special Allowances				
							Investment Allowance	Export Market Development	Increased Exports	West Coast Investment	Tourist Development
							$(000)				
Manufacturing (Food, Beverages and Tobacco)											
Meat freezing and preserving	106	24,679	24,405	24,630	14,975	11,087	2,973	660	814	-	-
Milk products	129	4,404	4,389	4,581	297	1,941	495	36	255	1	-
Canning and preserving (other than meat and milk)	68	7,074	6,943	6,953	515	3,117	574	199	1,126	-	-
Bakery products, bread, biscuits, cakes, etc.	317	5,396	5,319	5,353	191	2,302	577	152	247	13	-
Miscellaneous food preparations	203	16,227	14,571	15,493	2,371	6,502	822	97	1,108	-	-
Beverage industries	120	21,706	21,443	21,933	872	9,660	821	166	362	199	30
Tobacco manufactures	5	4,186	4,186	4,200	10	1,882	208	36	127	-	-
Total	948	83,672	81,257	83,142	19,230	36,490	6,470	1,347	4,038	213	30

SCHEDULE THREE

COMPANIES

TABLE 28 CLASSIFICATION BY INDUSTRY: INCOME, TAX ASSESSED, SPECIAL ALLOWANCES,

Industry	Number of Returns	Assessable Income before Losses	Assessable Income	Returnable Income	Current Net Loss	Ordinary Income Tax Assessed	Special Allowances				
							Investment Allowance	Export Market Development	Increased Exports	West Coast Investment	Tourist Development
		$(000)									
Manufacturing (Textiles, Wearing Apparel and Made-up Textiles)											
Manufacture of textiles	132	15,207	14,189	15,554	662	6,370	1,173	768	2,651	5	-
Footwear	81	2,871	2,774	2,841	92	1,215	78	16	90	-	-
Wearing apparel (except footwear)	646	13,801	13,374	13,455	1,206	5,744	424	207	610	10	-
Made-up textile goods (except wearing apparel)	122	5,939	5,619	5,640	470	2,490	152	299	267	1	-
Total	981	37,818	35,956	37,490	2,431	15,818	1,828	1,291	3,618	16	-
Manufacturing (Wood, Paper, Chemical Products, and Miscellaneous Manufacturing)											
Wood, cork (except furniture) including sawmilling	683	28,308	26,095	32,576	12,625	11,549	7,940	210	5,943	64	-
Furniture and fixtures (including metal furniture)	496	12,136	12,004	12,014	457	5,217	369	80	286	-	-
Paper and paper products	73	17,166	15,756	16,190	96	7,035	2,188	666	2,735	-	-
Printing, publishing, and allied industries	833	21,781	20,676	23,743	1,523	9,064	1,087	98	301	10	-
Leather and leather products (except footwear)	153	3,098	3,055	3,071	1,489	1,329	345	141	700	-	-
Rubber products	49	4,842	4,826	4,894	134	2,157	452	24	215	1	-
Chemicals and chemical products	297	26,243	25,381	30,116	1,643	11,452	1,341	729	1,124	23	-
Petroleum and coal products	24	5,370	5,334	5,429	51	2,395	599	-	-	-	-
Non-metallic mineral products (except petroleum and coal)	472	27,918	27,691	33,082	731	12,251	2,207	152	1,014	175	-
Miscellaneous manufacturing industries	841	15,447	14,839	14,981	2,023	6,488	1,548	231	774	-	-
Total	3,921	162,309	155,657	176,095	20,771	68,937	18,075	2,330	13,093	274	-
Manufacturing (Metals and Metal Products)											
Basic metal industries	170	16,513	9,338	9,355	871	4,078	471	105	521	20	-
Metal products (except machinery and transport equipment)	873	22,198	21,405	21,730	730	9,337	810	188	610	1	-
Machinery (except electrical machinery)	1,177	20,968	19,881	20,273	1,597	8,544	1,218	423	1,351	12	-
Electrical machinery, apparatus, appliances and supplies	487	19,494	18,481	18,634	679	8,205	1,003	1,094	1,820	5	-
Transport equipment	2,543	12,982	12,405	12,789	2,057	4,868	1,230	90	433	10	-
Total	5,250	92,154	81,511	82,781	5,934	35,031	4,732	1,900	4,734	48	-

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