

[AS REPORTED FROM THE SOCIAL SERVICES COMMITTEE]

House of Representatives, 1 October 1992

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Wyatt Creech

REDUNDANCY PAYMENTS (TAXATION AND BENEFITS)

ANALYSIS

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A BILL INTITULED

An Act to amend the Income Tax Act 1976 and the Social Security Act 1964 in relation to redundancy payments

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

- 5 **1. Short Title**—(1) This Act may be cited as the Redundancy Payments (Taxation and Benefits) Act 1992.

New

(2) This Act shall come into force on the 30th day of November 1992.

PART I
INCOME TAX

2. This Part to be read with Income Tax Act 1976—This Part of this Act shall be read together with and deemed part of the Income Tax Act 1976* (hereafter in this Part referred to as the principal Act). 5

3. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, at the beginning of paragraph (ba) of the definition of the term “extra emolument” (as inserted by section 2 of the Income Tax Amendment Act (No. 3) 1988), the words “Before the *(date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992)* 30th day of November 1992”. 10

(2) The definition of the term “extra emolument” in the said section 2 is hereby further amended by inserting, after paragraph (ba), the following paragraph: 15

“(bb) On or after the date of commencement of the *Redundancy Payments (Taxation and Benefits) Act 1992* by way of a redundancy payment as defined in section 68 of this Act:” 20

4. Retiring allowances payable to employees—(1) Section 68 (2A) of the principal Act (as inserted by section 5 (6) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting, after the words “lump sum redundancy payment”, the words “made before the *(date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992)* 30th day of November 1992”. 25

New

(2) Section 68 (5) of the principal Act is hereby amended by inserting, after the words “redundancy payment” (as inserted by section 5 (1) of the Income Tax Amendment Act (No. 3) 1988), the words “made before the 30th day of November 1992”. 30

*R.S. Vol. 12, p. 1

Amendments: 1983, No. 4; 1983, No. 139; 1984, No. 10; 1985, No. 59; 1985, No. 125; 1986, No. 3; 1986, No. 7; 1986, No. 41; 1986, No. 117; 1987, No. 66; 1987, No. 104; 1987, No. 190; 1988, No. 6; 1988, No. 14; 1988, No. 133; 1988, No. 225; 1989, No. 7; 1989, No. 13, Part II; 1989, No. 49; 1989, No. 150; 1990, No. 24; 1990, No. 63; 1990, No. 91; 1991, No. 10; 1991, No. 14; 1991, No. 47; 1991, No. 75; 1991, No. 85; 1991, No. 125; 1992, No. 1; 1992, No. 14

5. Interpretation—fringe benefit tax—The definition of the term “fringe benefit” in section 336N(1) of the principal Act is hereby amended—

- 5 (a) By inserting in paragraph (dd) (as inserted by section 11(3) of the Income Tax Amendment Act (No. 3) 1988), after the words “redundancy payment”, the words “made before the (*date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992*) 30th day of November 1992”:
- 10 (b) By inserting after the words “lump sum redundancy payment as defined in section 68 of this Act” (as inserted by section 11(4) of the Income Tax Amendment Act (No. 3) 1988), where those words appear between paragraphs (e) and (f), the words
- 15 “made before the (*date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992*) 30th day of November 1992”:
- 20 (c) By inserting in paragraph (j) (ii) (AB) (as inserted by section 11(6) of the Income Tax Amendment Act (No. 3) 1988), after the words “redundancy payment”, the words “made before the (*date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992*) 30th day of November 1992”:
- 25 (d) By inserting in paragraph (k), after the words “as defined in section 68 of this Act” (as inserted by section 11(4) (b) of the Income Tax Amendment Act (No. 3) 1988), the words “made before the (*date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992*) 30th day of November 1992”.

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PART II

AMENDMENTS TO SOCIAL SECURITY ACT 1964

6. This Part to be read with Social Security Act 1964—

This Part of this Act shall be read together with and deemed part of the Social Security Act 1964* (in this Part of this Act referred to as the principal Act).

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*R.S. Vol. 13, p. 403

Amendments: 1983, No. 138; 1984, No. 8; 1984, No. 19; 1985, No. 111; 1985, No. 159; 1986, No. 39; 1987, No. 106; 1988, No. 197; 1989, No. 13 (Part V); 1989, No. 58; 1990, No. 5; 1990, No. 74; 1991, No. 1; 1991, No. 78; 1991, No. 33; 1991, No. 124; 1991, No. 143; 1992, No. 15

New

- 6A. Interpretation**—(1) Section 3 (1) of the principal Act is hereby amended by repealing the definition of the term “ceased” (as inserted by section 2 (3) of the Social Security Amendment Act 1991), and substituting the following definition: 5
- “ ‘Ceased’, in relation to a person’s employment, means—
- “(a) Subject to paragraph (b) of this definition, the date on which the person’s employment terminates; or 10
- “(b) If, in relation to the termination of employment, the person receives—
- “(i) Any payment in lieu of notice terminating the employment of the person; or 15
- “(ii) Any holiday pay; or
- “(iii) Any payment in lieu of accumulated leave; or
- “(iv) Any payment contingent on the completion of a fixed-term engagement,— 20
- a date which is the number of days after the date on which the person’s employment terminated which is equal to the nearest whole number produced by dividing the aggregate amount of any such payments by the amount of the person’s normal daily wage or salary before termination of his or her employment.” 25
- (2) The said section 3 (1) is hereby amended by inserting in the definition of the term “income” (as substituted by section 3 (1) of the Social Security Amendment Act 1984), after paragraph (b), the following paragraph: 30
- “(ba) Includes—
- “(i) Any payment relating to a situation involving a seasonal layoff: 30
- “(ii) Any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract: 35
- “(iii) Any payment in lieu of notice terminating employment: 35
- “(iv) Any payment (including holiday pay) which, if it had not been made in relation to termination of employment, would, in the opinion of the Director. 40

New

“66B. In computing the income of any person for the purpose of determining the rate of any benefit payable under this Part of this Act, no account shall be taken of any redundancy payment (as defined in **section 80B (3)** of this Act) received by that person, except to the extent that the redundancy payment may constitute cash assets that are required to be taken into account in determining the rate of an accommodation benefit or a rent rebate under section 61F (1A) or section 61FB of this Act.”

8. Effect of high income on entitlement to benefits—

(1) The principal Act is hereby amended by repealing section 80B (as inserted by section 21 of the Social Security Amendment Act (No. 2) 1991), and substituting the following section:

“80B. (1) If—

“(a) An applicant for a widow’s benefit, a domestic purposes benefit, an invalid’s benefit, a sickness benefit, an unemployment benefit, a job search allowance, a training benefit, or an independent youth benefit has lost his or her employment; and

“(b) The average income of the applicant exceeds the net average wage plus \$50; and

“(c) Section 60H, section 60J, or section 60N of this Act do not apply to the applicant—

the applicant shall not be entitled to a benefit for a period commencing on the date on which the applicant’s employment ceased, that period to be calculated as follows:

“(d) Three weeks, if that average income exceeds the net average wage by \$50 or more but less than \$100:

“(e) Four weeks, if that average income exceeds the net average wage by \$100 or more but less than \$150:

“(f) Six weeks, if that average income exceeds the net average wage by \$150 or more but less than \$200:

“(g) Eight weeks, if that average income exceeds the net average wage by \$200 or more but less than \$250:

“(h) Ten weeks, if that average income exceeds the net average wage by \$250 or more—

but in the case of a training benefit, any such period of non-entitlement shall be reduced by 2 weeks.

“(2) Where an applicant who is entitled to receive a redundancy payment has not received the whole or part of that redundancy payment,—

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“(a) The applicant shall be entitled to receive a benefit on a provisional basis as if the applicant’s average income were calculated excluding the whole or part of the redundancy payment not yet received; but

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“(b) If the applicant receives the whole or any part of the redundancy payment within 52 weeks after the date the employment to which the redundancy payment relates ceased, any payment of benefit which the applicant has received but to which he or she would not, but for paragraph (a) of this subsection, be entitled shall be recoverable under section 86 (1A) of this Act.

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“(3) In this section—

“‘Average income’, in relation to an applicant, means one twenty-sixth of the aggregate of—

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“(a) The applicant’s income, after the deduction of income tax, during the 26 weeks immediately preceding the date on which the applicant’s employment ceased; and

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“(b) The amount of any redundancy payment, after deduction of tax pursuant to clause 9 of the Second Schedule to the Income Tax Act 1976, made to the applicant in respect of the termination of that employment before or during the period of 52 weeks immediately following the date on which that employment ceased, not being—

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“(i) A payment made before the *(date of commencement of the Redundancy Payments (Taxation and Benefits) Act 1992)* 30th day of November 1992; or

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“(ii) A payment included as income of the applicant under paragraph (a) of this definition:

“‘Income’ includes unemployment benefits, domestic purposes benefits, sickness benefits, invalids’ benefits, widows’ benefits, emergency benefits, job search allowances, training benefits, independent youth benefits, and accommodation benefits paid under this Part of this Act:

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*Redundancy Payments (Taxation
and Benefits)*

“ ‘Redundancy payment’ means a payment made in relation to termination of employment where—

“(a) In the case of an applicant who is an employee and who is not a seasonal worker, the employment is terminated by the employer, the termination being attributable, wholly or mainly, to the fact that the position filled by the applicant is or will become superfluous to the needs of the employer; or

“(b) In the case of an applicant who is a seasonal worker, the applicant’s usual seasonal employment is made unavailable by the employer, the unavailability being attributable, wholly or mainly, to the fact that the applicant’s position or usual position is, or will become, superfluous to the needs of the employer;— but does not include—

“(c) Any payment relating to a situation solely involving a seasonal lay-off; or

“(d) Any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract; or

“(e) Any payment in lieu of notice terminating the employment of the applicant; or

“(f) Any payment (*including holiday pay*,) (*including holiday pay*) which, if it had not been made (*upon*) in relation to the termination of the employment, would, in the opinion of the Director-General, have been paid so as to constitute monetary remuneration of the employee; or

“(g) Any payment made by a company pursuant to its articles of association to any of its directors; or

Struck Out

“(h) A retiring allowance made on the occasion of the termination of employment.

New

“(h) Any retiring allowance.

“(4) References in subsection (1) of this section to the net average wage are references to the net average wage at the

time the *(applicant lost his or her employment)* applicant's employment ceased."

New

5 (2) This section shall apply in respect of any redundancy payment received on or after the date of commencement of this section, notwithstanding that the loss of employment in respect of which the redundancy payment is made occurred before that date.