

TAXATION REFORM BILL

EXPLANATORY NOTE

THIS Bill amends the Income Tax Act 1976 and the Estate and Gift Duties Act 1968.

Clause 1 relates to the Short Title.

PART I

INCOME TAX

Clause 3 adds the Cyclone Ofa Relief Trust to the list of organisations in section 56A of the principal Act, gifts of money to which qualify for a rebate of income tax, with respect to the 1989-90 income year and subsequent years.

Clause 4 amends section 61 of the principal Act, which provides for exemptions from tax, by excluding from the exemption for local authorities the income derived by local authority trading enterprises and by port companies. Also excluded is income derived by local authority port operators to the extent that it relates to a port related commercial undertaking (see also *clause 15* below).

Clause 5 amends section 327A of the principal Act to provide that dividends payable by building societies on withdrawable shares are deemed to be interest for the purposes of resident withholding tax with effect from 1 October 1989, the commencement of the application of resident withholding tax.

Clauses 6 to 9 and clause 11 amend the provisions which apply from 1 May 1990 in relation to the payment to the Commissioner of PAYE deductions and specified superannuation contribution withholding tax by employers who make PAYE deductions of less than \$50,000 per annum—

- (a) By providing that these provisions are now to apply where the aggregate of the PAYE deductions and the specified superannuation contributions withholding tax by employers is less than \$50,000; and
- (b) By providing that the single monthly payment is now to be made by the 20th day of the month following the month in which the deductions are made, instead of the 5th day of the month.

Clause 10 cancels the proposed change of date of payment of PAYE deductions to the Commissioner by employees, which will still be paid by the 20th day of the next succeeding month.

No. 7—1

Price
incl. GST \$2.20

Clause 12 provides that the new provisions relating to certain overpayments of credit of tax by employers pursuant to a certificate of entitlement under the family support provision, which are to come into force on 1 May 1990, now deem the overpayments to be due and payable to the Commissioner on the 20th day of the month succeeding the month in which the overpayment was made, and not the 5th day of the month.

Clause 13 amends the First Schedule to the principal Act, which sets the rates of tax payable.

Subclause (1) amends clause 7 of Part A of the First Schedule to specify that the taxable income derived by a local authority is to be liable for tax at a basic rate of 33c for every \$1 of that taxable income.

Subclause (2) amends clause 9 of Part A of the First Schedule to make it clear that it relates to trustee income and not income which is also assessable to a beneficiary.

Clause 14 amends the application of the trust taxation provisions to make it clear that all distributions made from a superannuation fund after 1 April 1990 are exempt from tax in the beneficiary's hands.

Clause 15 makes consequential amendments to the Port Companies Act 1988 in relation to the taxation of port companies and operators.

Subclause (1) inserts new subsections into section 38 of the Port Companies Act 1988, which deals with taxation matters, to provide that any loss incurred by a harbour board in relation to any port related commercial undertaking that is transferred to a port company shall be deemed for the purposes of section 188 of the principal Act, which deals with the carry forward of losses, to have been incurred by the port company.

Similar provision is made in respect of port operators that have taken over the undertaking of a harbour board, and port companies that have taken over the undertaking of a port operator.

Subclause (2) defines the term "port operator", and makes a consequential alteration to a reference in the definition of the term "port related commercial undertaking".

Clauses 16 to 18 confirm the rates of income tax and excess retention tax for the 1989-90 year.

PART II

ESTATE AND GIFT DUTY

This Part amends the Estate and Gift Duties Act 1968.

Clause 20 amends section 2 of the principal Act, which is the interpretation provision, by increasing the maximum amount of the charitable succession (which is not liable to estate duty) from \$25,000 to \$100,000.

Clause 21 inserts a new section 75c into the principal Act to provide for an exemption from gift duty for transfers of property under sections 23 and 24 of the Waikato Electricity Authority Act 1988 from the Central Waikato Power Board and the Hamilton City Council to the Waikato Electricity Authority, and for transfers under section 21 of that Act from the Authority to an electricity company (within the meaning of section 2 of that Act).

Hon. Peter Neilson

TAXATION REFORM

ANALYSIS

Title	
1. Short Title	12. Employer to deliver credit of tax
	13. First Schedule amended
	14. Application of Part II of Income Tax Amendment Act (No. 5) 1988
	15. Consequential amendments to Port Companies Act 1988
	16. Rates of income tax for year commencing on 1 April 1989
	17. Rates of excess retention tax for year commencing on 1 April 1989
	18. Repeal
	PART II
	ESTATE AND GIFT DUTY
	19. This Part to be read with Estate and Gift Duties Act 1968
	20. Interpretation
	21. Exemption for certain dispositions of property under Waikato Electricity Authority Act 1988

A BILL INTITULED

An Act to amend the Income Tax Act 1976 and the Estate and Gift Duties Act 1968

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

- 5 **1. Short Title**—This Act may be cited as the Taxation Reform Act 1990.

PART I

INCOME TAX

- 10 **2. This Part to be read with Income Tax Act 1976—**
(1) This Part of this Act shall be read together with and deemed

part of the Income Tax Act 1976* (in this Part referred to as the principal Act).

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

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

Amendments: 1983, No. 4; 1983, No. 10; 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. 123; 1988, No. 133; 1988, No. 225; 1989, No. 7; 1989, No. 13, Part II; 1989, No. 46; 1989, No. 49; 1989, No. 150

3. 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:

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“(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.

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4. 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:

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“(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):”

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

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“(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.

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(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.

5. 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:

5 “(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.”

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

6. 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”.

15 (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.

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

25 (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. 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”.

30 (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.

8. 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.

9. 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”.

5 (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”.

10 (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 15 the 1st day of May 1990.

10. 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:

20 “(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

25 “(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.”

30 (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.

11. Employer failing to make tax deductions—Section

40 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)”.

12. 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.

13. 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.

14. 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
5 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

10 “(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
15 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
20 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
25 April 1988 and in every subsequent year.

15. 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:

30 “(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
35 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
40 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. 5

“(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 10

“(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 20

“(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.” 25

(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.

16. 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 13** of this Act). 30 35 40

17. 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.

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

PART II

ESTATE AND GIFT DUTY

10 **19. This Part to be read with Estate and Gift Duties Act 1968**—This Part of this Act shall be read together with and deemed part of the Estate and Gift Duties Act 1968* (in this Part referred to as the principal Act).

*Reprinted 1976, Vol. 5, p. 3585

Amendments: 1977, No. 58; 1978, No. 22; 1979, No. 24; 1980, No. 22; 1982, No. 128; 1983, No. 3; 1986, No. 14; 1986, No. 119; 1987, No. 192

15 **20. Interpretation**—(1) Section 2 (2) of the principal Act is hereby amended by omitting from the definition of the term “charitable allowance” (as inserted by section 3 (1) of the Estate and Gift Duties Amendment Act 1979) the expression “\$25,000”, and substituting the expression “\$100,000”.

(2) This section shall apply to the estates of all persons who die on or after the 1st day of April 1990.

20 **21. Exemption for certain dispositions of property under Waikato Electricity Authority Act 1988**—The principal Act is hereby amended by inserting, after section 75B (as inserted by section 3 of the Estate and Gift Duties Amendment Act 1987), the following section:

25 “75c. Any disposition of property made on or after the 1st day of April 1989—

 “(a) Pursuant to section 23 or section 24 of the Waikato Electricity Authority Act 1988; or

30 “(b) By the Waikato Electricity Authority (as constituted under the Waikato Electricity Authority Act 1988) to an electricity company (as defined in section 2 of that Act) pursuant to section 21 of the Waikato Electricity Authority Act 1988,—

shall not constitute a dutiable gift.”