

House of Representatives
Supplementary Order Paper

Thursday, 26 July 2007

Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill

Proposed amendments

Hon Peter Dunne, in Committee, to move the following:

Clause 2

Subclause (13): to omit “**141, 144(2)(a)**” and substitute “**141, 142B, 142C, 142D, 144(2)(a), 144(3B) and (5B), 198B**” (line 20 on page 15).

Subclause (16): to omit “**144(2)(b)**” (line 30 on page 15) and substitute “**144(2)(ab)**”.

Subclause (16): to omit “**and 260**” (line 33 on page 15) and substitute “**238B, 239B, 240B, 240C, and 260**”.

Clause 142

Section DC 6(1B): to omit “**KJ 1**” and substitute “**KJ 6**” (line 5 on page 114).

New clauses 142B to 142D

To insert, after *clause 142* (after line 8 on page 114), the following:

142B Person’s requirements

(1) Section KJ 2(a) is replaced by the following:

“(a) has creditable membership of a complying superannuation fund or a KiwiSaver scheme; and”.

(2) In the list of defined terms in section KJ 2, “**creditable membership**” is inserted in its appropriate alphabetical order.

142C Section KJ 3 replaced

Section KJ 3 is replaced by the following:

“KJ 3 Tax credit amount

“Amount: lower contribution rate

“(1) The amount of the tax credit for the member credit year is the member credit contributions as defined for the following

formulas, if the amount calculated by the first formula in **subsection (2)** is less than 1042.86 / 365.

“First formula

- “(2) For the purposes of **subsection (1)**, an amount is calculated using the following formula:

$$\frac{\text{member credit contributions}}{\text{included days}}$$

“Amount: formula for higher contribution rate

- “(3) The amount of the tax credit for the member credit year is calculated using the following formula, if the tax credit is not calculated under **subsection (1)**:

$$\$1042.86 \times \frac{\text{included days}}{365}$$

“Definition of items in formulas

- “(4) In the formulas,—
- “(a) **member credit contributions** is the total amount of a person’s member credit contributions for all of the person’s complying superannuation funds and KiwiSaver schemes for the member credit year:
- “(b) **included days** are the number of days in the member credit year on which the person meets the requirements in section KJ 2.

“Defined in this Act: amount, complying superannuation fund, KiwiSaver scheme, member credit contributions, member credit year, salary or wages”.

142D Payment

- (1) The heading to section KJ 4(1) is replaced by *“Payment to fund provider by direct credit without deduction or set-off”*.
- (2) In section KJ 4(1), “The Commissioner” is replaced by “Unless **subsection (3)** applies, the Commissioner”.
- (3) After section KJ 4(2), the following is added:
“Exception: payment to the person or another provider
- “(3) Despite **subsection (1)**, the Commissioner may pay the amount of tax credit under section KJ 1 to—
- “(a) the person, if it would be impracticable to pay it to the person’s fund provider because the person has no fund provider or because of the person’s death or **serious illness** as that term is defined in schedule 1, clause 12(3) of the KiwiSaver Act 2006; or
- “(b) a fund provider (**provider B**) who is not described in **subsection (1)**, if the fund provider described in **subsection (1)** requests the payment to provider B because

the person is transferring or has transferred to provider
B.”

Clause 143: heading

To omit “**subpart KJ**” and substitute “**sections KJ 6 to KJ 12**” (line 9 on page 114).

Clause 143: amending words

To omit “After subpart KH, the following is inserted” and substitute “In subpart KJ, the following is added” (line 10 on page 114).

Clause 143: subpart heading

To omit “Subpart KJ—KiwiSaver scheme and complying superannuation fund tax credits” (lines 11 and 12 on page 114).

Clause 143: sections KJ 1 to KJ 7

To omit “KJ 1” in all places in which it appears and substitute “KJ 6” (lines 13 and 32 on page 114: line 7 on page 118):

To omit “KJ 2” in all places in which it appears and substitute “KJ 7” (lines 17 and 31 on page 114: lines 4 and 7 on page 116):

To omit “KJ 3” in all places in which it appears and substitute “KJ 8” (line 21 on page 114: line 22 on page 115)

To omit “KJ 4” in all places in which it appears and substitute “KJ 9” (line 23 on page 114: line 1 on page 116: lines 11, 27, 29, and 31 on page 117):

To omit “KJ 5” in all places in which it appears and substitute “KJ 10” (line 24 on page 114: line 6 on page 117)

To omit “KJ 6” in all places in which it appears and substitute “KJ 11” (line 26 on page 114: line 35 on page 117: line 7 on page 118)

To omit “KJ 7” in all places in which it appears and substitute “KJ 12” (line 27 on page 114: line 6 on page 118).

Clause 144

New subclause (2)(ab): to insert, after *subclause (2)(a)* (after line 25 on page 118), the following:

(ab) after paragraph (c), the following is inserted:

“(cc) require the trustees, at the member’s request, to pay any withdrawal that is allowed under the rules in paragraphs (a) to (c) as a lump sum, as if the withdrawal were a permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act 2006 applied (with necessary modifications); and”.

New subclause (3B): to insert, after *subclause (3)* (after line 4 on page 119), the following:

(3B) After the definition of **credit transfer notice** the following is inserted:

“**creditable membership**—

“(a) means, for a person, membership in a KiwiSaver scheme or a complying superannuation fund; and

“(b) includes, for a person,—

- “(i) the period beginning on the first day of the month in which KiwiSaver contributions are first deducted and ending on the day on which securities are first allotted by the KiwiSaver scheme:
- “(ii) the days in the month in which securities are first allotted by the KiwiSaver scheme or complying superannuation fund in relation to the person:
- “(iii) for the period beginning on 1 July 2007 and ending on the day on which securities are first allotted by the KiwiSaver scheme, the days in the month that the KiwiSaver scheme receives a valid application for membership from the person and any remaining days in that period, if the person makes contributions in relation to the KiwiSaver scheme before 1 November 2007”.

New subclause (5B): to insert, after *subclause (5)* (after line 10 on page 119), the following:

(5B) The definition of **member credit contributions** is replaced by the following:

“**member credit contributions** means, for a person and a member credit year, the total of the following:

- “(a) superannuation contributions to the person’s complying superannuation funds and KiwiSaver scheme to the extent to which the contributions are subject to KiwiSaver scheme rules or complying fund rules, but excluding the following:
 - “(i) specified superannuation contributions for the person:
 - “(ii) contributions withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006:
 - “(iii) any amounts that are accounted for under **paragraph (b)**:
- “(b) amounts that have been received and held in respect of the person by the Commissioner and to which section 73, 74, or 75 of the KiwiSaver Act 2006 applies, but excluding specified superannuation contributions for the person and amounts that are never paid to the provider of the person’s KiwiSaver scheme, unless the amounts are never paid to the provider because of—
 - “(i) the person’s death:
 - “(ii) a refund under section 113 of the KiwiSaver Act 2006”.

New clause 198B

To insert, after *clause 198* (after line 28 on page 151), the following:

**198B Tax credit relating to KiwiSaver and complying
superannuation fund members: member credit form**

Section 68C(4) is replaced by the following:

- “(4) The fund provider may claim an amount of a tax credit under section KJ 1 of the Income Tax Act 2004 for the person if the provider meets the requirements of subsection (2)(b) and (c), and is satisfied that the amount of tax credit has not previously been claimed. A claim under this subsection may be supplementary to or included in a claim under subsection (3), and must be in the form prescribed under subsection (3).”

Clause 218(2)

Section 99(4): to omit “KJ 1” and substitute “KJ 6” (line 30 on page 157).

Clause 219

Section 101D(2)(c): to omit section 101D(2)(c) (line 24 on page 159 to line 3 on page 160) and substitute the following:

- “(c) **other contributions** means amounts that the employer pays in relation to the employee for the period to which the payment of salary or wages relates, to the extent to which the amounts are—
- “(i) specified superannuation contributions or superannuation subsidies in relation to an employee—
 - “(A) whose employment is as a Member of Parliament, a judicial officer, or a sworn member of the Police;
 - “(B) who is in a class of employees prescribed in regulations made under **section 230A**; or
 - “(ii) specified superannuation contributions made to a registered superannuation scheme, and—
 - “(A) the employee is employed by the employer before 1 April 2008; and
 - “(B) the employer provides to the employee access to a registered superannuation scheme as at 17 May 2007; and
 - “(C) the employer makes or has agreed with the employee to make the specified superannuation contributions for the employee before 1 April 2008 to the registered superannuation scheme; and
 - “(D) the specified superannuation contributions vest in the employee immediately after the contributions are paid to the scheme.”

Clause 218(2)

Section 99(4): to omit “KJ 1” and substitute “KJ 6” (line 30 on page 157).

New clause 235B

To insert, after *clause 235* (after line 29 on page 168), the following:

235B New section 230A

After section 230, the following is inserted:

“230A Regulations relating to compulsory employer contributions

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance, make regulations prescribing a class of employees for the purposes of the calculation of compulsory employer contributions under **section 101D(2)(c)(i)**.
- “(2) The Minister of Finance may make a recommendation under **subsection (1)** only if the Minister is satisfied that an employer may not prevent compulsory employer contributions increasing their employer contributions in relation to the class of employees because terms relating to their employer contributions are imposed by a person independent of the employer and the class of employees.”

Clause 238

To omit “**Sections 239 and 240** (line 6 on page 170) and substitute “**Sections 238B to 240C**”.”

New clause 238B

To insert, after *clause 238* (after line 7 on page 170), the following:

238B Interpretation

Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**participation agreement** has the meaning given to it in section 4(1) of the KiwiSaver Act 2006”.

New clause 239B

To insert, after *clause 239* (after line 12 on page 170), the following:

239B Complying superannuation funds

After section 34(2), the following is added:

- “(3) The application must include a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the registered scheme.”

New clauses 240B and 240C

To insert, after *clause 240* (after line 29 on page 170), the following.

240B New section 37 inserted

After section 36 the following is added:

“37 Transitional provision relating to lodging of participation agreements

The trustees of every scheme that has been approved as a complying superannuation fund before the date of commencement of this section must send to the Government Actuary, within 28 days after that commencement date, a copy of any

participation agreements that have been ratified by employers of employees in the scheme as applicable to the complying superannuation fund.”

240C Schedule 2—Matters to be specified in annual report

In schedule 2, clause 1(o)(iii), “rules.” is replaced by “rules:”, and the following is added:

“(iv) the summary of any amendments to the trust deed that have been made since the date of the last annual report of the trustees (as required by paragraph (i)) as if the trust deed included any participation agreement that, under the terms of the relevant trust deed, forms part of or determines any of the terms of the trust deed.”

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill.

This Supplementary Order Paper contains amendments in relation to KiwiSaver and complying superannuation funds. The amendments have the following main effects:

- Complying fund providers will be required to lodge employer participation agreements with the Government Actuary.
- Complying fund providers will be required to pay lump sums, in the same way as KiwiSaver providers are so required.
- KiwiSaver and complying superannuation fund member tax credit drafting is remedied, including the basic formula, and the ability to claim the credits.
- KiwiSaver and complying superannuation fund member tax credit are clarified, by clarifying the relevant period of membership for the calculation of the credit.
- Employer contributions and superannuation subsidies paid to Members of Parliament, judicial officers, and sworn members of the Police will be counted towards compulsory employer contributions. Additional classes of employees, prescribed by regulations, will also have employer contributions counted towards compulsory employer contributions.