

House of Representatives
Supplementary Order Paper

Tuesday, 26 August 2008

Taxation (International Taxation, Life Insurance,
and Remedial Matters) Bill

Proposed amendments

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

Clause 2

New subclause (15B): to insert, after *subclause (15)* (after line 17 on page 32), the following:

(15B) **Sections 542B, 549B, 550B, 568B, 568C, 568D, 578B, 578C, 578D, 578E, 578F, 580B, and 613(4B), (4C), (4D), (6B), (13B), (13C), and (13D)** come into force on 25 February 2008.

Subclause (17): to insert in their appropriate place in the alphanumerical sequence (line 19 on page 32 to line 8 on page 33), references to sections 12(1)(b), 55B, 67B, 115B, 115C, 127B, 151B(1), 163(1) and (3), 166(2B) and (4B), 203B, and 408(29B), (40B), (49)(a), (80B), (115B), (132)(a), and (136B).

Subclause (19): to omit “**147,**” (line 16 on page 33) and substitute “**147, 151B(2),**”.

Subclause (19): to omit “**163**” (line 18 on page 33) and substitute “**163(2) and (4)**”.

Subclause (19): to omit “**(49)**” (line 31 on page 33) and substitute “**(49)(b)**”.

Subclause (19): to omit “**(132)**” (line 32 on page 33) and substitute “**(132)(b)**”.

Subclause (22): to omit “**12**” (line 5 on page 34) and substitute “**12(1)(a)**”.

Clause 12

To omit *clause 12* (lines 1 to 6 on page 39) and substitute the following:

12 Returns of capital: off-market share cancellations

(1) In section CD 22(9),—

- (a) in the definition of **counted associate**, paragraph (b), “is a beneficiary” is replaced by “has benefited or is eligible to benefit”:
 - (b) in the definition of **non-participating redeemable share**, paragraph (b)(iii), “; or” is replaced by “or **section FA 2B(2)** (Stapled debt securities); or”.
- (2) **Subsection (1)(a)** applies for the 2009–10 and later income years.

New clause 55B

To insert, after *clause 55* (after line 15 on page 63), the following:

55B New section DB 10B inserted

After section DB 10, the following is inserted:

“DB 10B Interest or expenditure connected to stapled debt security

“No deduction

- “(1) A company issuing a stapled debt security is denied a deduction for—
- “(a) interest payable under the security; or
 - “(b) expenditure or loss incurred in connection with the security; or
 - “(c) expenditure or loss incurred in borrowing the money secured by or owing under the security.

“Relationship with sections DB 5 to DB 8

- “(2) This section overrides sections DB 5 to DB 8.

“Link with subpart DA

- “(3) This section overrides the general permission.

“Defined in this Act: deduction, general permission, interest, pay, stapled debt security”.

New clause 67B

To insert, after *clause 67* (after line 18 on page 68), the following:

67B Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction

- (1) In the heading to section DP 8(3), “**section FA 2**” is replaced by “**sections FA 2 and FA 2B**”.
- (2) In section DP 8(3), “, does” is replaced by “and **section FA 2B** (Stapled debt securities) do”.

New clauses 115B and 115C

To insert, after *clause 115* (after line 22 on page 93), the following:

115B Direct control interests

In section EX 5(5)(c), “debentures)” is replaced by “debentures), **FA 2B** (Stapled debt securities),”.

115C Direct income interests

In section EX 9(6)(c), “debentures” is replaced by “debentures), **FA 2B** (Stapled debt securities).”.

New clause 127B

To insert, after *clause 127* (after line 34 on page 126), the following:

127B Direct income interests in FIFs

In section EX 30(6)(c), “debentures” is replaced by “debentures) or **FA 2B** (Stapled debt securities)”.

Clause 151

Clause 151(2): section FA 2(4)(b)(iii): to omit “date).” (line 3 on page 170) and substitute “date:.”, and add (after line 3 on page 170), as *new section FA 2(4)(c)*, the following:

“(c) does not include a debenture treated as a share under **section FA 2B** (Stapled debt securities).”

Clause 151(3): section FA 2(5)(c): to omit “note.” (line 25 on page 170) and substitute “note:.”, and add (after line 25 on page 170), as *new section FA 2(5)(d)*, the following:

“(d) does not include a debenture treated as a share under **section FA 2B.**”

New clause 151B

To insert, after *clause 151* (after line 31 on page 170), the following:

151B New section FA 2B

(1) After section FA 2, the following is inserted:

“FA 2B Stapled debt securities

“When subsection (2) applies

“(1) **Subsection (2)** applies when—

“(a) a company has issued a debt security; and

“(b) the debt security is stapled to a share in the company or to a share in another company; and

“(c) the share is not a fixed-rate share.

“Stapled debt treated as equity

“(2) The stapled debt security is treated as a share issued by the company and—

“(a) interest payable under the stapled debt security is treated as a dividend; and

“(b) the company is denied a deduction under **section DB 10B** (Interest or expenditure connected to stapled debt security) for expenditure or loss incurred in connection with the security.

“Stapled securities aggregated

“(3) A stapled debt security and a share to which it is stapled are treated as a single share for the purposes of applying—

- “(a) the definition of **non-participating redeemable share** in section CD 22(9) (Returns of capital: off-market share cancellations); and
- “(b) the definition of **fixed-rate share** in section LL 9 (Some definitions); and
- “(c) the definitions, in section YA 1 (Definitions), of—
 - “(i) **fixed-rate foreign equity**; and
 - “(ii) **fixed-rate share**, except for the purposes of **subsection (1)(c)**.

“*Meaning of debt security*

- “(4) In this section, **debt security** means a financial arrangement if—
 - “(a) the financial arrangement provides funds to the company; and
 - “(b) the financial arrangement gives rise to an amount for which the company would have a deduction but for this section; and
 - “(c) the amount does not arise only from either a movement in a currency exchange rate or a non-contingent fee.

“*Meaning of stapled*

- “(5) In this section, a debt security is **stapled** to a share if—
 - “(a) the debt security can, or ordinarily can, be disposed of only together with the share; and
 - “(b) the arrangement that requires the debt security and the share to be disposed of together is an arrangement in which the company that issued the debt security or the share is a party.

“*Exclusion: stapled before 25 February 2008*

- “(6) This section does not apply if the debt security was stapled to the share before 25 February 2008.

“Defined in this Act: amount, company, debt security, deduction, financial arrangement, fixed-rate share, non-contingent fee, share, stapled”.

- (2) **Section FA 2B(3)(b)** is repealed.
- (3) **Subsection (1)** applies if a debt security is stapled to a share on or after 25 February 2008.
- (4) **Subsection (2)** applies for the 2009–10 and later income years.

Clause 163

To omit *clause 163* (line 24 on page 177 to line 11 on page 178) and substitute the following:

163 Total group debt

- (1) Section FE 15(1)(b) is replaced by the following:
 - “(b) the financial arrangement—

- “(i) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction:
 - “(ii) is a stapled debt security held by a person resident in New Zealand, unless it is stapled to a share issued by a proportional-stapling company.”
- (2) Section FE 15(1) and (2) are replaced by the following:
- “Meaning*
- “(1) In this subpart for a New Zealand group, **total group debt** means the sum of the outstanding balances for—
- “(a) financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, if the financial arrangement—
 - “(i) provides funds to the natural person, the entity, or another member of the group; and
 - “(ii) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction:
 - “(b) fixed-rate foreign equity that is—
 - “(i) issued by the entity or another member of the New Zealand group; and
 - “(ii) held by a person resident in New Zealand:
 - “(c) stapled debt securities—
 - “(i) issued by the entity or another member of the New Zealand group; and
 - “(ii) held by a person resident in New Zealand; and
 - “(iii) not stapled to shares issued by a proportional-stapling company.
- “Exchange rate fluctuations*
- “(2) **Subsection (1)(a)(ii)** does not include a deduction for an amount that arises only from movement in currency exchange rates.”
- (3) In section FE 15, in the list of defined terms, “proportional-stapling company”, “resident in New Zealand”, “stapled”, and “stapled debt security” are inserted.
- (4) In section FE 15, in the list of defined terms, “fixed-rate foreign equity” is inserted.
- (5) **Subsections (2) and (4)** apply for the 2009–10 and later income years.

Clause 166

New subclause (2B): to insert, after *clause 166(2)* (after line 21 on page 180), the following:

(2B) After section FE 21(4), the following is inserted:

“*Stapled debt securities*

“(4B) **Adjustment 1A** is the financial value of stapled debt securities that are—

“(a) owned by a person resident in New Zealand; and

“(b) included in equity value under subsection (3);
and

“(c) are not stapled to shares issued by a proportional-stapling company.”

New subclause (4B): to insert, after *clause 166(4)* (after line 5 on page 181), the following:

(4B) In section FE 21, in the list of defined terms, “proportional-stapling company”, “stapled”, and “stapled debt security” are inserted.

New clause 203B

To insert, after *clause 203* (after line 8 on page 197), the following:

203B Companies issuing debentures

(1) Section HD 14(2)(a) is replaced by the following:

“(a) it is a profit-related debenture or substituting debenture to which section FA 2 (Recharacterisation of certain debentures) applies or a stapled debt security to which **section FA 2B** (Stapled debt securities) applies; or”.

(2) In section HD 14, in the list of defined terms, “stapled debt security” is inserted.

Clause 408

New subclause (29B): to insert, after *subclause (29)* (after line 14 on page 323), the following:

(29B) After the definition of **debenture holder**, the following is inserted:

“**debt security** is defined in **section FA 2B(4)** (Stapled debt securities) for the purposes of that section”.

Subclause (30): to omit “**debenture holder**” (line 15 on page 323) and substitute “**debt security**”.

New subclause (40B): to insert, after *subclause (40)* (after line 22 on page 325), the following:

(40B) In the definition of **excluded fixed rate security**, “substituting debenture” is replaced by “substituting debenture or stapled debt security”.

Subclause (49): to omit *subclause (49)* (lines 19 to 21 on page 327), and substitute the following:

- (49) In the definition of **fixed-rate share**,—
- (a) in paragraph (e), “equity” is replaced by “equity);”, and the following is added:
 - “(f) in **section FA 2B** (Stapled debt securities), this paragraph, and the definition of **proportional-stapling company**, means—
 - “(i) a share described in paragraph (a):
 - “(ii) a share that would be a share described in paragraph (a) but for any variation in the rate of dividend that may occur, reflecting generally accepted market practice, to compensate the shareholder for transaction expenditure, such as brokerage, expected to be incurred by the shareholder due to conversion of the share into another share that is not a fixed-rate share:
 - “(iii) a share for which the dividend payable is the equivalent of the payment of interest for money lent having regard to the factors in **paragraph (g)**:
 - “(g) for the purposes of **paragraph (f)(iii)**, the factors are—
 - “(i) whether or not the share is redeemable:
 - “(ii) any security provided to the shareholder, including put or call options over the share or any amount payable determined by reference to the amount of dividend payable:
 - “(iii) the variability or lack of variability of the dividend payable”:
 - (b) paragraph (e) is repealed.

New subclause (80B): to insert, after *subclause (80)* (after line 22 on page 331), the following:

- (80B) In the definition of **market value circumstance**, paragraph (a)(ii), “applies” is replaced by “or **FA 2B** (Stapled debt securities) applies”.

New subclause (115B): to insert, after *subclause (115)* (after line 19 on page 337), the following:

- (115B) After the definition of **property**, the following is inserted:
“**proportional-stapling company** means a company if—
“(a) each share in the company that is not a fixed-rate share (a **participating share**) is stapled to a stapled debt security; and
“(b) for each participating share in the company, the amount payable for the issue of its stapled debt security is the same proportion of the available subscribed capital cal-

culated under the slice rule of the participating share as it is for each other participating share”.

Subclause (132): to omit *subclause (132)* (lines 1 to 3 on page 340), and substitute the following:

(132) In the definition of **share**,—

(a) after paragraph (b), the following is inserted:

“(bb) includes a stapled debt security to which **section FA 2B(2)** (Stapled debt securities) applies.”:

(b) after paragraph (e), the following is inserted:

“(eb) does not include a fixed-rate foreign equity.”:

New subclause (136B): to insert, after *subclause (136)* (after line 11 on page 341), the following:

(136B) After the definition of **standing timber**, the following is inserted:

“**stapled**, for a debt security and a share, is defined in **section FA 2B(5)** (Stapled debt securities)

“**stapled debt security** means a financial arrangement to which **section FA 2B(2)** (Stapled debt securities) applies”.

New clause 542B

To insert, after *clause 542* (after line 19 on page 405), the following:

542B Returns of capital: off-market share cancellations

In section CD 14(9), in the definition of **non-participating redeemable share**, paragraph (b)(iii), “; or” is replaced by “or **section FC 2B(2)** (Stapled debt securities); or”.

New clause 549B

To insert, after *clause 549* (after line 10 on page 410), the following:

549B New section DB 8B inserted

After section DB 8, the following is inserted:

“DB 8B Interest or expenditure connected to stapled debt security

“*No deduction*

“(1) A company issuing a stapled debt security is denied a deduction for—

“(a) interest payable under the security; or

“(b) expenditure or loss incurred in connection with the security; or

“(c) expenditure or loss incurred in borrowing the money secured by or owing under the security.

“*Relationship with sections DB 5 to DB 8*

“(2) This section overrides sections DB 5 to DB 8.

“Link with subpart DA

“(3) This section overrides the general permission.

“Defined in this Act: deduction, general permission, interest, pay, stapled debt security”.

New clause 550B

To insert, after *clause 550* (after line 19 on page 410), the following:

550B Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction

- (1) In the heading to section DP 7(3), “and FZ 2” is replaced by “, FC 2B, and FZ 2”.
- (2) In section DP 7(3), “do” is replaced by “and **section FC 2B** (Stapled debt securities) do”.

New clauses 568B to 568D

To insert, after *clause 568* (after line 19 on page 423), the following:

568B Direct control interests

In section EX 5(5)(c), “shares” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.

568C Direct income interests

In section EX 9(6)(c), “shares” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.

568D Direct income interests in FIFs

In section EX 31(6)(c), “shares” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.

New clauses 578B to 578F

To insert, after *clause 578* (after line 35 on page 426), the following:

578B Floating rate of interest on debentures

After section FC 1(3), the following is added:

- “(4) This section does not apply to a debenture treated as a share under **section FC 2B** (Stapled debt securities).”

578C Interest on debentures issued in substitution for shares

After section FC 2(4), the following is inserted:

- “(4B) This section does not apply to a debenture treated as a share under **section FC 2B** (Stapled debt securities).”

578D New section FC 2B

- (1) After section FC 2, the following is inserted:

“FC 2B Stapled debt securities

- “(1) **Subsection (2)** applies when—

“(a) a company has issued a debt security; and

- “(b) the debt security is stapled to a share in the company or to a share in another company; and
- “(c) the share is not a fixed-rate share.
- “(2) The stapled debt security is treated as a share issued by the company and—
 - “(a) interest payable under the stapled debt security is treated as a dividend; and
 - “(b) the company is denied a deduction under **section DB 8B** (Interest or expenditure connected to stapled debt security) for expenditure or loss incurred in connection with the security.
- “(3) A stapled debt security and a share to which it is stapled are treated as a single share for the purposes of applying—
 - “(a) the definition of **non-participating redeemable share** in section CD 14(9) (Returns of capital: off-market share cancellations); and
 - “(b) the definition of **fixed rate share** in section LF 2(3) (Granting of foreign underlying tax credits); and
 - “(c) the definition, in section OB 1 (Definitions) of **fixed rate share**, except for the purposes of **subsection (1)(c)**.
- “(4) In this section, **debt security** means a financial arrangement if—
 - “(a) the financial arrangement provides funds to the company; and
 - “(b) the financial arrangement gives rise to an amount for which the company would have a deduction but for this section; and
 - “(c) the amount does not arise only from either a movement in a currency exchange rate or a non-contingent fee.
- “(5) In this section, a debt security is **stapled** to a share if—
 - “(a) the debt security can, or ordinarily can, be disposed of only together with the share; and
 - “(b) the arrangement that requires the debt security and the share to be disposed of together is an arrangement in which the company that issued the debt security or the share is a party.
- “(6) This section does not apply if the debt security was stapled to the share before 25 February 2008.”
- (2) **Subsection (1)** applies if a debt security is stapled to a share on or after 25 February 2008.

578E Rules for calculating New Zealand group debt percentage

Section FG 4(2)(b) is replaced by the following:

- “(b) the financial arrangement—

- “(i) gives rise to an amount for which the taxpayer (or another group member) would be allowed a deduction, other than an amount that arises only from movement in currency exchange rates:
- “(ii) is a stapled debt security held by a person resident in New Zealand, unless it is stapled to a share issued by a proportional-stapling company.”

578F New Zealand net equity of New Zealand banking group

- (1) In section FG 8G(1), in the formula, “**FRS**” is replaced by “**FRS – SDS**”.
- (2) In section FG 8G(1), after the item **FRS**, the following is inserted:
 - “**SDS** is the financial value for the measurement day of stapled debt securities, each of which is—
 - “(a) owned by a person resident in New Zealand; and
 - “(b) included in the value of item **EQV**; and
 - “(c) are not stapled to shares issued by a proportional-stapling company”.

New clause 580B

To insert, after *clause 580* (after line 13 on page 427), the following:

580B Modification of agency provisions in respect of income from company debentures

In section HK 13(1), “debentures issued” is replaced by “debentures that are a stapled debt security to which **section FC 2B** (Stapled debt securities) applies, or to debentures issued”.

Clause 613

New subclauses (4B) to (4D): to insert, after *subclause (4)* (after line 21 on page 434), the following:

- (4B) After the definition of **debentures**, the following is inserted:
 - “**debt security** is defined in **section FC 2B(4)** (Stapled debt securities) for the purposes of that section”.
- (4C) In the definition of **excluded security**, “shares” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.
- (4D) In the definition of **fixed rate share**, paragraph (e), “section LF 2(3)” is replaced by “section LF 2(3):”, and the following is added:
 - “(f) in **section FC 2B** (Stapled debt securities), this paragraph, and the definition of **proportional-stapling company**, means—
 - “(i) a share described in paragraph (a):

- “(ii) a share that would be a share described in paragraph (a) but for any variation in the rate of dividend that may occur, reflecting generally accepted market practice, to compensate the shareholder for transaction expenditure, such as brokerage, expected to be incurred by the shareholder due to conversion of the share into another share that is not a fixed rate share:
- “(iii) a share for which the dividend payable is the equivalent of the payment of interest for money lent having regard to the factors in **paragraph (g)**:
- “(g) for the purposes of **paragraph (f)(iii)**, the factors are—
 - “(i) whether or not the share is redeemable:
 - “(ii) any security provided to the shareholder, including put or call options over the share or any amount payable determined by reference to the amount of dividend payable:
 - “(iii) the variability or lack of variability of the dividend payable”.

New subclause (6B): to insert, after *subclause (6)* (after line 33 on page 434), the following:

- (6B) In the definition of **market value circumstance**, paragraph (a)(ii), “applies” is replaced by “or **FC 2B** (Stapled debt securities) applies”.

New subclauses (13B) to (13D): to insert, after *subclause (13)* (after line 24 on page 435), the following:

- (13B) After the definition of **property**, the following is inserted:
 - “**proportional-stapling company** means a company if—
 - “(a) each share in the company that is not a fixed rate share (a **participating share**) is stapled to a stapled debt security; and
 - “(b) for each participating share in the company, the amount payable for the issue of its stapled debt security is the same proportion of the available subscribed capital calculated under the slice rule of the participating share as it is for each other participating share”.
- (13C) In the definition of **share**, paragraph (b), “shares” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.
- (13D) After the definition of **standing timber**, the following is inserted:
 - “**stapled**, for a debt security and a share, is defined in **section FC 2B(5)** (Stapled debt securities)

“**stapled debt security** means a financial arrangement to which **section FC 2B(2)** (Stapled debt securities) applies”.

Explanatory note

This Supplementary Order Paper amends the Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill.

The amendments provide for new rules relating to stapled debt securities’ tax treatment. They do not apply to debt securities that are stapled before 25 February 2008. The amendments have the following effects:

- they define the concept of a stapled debt security, being a financial arrangement that provides funds to a company, that would otherwise give rise to deductions and that can ordinarily only be disposed of together with a share (not being a fixed-rate share) in the issuing company or in another company:
 - they provide that a security that is a stapled debt security is treated as a share and the issuing company is denied a deduction for expenditure or loss incurred under the security:
 - they provide that the stapled debt security and the share to which it is stapled are treated as a single share for the purposes of various provisions that define and apply specific treatments to shares bearing a fixed rate of dividend or having an equivalent consequence:
 - they provide that, despite the stapled security being treated as a share, the stapled debt is treated as debt for thin capitalisation purposes unless the debt is stapled in proportion to all shares other than fixed-rate shares:
 - they provide that stapled debt securities are to be treated in the same manner as debentures to which section FA 2 of the Income Tax Act 2007 applies, or to which section FC 1 or FC 2 of the Income Tax Act 2004 applies.
-