

# House of Representatives

# Supplementary Order Paper

Tuesday, 24 November 2009

## Taxation (Consequential Rate Alignment and Remedial Matters) Bill

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### *Proposed amendments*

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

#### *Clause 2*

*New subclause (1B)*: to insert, after *subclause (1)* (after line 6 on page 7), the following:

- (1B) **Sections 41C and 49(9E)** come into force on the day that the New Zealand Superannuation and Retirement Income Amendment Act 2009 comes into force.

*Subclause (3B)*: to omit “**Section 82(2B)** is” (line 12 on page 7) and substitute “**Sections 70B and 82(2B)** are”.

*Subclause (6)*: to omit “**38**” (line 24 on page 7) and substitute “**37DE(1), 38**”.

*New subclause (8D)*: to insert, after *subclause (8C)* (after line 13 on page 8), the following:

- (8D) **Sections 37DC(1), 47CB, 47CC, 49(9F), and schedule 1, row 28B** come into force on 1 February 2010.

*Subclause (9)*: to omit “**(10B)**” (line 16 on page 8) and substitute “**(10B), (10C)**”.

*Subclause (10)*: to omit “**Section 51(3)**” (line 23 on page 8) and substitute “**Sections 37DB, 37DC(2), (3) and (5), 49(14BB), 49BA, 51(3), and schedule 1, row 28D**”.

*New subclause (10B)*: to insert, after *subclause (10)* (after line 23 on page 8), the following:

- (10B) **Sections 37BA, 37DC(4) and (6), 37DD, 37DE(2), 37DF, 37DG, 49(12F) and (18), and schedule 1, row 28C** come into force on 1 April 2013.

*New clause 4B*

To insert, after *clause 4* (after line 31 on page 8), the following:

**4B Double tax agreements**

After section BH 1(6), the following is added:

*“Reference to unrelated persons*

- “(7) A reference in a double tax agreement to 2 persons being unrelated is to be read, if possible, as a reference to 2 persons being not associated.””

*Clause 15H*

*New subclause (1A)*: to insert, before *subclause (1)* (before line 19 on page 18), the following:

- (1A) In section EY 30(2), in the words before the paragraphs, “employer sponsored” is replaced by “workplace”.

*Clause 19G*

*Subclauses (2) and (3)*: to omit *subclauses (2) and (3)* (lines 10 to 13 on page 25) and substitute the following:

- (2) In section HM 60(1),—
- (a) “HM 56 to HM 59” is replaced by “HM 56 to HM 58”:
  - (b) “for a period” is replaced by “for a period (the **notified investor rate**)”.
- (3) In section HM 60(4),—
- (a) in the heading, “*HM 56 to HM 59*” is replaced by “*HM 56 to HM 58*”:
  - (b) “notifies an investor rate” is replaced by “advises a notified investor rate”:
  - (c) “HM 56 to HM 59” is replaced by “HM 56 to HM 58”.

*New clause 37BA*

To insert, after *clause 37* (after line 25 on page 35), the following:

**37BA Subpart IV repealed**

- (1) Subpart IV is repealed.
- (2) **Subsection (1)** applies for the 2013–14 and later tax years.

*New clauses 37DB to 37DG*

To insert, after *clause 37D* (after line 33 on page 35), the following:

**37DB What this subpart does**

Section LP 1(2) is repealed.

**37DC Tax credits for supplementary dividends**

- (1) Section LP 2(1)(a) is replaced by the following:
  - “(a) a non-resident, if—
    - “(i) the non-resident has less than a 10% direct voting interest in the company; and

“(ii) the post-treaty tax rate for the dividend and the related supplementary dividend is 15% or more; or”.

- (2) Section LP 2(1)(b) is repealed.
- (3) In section LP 2(2), “For the year of payment” is replaced by “For the tax year corresponding to the income year in which the company pays the dividend”.
- (4) Section LP 2(4) is repealed.
- (5) Section LP 2(5) and (6) are repealed.
- (6) **Subsection (4)** applies for the 2013–14 and later income years.

**37DD Section LP 7 repealed**

- (1) Section LP 7 is repealed.
- (2) **Subsection (1)** applies for the 2013–14 and later income years.

**37DE Relationship with exempt income rules**

- (1) In section LP 8(2), the formula is replaced by the following:

attached credit + dividend

tax rate.

- (2) Section LP 8 is repealed.
- (3) **Subsection (2)** applies for the 2013–14 and later income years.

**37DF Section LP 9 repealed**

- (1) Section LP 9 is repealed.
- (2) **Subsection (1)** applies for the 2013–14 and later income years.

**37DG Section LP 10 repealed**

- (1) Section LP 10 is repealed.
- (2) **Subsection (1)** applies for the 2013–14 and later income years.

*New clause 41C*

To insert, after *clause 41B* (after line 16 on page 40), the following:

**41C Salary or wages**

Section RD 5(6)(b) is replaced by the following:

“(b) an income-tested benefit:

“(bb) a veteran’s pension, other than a veteran’s pension paid under section 74J(2)(b) of the War Pensions Act 1954:

“(bc) New Zealand superannuation, other than New Zealand superannuation paid under section 26(2)(b) of the New Zealand Superannuation and Retirement Income Act 2001:

“(bd) a living alone payment.”.

*New clauses 47CB and 47CC*

To insert, after *clause 47C* (after line 6 on page 46), the following:

**47CB When dividends fully imputed or fully credited**

In section RF 9(1), “and RF 10” is replaced by “, RF 10, and **RF 11B**”.

**47CC New section RF 11B**

After section RF 11, the following is inserted:

**“RF 11B Certain dividends paid to certain non-residents**

The rate of NRWT payable on a payment of non-resident passive income is 0% to the extent to which the payment is a fully imputed dividend paid to a non-resident by a company, if—

“(a) the non-resident has a 10% or more direct voting interest in the company:

“(b) the non-resident has less than a 10% direct voting interest in the company and, but for this section, the post-treaty tax rate for the dividend is less than 15%.

“Defined in this Act: company, direct voting interest, dividend, non-resident, non-resident passive income, NRWT, pay, post-treaty tax rate”.

*Clause 49*

*Subclause (2): definition of cost of timber, paragraph (a)(ii):* to omit “right take timber” (line 34 on page 47) and substitute “right to take timber”.

*New subclauses (9E) and (9F):* to insert, after *subclause (9D)* (after line 11 on page 52), the following:

(9E) The definitions of **portable New Zealand superannuation** and **portable veteran’s pension** are replaced by the following:

“**portable New Zealand superannuation** means New Zealand superannuation paid or payable overseas under—

“(a) section 26(2)(a) of the New Zealand Superannuation and Retirement Income Act 2001, or under section 26(2)(b) where the superannuitant is residing in a country to which section 26(1)(a) of that Act applies; or

“(b) section 31 of the New Zealand Superannuation and Retirement Income Act 2001; or

“(c) section 19 of the Social Welfare (Transitional Provisions) Act 1990

“**portable veteran’s pension** means a veteran’s pension paid or payable overseas under—

“(a) section 74J(2)(a) of the War Pensions Act 1954, or under section 74J(2)(b) where the pensioner is residing in a country to which section 74J(1)(a) of that Act applies; or

“(b) section 74O of the War Pensions Act 1954; or

“(c) section 19 of the Social Welfare (Transitional Provisions) Act 1990”.

(9F) After the definition of **post-1989 forest land emissions unit** the following is inserted:

“**post-treaty tax rate** means the rate of tax, after taking into account the overriding effect of a relevant double tax agreement, if there is one, as provided by section BH 1 (Double tax agreements)”.

*New subclause (10C): to insert, after subclause (10B) (after line 28 on page 53), the following:*

(10C) In the definition of **relative**,—

(a) in paragraph (a), in the words before the subparagraphs, “except in section HC 36 (Trusts and minor beneficiary rule)” is replaced by “for the purposes of only this Act, other than in section HC 36 (Trusts and minor beneficiary rule)”:

(b) in paragraph (b), “that section” is replaced by “only that section”:

(c) after paragraph (b), the following is added:

“(c) for the purposes of the definition of **relative** in section 2 of the Securities Act 1978, means a person connected with another person by—

“(i) being within the fourth degree of blood relationship to the other:

“(ii) being in a marriage, civil union, or de facto relationship with the other:

“(iii) being in a marriage, civil union, or de facto relationship with a person who is within the fourth degree of blood relationship to the other:

“(iv) being adopted as a child of the other or as a child of a person who is within the third degree of relationship to the other:

“(v) being the trustee of a trust under which a relative of the other person has benefited or is eligible to benefit”.

*New subclause (12F)*: to insert, after *subclause (12E)* (after line 38 on page 54), the following:

(12F) The definition of **supplementary dividend holding company** is omitted.

*New subclause (14BB)*: to insert, after *subclause (14B)* (after line 24 on page 55), the following:

(14BB) The definition of **year of payment** is omitted.

*New subclause (18)*: to add, after *subclause (17)* (after line 3 on page 56), the following:

(18) **Subsection (12F)** applies for the 2013–14 and later income years.

*New clause 49BA*

To insert, after *clause 49* (after line 3 on page 56), the following:

**49BA What this subpart does**

Section YB 1(8) is repealed.

*New clause 70B*

To insert, after *clause 70* (after line 29 on page 71), the following:

**70B Imposition of goods and services tax on supply**

After section 8(2), the following is inserted:

“(2B) To the extent to which a supply of services consists of the facilitation of inbound tour operations, the supply is chargeable with tax under subsection (1), and section 11A does not apply to that part of the supply.

“(2C) Despite **subsection (2B)**, the part of the supply that consists of the facilitation of inbound tour operations is charged at the rate of 0% if—

“(a) a registered person supplies the services in the period from 1 July 2007 to 30 June 2008 (the **transitional period**); and

“(b) the consideration for the supply is an amount quantified—

“(i) on the basis of the person’s gross margin attributable to the facilitation of inbound tour operations; or

“(ii) by other means that the Commissioner is able to verify.

“(2D) For the purposes of **subsection (2C)(b)**, the amount of the consideration must be—

“(a) calculated for each of the person’s taxable periods that fall in the transitional period:

“(b) for any days in the person’s taxable period that fall outside the transitional period, apportioned on a pro rata basis.

“(2E) If a registered person has supplied services in the transitional period by way of the facilitation of inbound tour operations and tax was paid under this section in relation to the services, the person is entitled to a refund of the amount of tax paid. They must apply for the refund in writing within the period that starts on the date of Royal assent of the Taxation (Consequential Rate Alignment and Remedial Matters) Act **2009** and ends 6 months after that date.

“(2F) For the purposes of **subsections (2B) and (2C)**, services that consist of the facilitation of inbound tour operations means the services that a registered person provides in packaging 1 or more domestic tourism products and services in New Zealand and selling them outside New Zealand to a non-resident person. The tourism products and services may include accommodation, meals, transport, and other activities.”

*Schedule 1*

*New row 1A:* to insert, before *row 1* (on page 83), the following:

1A	BH 1		associated
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*New rows 28B to 28D:* to insert, after *row 28* (on page 85), the following:

28B	LP 2		direct voting interest, post-treaty tax rate
28C	LP 2	supplementary dividend holding company	
28D	LP 2	year of payment	

### Explanatory note

This Supplementary Order Paper contains 3 substantive non-remedial amendments to the bill, and 6 minor remedial matters.

The first substantive amendment is to clarify that inbound tour operators’ facilitation services are subject to GST at the standard 12.5% rate. However, for the period 1 July 2007 to 30 June 2008 only, all inbound tour operators will be able to zero-rate their facilitation services. This will allow those operators who have not zero-rated their fees in that period to claim refunds of GST.

The second substantive amendment is the repeal of the general availability of supplementary dividend tax credits. In the future, only portfolio investors on NRWT rates of at least 15% will qualify for relief under the supplementary dividend rules, along with supplementary dividend holding companies. Reflecting this, a zero rate of NRWT is introduced for non-portfolio dividends (and for any other dividends subject to lower tax rates), to the extent they are imputed. Later,

the supplementary dividend regime will also cease to apply to holding companies.

The third substantive amendment is to ensure the correct taxation of the new portable New Zealand superannuation and veterans' pension, introduced by the *New Zealand Superannuation and Retirement Income Amendment Act 2009* and the *War Pensions Amendment Act 2009*. When a superannuitant or pensioner is travelling overseas and is, effectively, still resident in New Zealand, they will be taxed so that, apart from the withholding tax regime, they pay the same as if they were not travelling and were actually resident in New Zealand. If the superannuitant or pensioner decides to reside overseas, the tax-free status of the current portable superannuation and veteran's pension is retained.

The 6 minor remedial matters are:

- A new definition of *unrelated person* for the purposes of double tax agreements, to equate that term with the domestic term *not an associated person* in the *Income Tax Act 2007*:
  - The correction of a formula for supplementary dividend holding companies, in *section LP 8(2)* of the *Income Tax Act 2007*:
  - The correction of a cross-reference in *section EY 30* of the *Income Tax Act 2007*:
  - The correction of cross-references in *section HM 60* of the *Income Tax Act 2007*:
  - The reinstatement, in the *Income Tax Act 2007*, of a definition of *relative*, to the 4th blood degree, for the purposes of a cross-reference in *section 2* of the *Securities Act 1978*:
  - The correction of a typographical error in the defined term *cost of timber*.
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