

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 26 July 1988

TAXATION REFORM BILL (NO. 4)

Proposed Amendments

Hon. T. A. de CLEENE, in Committee, to move the following amendments:

Clause 4: To omit from line 39 on page 3, and line 13 on page 4, the words "or rents", and substitute in each case the words "rents, or income derived by a beneficiary under a trust pursuant to section 227 of this Act".

Proposed new clause 6A: To insert on page 6, after clause 6, the following clause:

6A. Transitional provisions in relation to livestock revaluation—Section 86C (3) of the principal Act (as inserted by section 8 (1) of the Income Tax Amendment Act (No. 4) 1986) is hereby amended, as from its commencement, by inserting, after the words "section 86D of this Act", the words "and the value of that herd livestock shall be deemed to be determined in accordance with the provisions of section 86A of this Act".

Clauses 8 and 9: To omit these clauses.

Clause 13: To insert in line 40 on page 53, before subclause (1), the following subclauses:

(1A) The definition of the term "contribution to a designated fund" in section 336N (1) of the principal Act (as amended by section 17 of the Income Tax Amendment Act (No. 2) 1988) is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) The Government Superannuation Fund; or".

(1B) The definition of the term "fringe benefit" in section 336N (1) of the principal Act (as so amended) is hereby further amended by omitting from paragraph (db), the word "superannuation".

To omit from lines 41 and 42 on page 53, the words "amended by section 18 of the Income Tax Amendment Act (No. 2) 1988" and substitute the words "so amended".

To insert, after line 30 on page 54, the following lines:

(3A) Subsections (1A) and (1B) of this section shall apply to fringe benefits paid on or after the 17th day of December 1987.

To insert in line 31 on page 54, before the words "This section", the words "Subject to subsection (3A) of this section,".

Clause 19: New section 375: To omit lines 19 to 22 on page 72, and substitute the following lines:

before the deduction of any losses under section 188 or any deduction under section 191 of this Act) derived by the person in the income year:

To insert in line 25 on page 72, after the words "New Zealand", the words "and which is not deemed to be resident in New Zealand".

To omit from line 22 on page 73 the expression "318 (1)", and substitute the expression "318 (2)".

New section 377: To omit from line 13 on page 74 the words "by the taxpayer", and substitute the words "whether by the taxpayer or the Commissioner".

New section 380: To insert in line 38 on page 75, after the word "Act", the words "or, as the case may be, one-third of the amount of the provisional tax payable by the taxpayer determined as at the due date for that instalment, in accordance with section 377 (3) of this Act".

To insert in line 2 on page 76, after the expression "379 (1)", the words "or, as the case may be, two-thirds of the amount of provisional tax payable by the taxpayer determined as at the due date for that instalment, in accordance with the said section 377 (3)".

To insert in line 7 on page 76, after the expression "379 (1)", the words "or, as the case may be, the amount of the provisional tax payable by the taxpayer in accordance with the said section 377 (3)".

New section 384: To insert in line 37 on page 80, after the word "enactment" the words "of any Act amending this Act or the making of any regulation or Order in Council relating to income tax".

To omit from lines 39 and 40 on page 80 the words ", of an Act to amend this Act".

To omit lines 41 and 42 on page 80 and lines 1 to 7 on page 81.

To omit from line 20 on page 81 the words "and in this regard the taxpayer has not been negligent,".

Clause 21: To insert, after line 25 on page 87, the following lines:

"(1A) Section 398 (7) of the principal Act is hereby amended by omitting the expression "394", and substituting the expression "390".

Clause 22: To insert, after line 11 on page 92, the following lines:

" "Trustee income" means income derived in an income year by a person in the capacity as trustee in so far as the income is not also income derived by any beneficiary entitled or deemed to be entitled in possession to the receipt thereof in accordance with section 227 of this Act."

To insert in line 12 on page 92, before the words "This section", the words "Subject to subsection (2A) of this section,".

To omit from line 14 on page 92 the words "Provided that", and substitute the expression "(2A)".

To insert, after line 21 on page 92, the following lines:

"Provided that where a natural person is a trustee and a provisional taxpayer in relation to trustee income of a trust in any income year, this section shall apply to that person with respect of that trustee income in that income year.

To insert in line 33 on page 93, after the word "enactment", the words "of any Act amending this Act or the making of any regulation or Order in Council relating to income tax".

To omit from lines 36 and 37 on page 93 the words "of any Act to amend this Act".

To omit lines 38 to 42 on page 93 and lines 2 to 4 on page 94.

Clause 24: To omit from line 34 on page 99 the expression "318 (1)", and substitute the expression "318 (2)".

To insert, after line 3 on page 100, the following lines:

"'Trustee income', means income derived in any income year by a person in the capacity as trustee in so far as the income is not also income derived by any beneficiary entitled or deemed to be entitled in possession to the receipt thereof in accordance with section 227 of this Act.

To insert in line 4 on page 100, before the words "This section" the words "Subject to subsection (2A) of this section,".

To add to line 5 on page 100 the words "and is a person who paid provisional tax in accordance with Part XII of this Act and the amount of the provisional tax so paid exceeds the amount which is the residual income tax in relation to that person and that income year".

To omit from line 6 on page 100, the words "Provided that", and substitute the expression "(2A)".

To omit lines 14 to 17 on page 100, and substitute the following lines:

"Provided that where a natural person is a trustee and a provisional taxpayer in relation to trustee income of a trust in any income year, this section shall apply to that person with respect to that trustee income in that income year.

To omit from line 40 on page 100 the words "that day", and substitute the words "the day first mentioned in this subsection".

Clause 25: To insert, after line 30 on page 105, the following lines:

(15A) The Eighth Schedule to the principal Act is hereby consequentially amended by omitting from clauses 1 and 2—

(a) The expression "section 385", and substituting in each case the expression "section 380":

(b) The expression "section 392", and substituting in each case the expression "section 388".

Clause 26: To insert in line 24 on page 108, after the words "provisional tax", the words "in respect of the income derived in the income year ending with the 31st day of March 1989".

To insert, after line 3 on page 109, the following lines:

Provided that where any person that is a company is a trustee of a trust in any income year, this section shall not apply to that person with respect to that trustee income in that income year.

(1A) For the purposes of subsection (1) of this section, the term "trustee income" means income derived in an income year by a person in the capacity as trustee in so far as the income is not also income derived by any beneficiary entitled or deemed to be entitled in possession to the receipt thereof in accordance with section 227 of this Act.

To insert, after line 28 on page 109, the following lines:

(5) This section shall come into force on the 7th day of November 1988 and shall apply to all provisional tax due and payable on or after that date.

Clause 29: To omit lines 14 to 25 on page 110, and substitute the following lines:

trusts—(1) Clause 9 of Part A of the First Schedule to the principal Act is hereby amended by omitting the words “of a specified trust under section 228 or section 231 of this Act”, and substituting the words “where such income is not included within any of the provisions of clauses 6, 9A, 9B, and 9C of this Part of this Schedule”.

To omit from line 29 on page 110 the expression “9D”, and substitute the expression “9c”.

To omit subclause (3) in lines 34 to 36 on page 110.

Proposed new clauses 30A to 30c: To insert, after clause 30 on page 111, the following heading and clauses:

*Special Provision for Distributions on Winding Up Made in Year
Ending 31 March 1989*

30A. Exemption from tax for income derived from dividends on which winding-up distribution tax paid—Notwithstanding anything in the principal Act, income derived by any person from dividends in respect of which winding-up distribution tax is payable under section 30c of this Act shall be exempt from income tax where the Commissioner is satisfied that the correct amount of winding-up distribution tax (including any penalty by way of additional tax payable under subsection (3) of that section) has, on or before the 31st day of May 1989, been paid in respect of those dividends in accordance with that section.

30B. Companies liable to pay winding-up distribution tax—(1) Subject to subsection (2) of this section, every company that, during the period commencing with the 1st day of April 1988 and ending with the 31st day of March 1989, in the course of and for the purpose of the winding up of the company, pays or distributes dividends to its shareholders other than dividends paid or distributed—

(a) To a shareholder who is exempt from income tax or, being a company, is exempt from income tax in respect of dividends pursuant to section 63 of the principal Act; or

(b) From the non-qualifying reserves of the company within the meaning of subsection (3) of this section,—

shall be liable to pay a special tax by way of an income tax known as winding-up distribution tax.

(2) The Commissioner may exempt a company from liability to pay winding-up distribution tax (including any penalty by way of additional tax payable under section 30c (3) of this Act)—

(a) In respect of any dividend paid or distributed by the company before the 1st day of August 1988, where the company so requests the Commissioner in writing:

(b) Where the Commissioner is satisfied that dividends in respect of which any winding-up distribution tax (including any penalty by way of additional tax) is due by the company have been included in the assessable income of a shareholder of the company, to such extent as the Commissioner determines represents the winding-up distribution tax (including any penalty by way of additional) tax due in respect of those dividends.

(3) For the purposes of this section,—

- (a) The amount of the non-qualifying reserves of a company shall be an amount equal to the aggregate of all dividends paid to the company during the period commencing with the 15th day of April 1988 and ending with the 31st day of March 1989:
- (b) Dividends paid by a company during the period referred to in subsection (1) of this section in the course of and for the purpose of the winding up of the company shall be deemed to be paid first from the non-qualifying reserves of the company to the extent of the non-qualifying reserves.

30c. Payment of winding-up distribution tax—(1) Every company that is liable to pay winding-up distribution tax under section 30b of this Act shall, at the time of making the payment or distribution of dividends, make a deduction of winding-up distribution tax of an amount equal to 10 percent of the gross amount of the dividends before that deduction (excluding the amount of any dividends referred to in paragraph (a) or paragraph (b) of section 30b (1) of this Act).

(2) Every company that makes a deduction of winding-up distribution tax in accordance with subsection (1) of this section shall—

- (a) Make payment to the Commissioner of the winding-up distribution tax not later than—
 - (i) The date on which the company pays or distributes the dividends in respect of which the deduction is made; or
 - (ii) The 31st day of August 1988,—
whichever is the later; and
 - (b) At the same time as making such payment, furnish to the Commissioner a return in a form prescribed by the Commissioner, setting out such details as are required in that form.
- (3) Where a company liable to pay winding-up distribution tax fails to pay the tax within the time for payment provided for in subsection (2) (a) of this section, the company shall be liable to pay a penalty by way of additional tax equal to—
- (a) Ten percent of the amount in respect of which default has been made (in this subsection referred to as the amount in default); and
 - (b) Ten percent of the amount of so much, if any, of the amount in default and any penalty added thereto in accordance with paragraph (a) of this subsection as remains unpaid at the expiry of the day on which there expires the period of 6 months immediately following the day on which the said failure occurred; and
 - (c) Ten percent of the amount of so much, if any, of the amount in default and any penalty added thereto in accordance with paragraphs (a) and (b) of this subsection, and of any further penalty added thereto in accordance with this paragraph, as remains unpaid at the expiry of any of the period of 6 months that, consecutively, succeed the period of 6 months referred to in paragraph (b) of this subsection.
- (4) The Commissioner may, in respect of any company liable to pay winding-up distribution tax, make an assessment of the

amount of winding-up distribution tax, and any additional tax payable under subsection (3) of this section, that in the Commissioner's judgment ought to be levied, and the company shall be liable to pay the winding-up distribution tax and any additional tax so assessed, except so far as—

- (a) The company establishes on objection that the assessment is excessive or that the company is not chargeable with winding-up distribution tax, or the additional tax; or
- (b) The Commissioner exempts the company from liability to pay winding-up distribution tax (including any penalty by way of additional tax) in accordance with section 30B(2) of this Act, and amends the assessment accordingly.

(5) Sections 23, 27, and 29 of the principal Act shall apply, so far as may be, with respect to every assessment made under this section as if—

- (a) The expression "taxpayer", in those sections, included a company which is chargeable with winding-up distribution tax; and
- (b) The expression "tax already assessed", in the said section 23, included winding-up distribution tax and any additional tax already assessed under this section.

(6) An assessment made under subsection (4) of this section shall be subject to objection in the same manner as an assessment of income tax levied under section 38 of the principal Act, and Part III of that Act shall apply, so far as may be, to an objection to an assessment made under this section as if the expressions "income tax" and "tax" in that Part included winding-up distribution tax and any additional tax payable under this section.

(7) For the purposes of section 106 (1) (f) of the principal Act, the expression "income tax" shall include any winding-up distribution tax and any penalty by way of additional tax paid under this section.

(8) Subject to this section, the provisions of the principal Act, so far as they are applicable and with any necessary modifications, shall apply with respect to winding-up distribution tax, and any additional tax payable under this section, as if it were income tax levied under section 38 of that Act, but nothing in this section shall be so construed as to include winding-up distribution tax or any such additional tax in the expressions "income tax" or "tax" for the purposes of Part IV of that Act.

Fourth Schedule: To omit this Schedule on page 124.

EXPLANATORY NOTE

Clause 4: The basic low income rebate is the lesser of \$885 or an amount equal to 9 cents for each complete dollar of the assessable income, excluding interest, dividends, royalties, or rents. This amendment adds to the exclusions income derived by a beneficiary under a trust.

Clause 6A: This new clause corrects a drafting error to make it clear the inflation-proofing provisions of the herd scheme for livestock apply to the 1988 year.

Clauses 8 and 9: These clauses are to be omitted.

Clause 13: These amendments provide for contributions to the Government Superannuation Fund to be contributions to a designated fund for the purposes

of fringe benefit tax, and for non-superannuation contributions to a non-designated fund to be treated in the same manner as superannuation contributions for the purposes of fringe benefit tax, with effect from 17 December 1987.

Clauses 19, 21, 22, 24, 25, and 26: Unless otherwise stated the amendments made to these clauses are drafting changes only and make no material change to the clauses.

Clause 19: New section 384: The amendments to this section provide that the Commissioner may remit additional tax where any shortfall in provisional tax is due to any Order in Council or regulation in relation to income tax made on or after the 1st day of the month preceding the month in which the third instalment is payable, and not merely to an Order in Council made determining standard values of livestock.

They also omit the requirement that the taxpayer has not been negligent before such remission of additional tax is made.

Clause 22: These amendments provide that interest may be charged on any under payment of provisional tax on trustee income and also make the same amendments regarding any shortfall in provisional tax in relation to the remission of interest as is made by the third, fourth, and fifth amendments to the new section 384 in relation to additional tax.

Clause 24: These amendments provide that interest may be paid to any overpayment of provisional tax on trustee income.

Clause 26: The first amendment makes it clear that the transitional arrangements relate to the 1988/1989 income year only.

The next amendment provides that the clause is not to apply to any company in respect of trustee income derived by the company.

The third amendment provides for the clause to come into force on 7 November 1988 and to apply to all provisional tax due and payable on or after that date.

Clause 29: The amendments to this clause and the omission of the *Fourth* Schedule provide that non-specified trusts and specified trusts are to be taxed at the same rate, being the present rate for specified trusts.

Clauses 30A to 30C: These new clauses in effect provide a concessionary tax rate as an incentive for companies to make distributions of revenue reserves in the course of winding up where they have ceased trading or consider that the company structure is no longer appropriate for their operations. The concessionary rate applies only to distributions on winding up that are made on or before 31 March 1989.

The new clauses provide that companies that pay or distribute dividends on winding up between 1 April 1988 and 31 March 1989 (inclusive) will be required to pay a winding-up distribution tax at a rate of 10 percent of the gross amount of the distribution. If the tax (including any penalty for late payment) is paid by 31 May 1989, the income derived from any such distribution will be exempt from tax in the hands of shareholders.

For distributions made before 31 August 1988 the tax should be paid on or before that date. For later distributions the tax is to be paid on or before the date of the distribution.

The Commissioner has a discretion to exempt a company from liability for distributions made before 1 August 1988, where the company so requests, and also from winding-up distribution tax due on any dividends that are included in the assessable income of a shareholder of the company.

The new clauses do not cover dividends paid or distributed to exempt shareholders or amounts representing dividends paid to the company on or after 15 April 1988 (the date of the announcement of the winding-up distribution tax).