

**FIXED-RATE SHARE, FIXED-RATE FOREIGN EQUITY & NON-PARTICIPATING REDEEMABLE SHARE**

<b>FIXED-RATE SHARE</b>	<b>FIXED-RATE FOREIGN EQUITY</b>	<b>NON-PARTICIPATING REDEEMABLE SHARE</b>
<b>Section YA 1</b>	<b>Section YA 1</b>	<b>Sections YA 1 &amp; CD 22(9)</b>
<p><b><u>1. Versions of the definition</u></b></p> <p>There are 3 versions of the definition:</p> <ol style="list-style-type: none"> <li>1. A general definition;</li> <li>2. A partially extended definition; and</li> <li>3. An extended definition.</li> </ol>	<p><b><u>1. Versions of the definition</u></b></p> <p>There is only 1 version of the definition.</p>	<p><b><u>1. Versions of the definition</u></b></p>
<p><b><u>2. Who the definition applies to</u></b></p> <p>The definition applies to <u>all shareholders</u>.</p>	<p><b><u>2. Who the definition applies to</u></b></p> <p>The definition applies only to holdings by <u>companies</u>.</p>	<p><b><u>2. Who the definition applies to</u></b></p> <p>The definition applies to <u>all shareholders</u>.</p>
<p><b><u>3. What the general definition applies to</u></b></p> <p>The general definition applies for the purposes of the following specific provisions:</p> <p>(a) <u>Section CD 22</u>: For the purpose of the definition of a <u>non-participating redeemable share</u> so as to automatically meet the bright line test for exclusion from being a dividend.</p> <p>(b) <u>Sections GC 8 &amp; GC 14</u>: For the purposes of:</p> <ol style="list-style-type: none"> <li>(i) The exemption in the transfer pricing rules for a non-resident receiving a dividend from NZ on a fixed rate share; and</li> <li>(ii) An 'acquisition' for transfer pricing purposes including a receipt by a company of consideration for the issue of a fixed-rate share.</li> </ol>	<p><b><u>3. What the general definition applies to</u></b></p> <p>The definition applies for the purposes of the Income Tax Act 2007.</p>	<p><b><u>3. What the general definition applies to</u></b></p> <p>The definition applies for the purpose of section CD 22(which concerns off-market share cancellations and the operation of the ordering rule and brightline tests so as to determine the portion of any capital returned that is not a dividend.</p> <p>A brightline test is met if the share is a non-participating redeemable share.</p>

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<p><b><u>3. What the general definition applies to (continued)</u></b></p> <p>(c) <u>Section YA 1 definitions of 'excluded fixed rate security' and 'pre-1991 budget security'</u>: These definitions are relevant in determining whether there is a market value circumstance which would then require shareholding percentages for shareholding continuity to be calculated based on market value interests as well as voting interests.</p>	<p><b><u>3. What the general definition applies to (continued)</u></b></p> <p>N/A</p>	<p><b><u>3. What the general definition applies to (continued)</u></b></p> <p>N/A</p>
<p><b><u>4. What the partially extended definition applies to</u></b></p> <p>The partially extended definition applies for the purposes of the following specific provisions:</p> <p>(a) <b>Section EX 46(10)(a)</b>: For the purposes of the FIF calculation rules, a fixed-rate share is treated as a 'non-ordinary share' for which the FDR method cannot be used, and the CV method can be used.</p> <p>(b) <b>Subpart FE</b>: Under the thin capitalisation rules, dividends on fixed-rate shares are included as interest for determining thin capitalisation adjustments.</p> <p>[Inserted by <b>section 130(6)</b> of the Taxation (Tax Administration and Remedial Matters) Act 2011]</p>	<p><b><u>4. What the partially extended definition applies to</u></b></p> <p>N/A</p>	<p><b><u>4. What the partially extended definition applies to</u></b></p> <p>N/A</p>

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<p><b><u>5. What the extended definition applies to</u></b></p> <p>The fully extended definition applies for the purposes of section FA 2B:</p> <p>(a) For excluding a debt security stapled to a fixed-rate share from being treated as equity under the stapled debt securities rules; and</p> <p>(b) For treating a stapled debt security and the share to which it is stapled as a single share for the purposes of the definition of a fixed-rate share.</p>	<p><b><u>5. What the extended definition applies to</u></b></p> <p>N/A</p>	<p><b><u>5. What the extended definition applies to</u></b></p> <p>N/A</p>

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<p><b>6. The general definition</b></p> <p>A fixed-rate share means a share issued by a company, if the only dividend payable on the share (disregarding: any dividend payable on the issue of the share, and ICs or FDP credits attached):</p> <ol style="list-style-type: none"> <li>1. Is payable at a rate that:           <ol style="list-style-type: none"> <li>(a) Is a specific fixed percentage of the amount subscribed for the issue of the share; or</li> <li>(b) Is a percentage of the amount subscribed for the issue of the share that is determined by a fixed relationship to commodity, economic, financial, or industrial indices, or to banking rates or general commercial rates of interest; or</li> <li>(c) Is a percentage that could be of a kind already referred to above but for any variation in the rate of dividend that may occur only:               <ol style="list-style-type: none"> <li>(i) By a fixed relationship to a rate of income tax; or</li> <li>(ii) As may be necessary to compensate the shareholder for a default on the part of the paying company or expenditure or loss suffered by the shareholder, or a person associated with the shareholder, through holding the share; or</li> <li>(iii) By a combination of the factors referred to above; and</li> </ol> </li> </ol> </li> <li>2. Is payable at a rate that is not set with a purpose or have an effect of defeating the intent and application of any provision in the Act whose application is dependent on the measurement of voting and market value interests.</li> </ol>	<p><b>6. The general definition</b></p> <p>Fixed-rate foreign equity means an interest (<u>the equity</u>) in the capital of a foreign company <u>held by a company (the holder)</u> in relation to which the foreign company makes distributions:</p> <ol style="list-style-type: none"> <li>3. At a rate that:           <ol style="list-style-type: none"> <li>(a) Is a specific fixed percentage of the amount subscribed for the issue of the share; or</li> <li>(b) Is a percentage of the amount subscribed for the issue of the equity; <u>and</u> has a fixed relationship to economic, commodity, industrial or financial indices, to banking rates of interest, or to general commercial rates of interest; or</li> <li>(c) Would be of a kind already referred to above but for variation due to:               <ol style="list-style-type: none"> <li>(i) A fixed relationship to a rate of income tax; or</li> <li>(ii) Compensation to the holder for default by the foreign company; or</li> <li>(iii) Compensation to the holder for expenditure or loss relating to the holding of the equity and suffered by the holder, or by a person associated with the holder; or</li> </ol> </li> </ol> </li> </ol> <p><b>[Continued under 7. Partially extended definition below.]</b></p> <ol style="list-style-type: none"> <li>3. N/A</li> </ol>	<p><b>6. The general definition</b></p> <p>A non-participating redeemable share means a share that meets the following conditions:</p> <ol style="list-style-type: none"> <li>(a) The share is issued, under the company's constitution or establishing legislation, on terms that involve the share being required or allowed to be redeemed or repaid before the company is liquidated; <u>and</u></li> </ol> <p><b>This paragraph (a) is the primary condition: the share must be redeemable.</b></p> <p><b>[The secondary conditions are continued below.]</b></p>

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<p><b><u>6. The general definition (continued)</u></b>  N/A</p>	<p><b><u>6. The general definition (continued)</u></b>  N/A</p>	<p><b><u>6. The general definition (continued)</u></b>  <b>Secondary conditions - paragraphs (b), (c) &amp; (d):</b>  (b) The share is:  (i) A redeemable share under section 68 of the Companies Act 1993 or an equivalent provision of foreign law; or  (ii) Issued under 1 of NZ's Acts relating to co-operative companies; or  (iii) Subject to:  a. Section FA 2 (a profit-related debenture or a substituting debenture that is treated as a share for tax purposes) and FZ 1 (profit-related debentures issued before 23/10/86); or  b. Section FA 2B(2) (stapled debt security treated as a share issued by the company); or  (iv) A unit in a unit trust that is not a widely-held trust (a unit trust with at least 100 direct or indirect unitholders); <u>and</u>  (c) The share is either a fixed-rate share or a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule; <u>and</u>  (d) The shareholder does not have shareholder decision-making rights in relation to the share except:  (i) A protective right; or  (ii) If the company is subject to 1 of NZ's Acts relating to co-operative companies.</p>

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<p><b><u>7. The partially extended definition</u></b></p> <p>A fixed rate share includes:</p> <p>3. A share for which the dividend payable is the equivalent of the payment of interest for money lent, having regard to the following factors:</p> <p>(a) Whether or not the share is redeemable.</p> <p>(b) Any security provided to the shareholder, including put or call options over the share or any amount payable determined by reference to the amount of the dividend payable.</p> <p>(c) The variability or lack of variability of the dividend payable.</p>	<p><b><u>7. The partially extended definition</u></b></p> <p>Fixed-rate foreign equity includes equity in the capital of a foreign company in relation to which the foreign company makes distributions:</p> <p>(d) Equivalent to the payment of interest for money lent, having regard to:</p> <p>(i) Whether or not the equity is redeemable.</p> <p>(ii) Any security provided to the holder, including put or call options over the equity or any amount payable determined by reference to the amount of the distributions payable.</p> <p>(iii) The variability or lack of variability of the distributions payable.</p>	<p><b><u>7. The partially extended definition</u></b></p> <p>N/A</p>

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<p><b><u>8. The fully extended definition for section FA (2B)</u></b></p> <ol style="list-style-type: none"> <li>1. A share described in 6. <b>The general definition</b> above.</li> <li>2. A share that would be a share described above but for a dividend or a variation in the rate of dividend that may occur when the share is converted into another share ('the other share') if the gain is attributable solely to either of the following causes:               <ol style="list-style-type: none"> <li>(a) A change in the value of the other share occurs in a period that starts no more than 30 days before the share is converted, and the period was a term or condition of the share when the share was first issued.</li> <li>(b) A term or condition of the share that existed when the share was first issued, which sets the gain at a fixed percentage equal to 5% or a lesser percentage of the amount subscribed for the share.</li> </ol> </li> <li>3. A share for which the dividend payable is the equivalent of the payment of interest for money lent, having regard to the following factors:               <ol style="list-style-type: none"> <li>(a) Whether or not the share is redeemable.</li> <li>(b) Any security provided to the shareholder, including put or call options over the share or any amount payable determined by reference to the amount of the dividend payable.</li> <li>(c) The variability or lack of variability of the dividend payable.</li> </ol> </li> </ol>	<p><b><u>8. The fully extended definition</u></b></p> <p>N/A</p>	<p><b><u>8. The fully extended definition</u></b></p> <p>N/A</p>

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<p><b><u>9. Aggregation of stapled securities</u></b></p> <p>A Stapled security that is treated as a share under section FA 2B(2) is aggregated with the share to which it is stapled for the purpose of applying this definition of fixed-rate share.</p> <p>[Section <b>FA 2B(3)</b>]</p>	<p><b><u>9. Aggregation of stapled securities</u></b></p> <p>A Stapled security that is treated as a share under section FA 2B(2) is aggregated with the share to which it is stapled for the purpose of applying this definition of fixed-rate foreign equity.</p> <p>[Section <b>FA 2B(3)</b>]</p>	<p><b><u>9. Aggregation of stapled securities</u></b></p> <p>A Stapled security that is treated as a share under section FA 2B(2) is aggregated with the share to which it is stapled for the purpose of applying this definition of non-participating redeemable share.</p> <p>[Section <b>FA 2B(3)</b>]</p>