

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Wednesday, 19 July 1989

INCOME TAX AMENDMENT BILL (NO. 8)

Proposed Amendments

Hon. DAVID CAYGILL, in Committee, to move the following amendments:

Clause 11, new section 327c: To insert in line 28 on page 21, after the word "made", the words "or, where the person required to make the resident withholding tax deduction so elects in the case of a payment of resident withholding income made outside New Zealand, on the next succeeding day".

To omit from line 15 on page 22 the word "income", and substitute the word "activity".

New section 327M: To omit lines 17 to 21 on page 50, and substitute the following lines:

subsection, in each income year any part of which income year falls within the period of validity of the certificate of exemption, be or be likely to be entitled to claim aggregate resident withholding tax credits in accordance with section 327k of this Act exceeding the income tax liability of that person for such income year by an amount not less than \$500:

"Provided that the Commissioner shall not issue to any person a certificate of exemption in accordance with this subsection unless the Commissioner has received from that person an application in writing in the form prescribed by the Commissioner, which application shall be accompanied by—

"(c) A declaration made by the applicant or any duly authorised officer of the applicant stating that the applicant is a person to whom either paragraph (a) or paragraph (b) of this subsection applies for the proposed period of validity of the certificate of exemption; and

"(d) A set of budgeted accounts detailing the projected income, deductions, resident withholding tax credits, and income tax liability of the person for the proposed period of validity of the certificate of exemption; and

"(e) Such further information in relation to the person or the budgeted accounts as the Commissioner may require.

New clause 23A: To insert, after line 39 on page 81, the following new clause:

23A. Exclusions from term "dividends"—(1) Section 4A (2) of the principal Act (as inserted by section 31 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended

by adding to the definition of the term "capital gain amount" the following paragraph:

- "(c) The amount of any profit or gain that is attributable to—
- "(i) Any deduction in respect of livestock revaluation under section 86E of this Act; or
 - "(ii) Any revaluation of livestock under section 86A of this Act; or
 - "(iii) Any deduction in respect of the revaluation of trading stocks of wine, brandy, and whisky available under section 87A of this Act."

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

Clause 28: To omit from lines 15 and 16 on page 83 the words "in any income year".

To insert in subsection (2A) (a), after the word "owed" at line 17 on page 83, the words "in any income year".

To omit subsections (2B) and (2c) (all the words in lines 1 to 20 on page 84), and substitute the following subsections:

"(2B) For the purposes of subsection (2A) of this section, where the employer furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March,—

"(a) Subject to paragraph (b) of this subsection, every reference in subsection (2A) of this section to an income year shall be deemed to be a reference to that accounting year:

"(b) The reference in paragraph (ba) of subsection (2A) of this section to an income year shall be deemed to be a reference to the income year to which that accounting year corresponds.

"(2c) Where the amount of any income derived by an employee and applied in repayment of an employment related loan—

"(a) Would, if it had been derived by the employee in the income year immediately preceding the income year in which it is derived, be an amount deemed by virtue of subsection (2A) of this section to be applied in repayment of that loan on a date earlier than the actual date of repayment; and

"(b) Would not but for the application of this subsection be so treated,—

with the approval of the Commissioner that amount shall, where the employee elects for the purposes of subsection (2A) of this section by notice in writing given to the Commissioner within the time within which the employer is required to furnish a return of income for the income year in which that employment related loan is owed, or within such further time as the Commissioner may allow, be deemed for the purposes of this Act to be derived by the employee in the income year immediately preceding the income year in which that amount would otherwise be treated as being derived."

New clauses 29A to 29D: To insert, after line 28 on page 86, the following new clauses:

29A. Debits arising to imputation credit account—

(1) Section 394E (1) of the principal Act (as inserted by section

55 (1) of the Income Tax Amendment Act (No. 5) 1988 and amended by section 62 of the Income Tax Amendment Act 1989) is hereby amended by adding the following paragraph:

“(j) The amount of any refundable excess paid pursuant to section 156F (4) of this Act in respect of the income year commencing on the 1st day of April 1988 or any subsequent year.”

(2) This section shall be deemed to have come into force on the 1st day of April 1989.

29b. Imputation return to be furnished in certain circumstances—(1) Section 394k of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) An imputation credit account company may furnish to the Commissioner, at any time, an imputation return in respect of the period commencing on the first day of any imputation year and ending with any day specified by the company within that imputation year, being a day that is not more than 7 days earlier than the date on which the imputation return is furnished to the Commissioner.

(2) Section 394k (3) of the principal Act (as so inserted) is hereby amended by omitting the words “required to be”.

(3) Section 394k (3) of the principal Act (as so inserted) is hereby further amended by adding the following paragraph:

“(c) In the case of a return furnished under subsection (2A) of this section, references to the period referred to in that subsection.”

29c. Further tax payable where end of year debit balance, or when company ceases to be an imputation credit account company—(1) Section 394L (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, before the words “the company is liable to pay”, the words “then, subject to subsection (4A) of this section”.

(2) Section 394L (3) of the principal Act (as so inserted) is hereby amended by inserting, before the words “the company is liable to pay”, the words “then, subject to subsection (4A) of this section,”.

(3) Section 394L of the principal Act (as so inserted) is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) Where—

“(a) Pursuant to section 156F (4) of this Act a company has been paid any refundable excess in respect of the income year commencing on the 1st day of April 1988 or any subsequent income year; and

“(b) The amount of that refundable excess has in any imputation year arisen as a debit to the company’s imputation credit account,—

any amount that the company would otherwise be liable to pay by way of further income tax pursuant to subsection (1) or subsection (3) of this section shall be reduced (so far as it extends) by the sum of all such refundable excesses paid to the company on or before the date on which the relevant debit

balance giving rise to the liability to further income tax is determined.”

(4) This section shall be deemed to have come into force on the 1st day of April 1989.

29D. Limits on refunds of income tax—(1) Section 394M (1) of the principal Act (as inserted by section 55 (1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “at the end of the most recently ending imputation year”, and substituting the following words:

“at the later of—

“(a) The end of the most recently ending imputation year; or

“(b) The last day of any period for which the company furnishes an imputation return pursuant to section 394K (2A) of this Act; or

“(c) The last day of any period for which the company is required by the Commissioner to furnish an imputation return pursuant to section 394K (1) of this Act.”

Clause 30B: To omit the words “which is not previously due and payable” from lines 15 and 16 on page 88, and substitute the words “and not otherwise due and payable under this Act”.

Schedule: To omit from clause 1 of the new Nineteenth Schedule to the principal Act on page 89 the expression “28c”, and substitute the expression “24c”.

EXPLANATORY NOTE

Clause 11, new section 327C: The first amendment provides that, in the case of a payment of resident withholding income made outside New Zealand, the person required to make the deduction has the option of converting the resident withholding income into New Zealand currency at the close of trading spot exchange rate on the day after the day on which the deduction is required to be made.

The second amendment corrects an error.

New section 327M: Subsection (12) of this proposed new section that the Commissioner with the discretion to issue certificates of exemption where a taxpayer is, or is likely to be, in tax loss, or where resident withholding tax deductions are likely to exceed the taxpayer’s income tax liability.

The subsection has been amended to provide that in circumstances where the resident withholding tax deducted is likely to exceed a taxpayer’s final tax liability by more than \$500 in any income year in the period to which the certificate of exemption relates, the Commissioner may issue a certificate of exemption.

The section has also been amended to provide for appropriate procedures for applications for certificates of exemption under this subsection.

New clause 23A amends section 4A of the principal Act by including in the definition of the term “capital gain amount” profits or gains attributable to livestock revaluations and to revaluation of trading stocks of wine, brandy, and whisky. The effect of this is to ensure that company revaluation reserves created by tax free revaluations of trading stock are not taxed on the winding up of the company.

The amendments to clause 28 (2A) are intended to clarify that payments to an employee need not be in the same year as that in which the employment related loan was advanced. Subsections (2B) and (2C) are redrafted to clarify the position where the employer has a non-standard accounting year, and to define more clearly the circumstances in which income of an employee applied towards repayment of an employment related loan may be treated as if it were derived in the preceding income year.

New clauses 29A and 29C, which amend sections 394E and 394L of the principal Act, relate to the position under the imputation regime of refundable excesses paid in respect of export tax credits under section 156F of the principal Act. Clause 29A provides that such refundable excesses will arise as debits to a company’s imputation credit account, but clause 29C provides that any further

income tax payable by a company in respect of a debit balance in its account will be reduced by the amount of all refundable excesses previously debited to the account.

New *clauses 29B and 29D* provide a mechanism whereby refunds of income tax need not be limited by the amount of the credit balance in a company's imputation account at the end of the most recent imputation year. *Clause 29B* provides that a company may voluntarily furnish an imputation return to the Commissioner at any time during an imputation year, and *clause 29D* provides that the credit balance for the most recently furnished imputation return will be the one that governs limits on the amount of any refund of tax. These amendments are of particular significance for companies with late balance dates, which may have paid third instalments of provisional tax after 31 March in any year.

The amendment to *clause 30B* changes a reference to tax that is not previously due and payable to a reference to tax that is not "otherwise" due and payable under the Act. The clause is not intended to affect payments of tax for which specific provision has already been made.

Schedule: This amendment reduces the resident withholding tax on interest from 28c for every \$1 to 24c for every \$1.