



ANALYSIS

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1990, No. 24

An Act to amend the Income Tax Act 1976

[28 March 1990]

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

1. Short Title and commencement—(1) This Act may be cited as the Income Tax Amendment Act 1990, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).

(2) Except as this Act otherwise provides, this Act shall come into force on the day on which this Act receives the Royal assent.

2. Rebate in respect of gifts of money and school fees—(1) Section 56A (2) of the principal Act (as inserted by section 9 (1) of the Income Tax Amendment Act (No. 2) 1977 and amended by section 12 (3) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the following paragraph:

“(zb) Cyclone Ofa Relief Fund.”

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

3. Incomes wholly exempt from tax—(1) Section 61 (2A) of the principal Act (as inserted by section 35 (2) of the Local Government Amendment Act (No. 2) 1989) is hereby amended by inserting, after subparagraph (b), the following subparagraphs:

“(c) Income derived by a local authority trading enterprise (as defined in section 594B of the Local Government Act 1974):

“(d) Income derived by a port operator (within the meaning of section 38 (4) of the Port Companies Act 1988) to the extent that that income relates to a port related commercial undertaking (within the meaning of that section):”.

(2) Section 61 (2A) (as so inserted) is hereby further amended by inserting, after subparagraph (d), the following subparagraph:

“(e) Income derived by a port company (as defined in section 2 of the Port Companies Act 1988):”.

(3) Subsection (1) of this section shall apply with respect to income derived on and after the 1st day of November 1989.

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

4. Interpretation—resident withholding tax—(1) Section 327A of the principal Act (as inserted by section 12 (1) of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) For the purposes of this Part of this Act, dividends paid by any building society (as defined in subsection (1) of section 194A of this Act) to its members in relation to withdrawable shares (as defined in that subsection) in that building society shall be deemed to be interest and not dividends.”

(2) This section shall apply with respect to payments made by any building society on or after the 1st day of October 1989.

5. Payment period—(1) Section 336zc (c) of the principal Act (as substituted by section 6 of the Income Tax Amendment Act (No. 3) 1989 and amended by section 31 of the Income Tax Amendment Act (No. 4) 1989) is hereby amended by omitting the expression “5th”, and substituting the expression “20th”.

(2) Notwithstanding anything in the principal Act, every employer (not being an employer to whom paragraph (c) of section 336ZC of the principal Act applies) who, during the month of April 1990, deducts specified superannuation contributions in accordance with section 336ZB of the principal Act, shall pay those deductions to the Commissioner not later than the 5th day of May 1990.

(3) The Income Tax Amendment Act (No. 3) 1989 is hereby consequentially amended by repealing section 6 (2).

(4) Subsection (1) of this section shall apply with respect to deductions of specified superannuation contribution withholding tax made on or after the 1st day of May 1990.

6. Furnishing of statement—(1) Section 336ZD (1) (c) of the principal Act (as substituted by section 7 of the Income Tax Amendment Act (No. 3) 1989 and amended by section 32 of the Income Tax Amendment Act (No. 4) 1989) is hereby amended by omitting the expression “5th”, and substituting the expression “20th”.

(2) Notwithstanding anything in the principal Act, every employer (not being an employer to whom paragraph (c) of section 336ZD (1) of the principal Act applies) who, during the month of April 1990, deducts specified superannuation contribution withholding tax from specified superannuation contributions in accordance with section 336ZB of the principal Act, shall, not later than the 5th day of May 1990, deliver to the Commissioner a statement in a form prescribed by the Commissioner showing such particulars of the specified superannuation contribution and of the specified withholding tax relating thereto as are prescribed in that statement.

(3) The Income Tax Amendment Act (No. 3) 1989 is hereby consequentially amended by repealing section 7 (2).

(4) Subsection (1) of this section shall apply with respect to deductions of specified superannuation contribution withholding tax made on or after the 1st day of May 1990.

7. Failure to deduct tax—(1) Section 336ZF (b) (iii) of the principal Act (as substituted by section 8 of the Income Tax Amendment Act (No. 3) 1989 and amended by section 33 of the Income Tax Amendment Act (No. 4) 1989) is hereby amended by omitting the expression “5th”, and substituting the expression “20th”.

(2) Notwithstanding anything in the principal Act, where an employer (not being an employer to whom subparagraph (iii) of section 336ZF (b) of the principal Act applies) fails, during the

month of April 1990, to make any deduction of specified superannuation contribution withholding tax from any specified superannuation contribution in accordance with section 336ZB of the principal Act, the amount in respect of which default has been made shall, on the 5th day of May 1990, constitute a debt payable by the employer to the Commissioner.

(3) The Income Tax Amendment Act (No. 3) 1989 is hereby consequentially amended by repealing section 8 (2).

(4) Subsection (1) of this section shall apply with respect to specified superannuation contributions made on or after the 1st day of May 1990.

8. Payment of tax deductions to Commissioner—

(1) Section 353 (1) (ac) of the principal Act (as inserted by section 34 (2) of the Income Tax Amendment Act (No. 4) 1989) is hereby amended by repealing subparagraphs (i) and (ii), and substituting the following subparagraphs:

“(i) The employer was an employer in the preceding year, and gross tax deductions payable and specified superannuation contribution withholding tax payable in that preceding year were in the aggregate less than \$50,000; or

“(ii) The employer was not an employer in the preceding year, until such time as gross tax deductions and specified superannuation contribution withholding tax payable in the current year in the aggregate exceed \$50,000,—”.

(2) Section 353 (1) (ac) of the principal Act (as so inserted) is hereby further amended by omitting the expression “5th”, and substituting the expression “20th”.

(3) Notwithstanding anything in the principal Act, in respect of tax deductions made from source deduction payments during the month of April 1990 by every employer (not being an employer to whom section 353 (1) (ac) of the principal Act applies), section 353 of the principal Act shall apply as if the expression “20th day of the month” were the expression “5th day of the month”.

(4) The Income Tax Amendment Act (No. 3) 1989 is hereby consequentially amended by repealing section 9 (3).

(5) Subsection (1) of this section shall apply with respect to tax deductions from source deduction payments made on or after the 1st day of May 1990.

9. Employee to pay deductions to Commissioner—

(1) Section 355 of the principal Act (as amended by section 35 of the Income Tax Amendment Act (No. 4) 1989) is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Not later than the 20th day of the month next after the month in which payment of the source deduction payment or payments was made, furnish to the Commissioner a return in the prescribed form of the source deduction payment or payments; and

“(b) Unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Commissioner an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Commissioner on the 20th day of the month next after the month in which payment of the source deduction payment or payments was made.”

(2) Section 10 of the Income Tax Amendment Act (No. 3) 1989 and section 35 of the Income Tax Amendment Act (No. 4) 1989 are hereby consequentially repealed.

10. Employer failing to make tax deductions—Section 11 (2) of the Income Tax Amendment Act (No. 3) 1989 is hereby amended by inserting, after the word “employer”, the words “(not being an employer to whom paragraph (ac) of section 353 (1) of the principal Act applies)”.

11. Employer to deliver credit of tax—(1) Section 374H (1B) of the principal Act (as inserted by section 38 (1) of the Income Tax Amendment Act (No. 4) 1989) is hereby amended by omitting the expression “5th”, and substituting the expression “20th”.

(2) Section 14 (5) of the Income Tax Amendment Act (No. 3) 1989 is hereby amended by inserting, after the word “overpayments”, the words “by an employer (not being an employer to whom section 374H (1B) of the principal Act applies)”.

(3) Subsection (1) of this section shall apply to payments made on or after the 1st day of May 1990 in relation to certificates of entitlement.

12. First Schedule amended—(1) Clause 7 of Part A of the First Schedule to the principal Act is hereby amended by adding the following paragraph:

“(d) A local authority,—”.

(2) Part A of the First Schedule to the principal Act is hereby amended by repealing clause 9 (as amended by section 14 (1) of the Income Tax Amendment Act (No. 5) 1988 and section 11 (2) of the Finance Act 1989), and substituting the following clause:

“9. **Trustee income**—On all trustee income where such income is not included within any of the provisions of clause 6 or clauses 9A to 9D of this Part of this Schedule (whether or not the trustee is a company or a corporation), the basic rate of tax for every \$1 of the taxable income shall be 33c.”

(3) Section 14 (1) of the Income Tax Amendment Act (No. 5) 1988 and section 11 (2) of the Finance Act 1989 are hereby consequentially repealed.

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

(5) Subsections (2) and (3) of this section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

13. Application of Part II of Income Tax Amendment Act (No. 5) 1988—(1) Section 9 of the Income Tax Amendment Act (No. 5) 1988 (as amended by section 78 of the Income Tax Amendment Act 1989) is hereby amended by repealing the proviso, and substituting the following proviso:

“Provided that this Part of this Act, with the exception of the definition of the term ‘distribution’ in section 226 and the provisions of section 230 of the principal Act (as inserted by section 11 of this Act), shall not apply in respect of a distribution (as so defined) derived from a trust, not being—

“(a) A unit trust, as defined in section 211 of the principal Act; or

“(b) A group investment fund, as defined in section 211A (1) of the principal Act; or

“(c) A superannuation scheme, as defined in section 2 of the principal Act,—

on or after the 1st day of April 1988, where and to the extent to which that distribution consists of income, capital profits, or capital gains derived by the trustee of that trust in any income year commencing before the 1st day of April 1988 which was not also income derived by a beneficiary entitled in possession to the receipt thereof under the trust during the same income

year, and, where such distribution is made on or after the 1st day of April 1988, that distribution shall not be assessable for income tax.”

(2) The Income Tax Amendment Act 1989 is hereby consequentially amended by repealing section 78.

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

14. Consequential amendments to Port Companies Act 1988—(1) Section 38 of the Port Companies Act 1988 is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) Subject to subsection (2D) of this section, except where subsection (2B) or subsection (2C) of this section applies, for the purposes of section 188 of the Income Tax Act 1976 any loss incurred by a harbour board, in relation to a port related commercial undertaking before that undertaking is transferred to a port company shall be deemed to have been incurred by that port company.

“(2B) Subject to subsection (2D) of this section, where, at any time on or after the 1st day of November 1989, port related commercial undertakings in respect of any port are carried on by a port operator, for the purposes of section 188 of the Income Tax Act 1976 any loss incurred by a harbour board in relation to port related commercial undertakings at that port prior to the 1st day of November 1989 shall be deemed to have been incurred by the port operator.

“(2C) Subject to subsection (2D) of this section, where any port related commercial undertakings carried on by a port operator are subsequently transferred to a port company, for the purposes of section 188 of the Income Tax Act 1976 any loss incurred by the port operator in respect of those undertakings shall be deemed to have been incurred by the port company.

“(2D) Subsections (2A), (2B), and (2C) of this section shall not apply to any loss that results from the transfer of property—

“(a) From a harbour board to a port company; or

“(b) From a harbour board to a port operator; or

“(c) From a port operator to a port company.”

(2) Section 38 of the Port Companies Act 1988 is hereby further amended by adding the following subsection:

“(4) For the purposes of this section,—

“(a) The term ‘port operator’ means any local authority (as defined in section 2 of the Income Tax Act 1976)

which operates a port related commercial undertaking; but does not include a port company or a local authority (as so defined) to the extent that it operates a port related commercial undertaking through a port company; and

“(b) In relation to a port operator, the definition of the term ‘port related commercial undertaking’ in section 2 of this Act shall apply as if the references in that definition to a Harbour Board were references to the port operator.”

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

15. Rates of income tax for year commencing on 1 April 1989—For the year commencing on the 1st day of April 1989, income tax shall be assessed, levied, and paid pursuant to Part IV of the principal Act at the basic rates specified in the First Schedule to the principal Act (as amended by sections 24 and 25 of the Income Tax Amendment Act (No. 3) 1988, section 14 of the Income Tax Amendment Act (No. 5) 1988, section 27 of the Income Tax Amendment Act 1989, section 11 of the Finance Act 1989, section 45 of the Income Tax Amendment Act (No. 2) 1989, and section 12 of this Act).

16. Rates of excess retention tax for year commencing on 1 April 1989—For the year commencing on the 1st day of April 1989, excess retention tax shall be assessed, levied, and paid pursuant to Part V of the principal Act at the rate specified in clause 11 of Part A of the First Schedule to that Act.

17. Repeal—The Income Tax Amendment Act 1989 is hereby consequentially amended by repealing sections 80 and 81.