

House of Representatives
Supplementary Order Paper

Tuesday, 25 June 2013

**Taxation (Annual Rates, Foreign Superannuation,
and Remedial Matters) Bill**

Proposed amendments

Hon Todd McClay, in Committee, to move the following amendments:

Clause 2

After *clause 2(6)* (page 8, after line 15), insert:

(6B) **Sections 25B, 25C(1), 52B, 52C, and 59B** come into force on 4 September 2010.

After *clause 2(12)* (page 9, after line 11), insert:

(12B) **Section 37B** comes into force on 25 June 2013.

After *clause 2(14)* (page 9, after line 23), insert:

(15) **Sections 52D and 55B** come into force on 1 April 2016.

New clauses 25B and 25C

After *clause 25* (page 27, after line 17), insert:

25B Section CZ 25 amended (Land and buildings as revenue account property affected by Canterbury earthquakes and replaced—insurance or compensation, Government purchase)

- (1) In section CZ 25(1), words before paragraph (a), replace “2016–17 income year” with “2019–20 income year”.
- (2) In section CZ 25(1)(a)(i), replace “abolished” with “demolished”.
- (3) In section CZ 25(1)(a)(ii), replace “Government” with “Crown”.
- (4) In section CZ 25(1)(a)(ii), replace “section 53(1) of the Canterbury Earthquake Recovery Act 2011” with “section 53(1), 54, or 55 of the Canterbury Earthquake Recovery Act 2011”.
- (5) Replace section CZ 25(1)(b) with:

- “(b) in the absence of this section, would have in or before the current year a total amount of income under sections CB 6, CB 7, CB 12, CB 13, and CG 6 (which relate to income from certain disposals of land and from compensation for trading stock) from the consideration, compensation, or insurance for the affected property that exceeds the total amount of deductions under sections DB 23 and DB 27 (which relate to deductions for the cost or value of land) for the affected property; and”.
- (6) In section CZ 25(2), replace “subsection (1)(a)” with “**subsection (1)(b)**”.
- (7) Replace section CZ 25(3)(a) with:
- “(a) for the purposes of determining the value of the replacement property for section EA 2 (Other revenue account property), the amount of the person’s expenditure on the replacement property is reduced by—
- “(i) the amount calculated by multiplying the replacement cost by the excess recovery and dividing the result by the total amount of deductions under sections DB 23 and DB 27, if the calculated amount is less than or equal to the amount given by **subparagraph (ii)**; or
- “(ii) the total amount of income under sections CB 6, CB 7, CB 12, CB 13, and CG 6 from the consideration, compensation, or insurance for the affected property, if that amount is less than the amount given by **subparagraph (i)**; and”.
- (8) In section CZ 25(4)(a), replace “2015–16 income year” with “2018–19 income year”.
- (9) In section CZ 25(5)(a), replace “2015–16 income year” with “2018–19 income year”.

25C Section CZ 26 replaced (Land and buildings affected by Canterbury earthquakes—sections CB 9 to CB 12 overridden for Government purchases)

- (1) Replace section CZ 26 with:
- “CZ 26 Land and buildings affected by Canterbury earthquakes—sections CB 9 to CB 12 and CB 14 overridden for Crown purchases**
- Sections CB 9 to CB 12 and CB 14 (which relate to disposals within 10 years of acquisition) do not apply to a person and land or buildings purchased by the Crown from the person under section 53(1), 54, or 55 of the Canterbury Earthquake Recovery Act 2011.
- “Defined in this Act: land”.

- (2) In the heading to **section CZ 26**, replace “**CB 12**” with “**CB 11**”.
- (3) In **section CZ 26**, replace “**CB 12**” with “**CB 11**”.

New clause 37B

After *clause 37* (page 42, after line 12), insert:

37B Section EE 52 amended (Amount of depreciation recovery income when compensation received)

After section EE 52(3), insert:

“Compensation derived when item no longer owned

- “(4) If, in the absence of this subsection, the person would derive the amount of insurance, indemnity, or compensation after ceasing to own the item, the person is treated as deriving the amount immediately before the person ceases to own the item.”

New clauses 52B, 52C, and 52D

After *clause 52* (page 47, after line 26), insert:

52B Section EZ 23B amended (Property acquired after depreciable property affected by Canterbury earthquakes)

- (1) Replace section EZ 23B(1) and (2) with:

“When this section applies

- “(1) This section applies for a person and an income year (the **current year**) before the 2019–20 income year when the person,—

- “(a) in or before the current year, receives insurance or compensation (the **earthquake compensation**) for items of depreciable property (the **affected property**), each of which is—

- “(i) not depreciable intangible property; and

- “(ii) included in 1 of the categories (an **affected class**) of the person’s depreciable property referred to in **subsection (10)(b)**; and

- “(iii) included in an affected class that is not linked with a replacement interest under **section EZ 23BB**; and

- “(b) is entitled to the earthquake compensation because each item of the affected property, as a result of a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011, is affected by—

- “(i) damage meeting the requirements of section EE 47(4) (Events for purposes of section EE 44); or

- “(ii) a disposal and reacquisition under section EZ 23C or EZ 65; and
 - “(c) would have, in the absence of this section, from the earthquake compensation for the affected property in the affected class, depreciation recovery income under section EE 48 (Effect of disposal or event) in or before the current year; and
 - “(d) has a total amount of depreciation loss under section EE 48 for the affected property in the affected class that, treated as a positive amount, is less than the total amount of depreciation recovery income referred to in **paragraph (c)** by an amount (the **excess recovery**); and
 - “(e) plans in the current year to acquire depreciable property (the **replacement property**) meeting the requirements of subsection (7); and
 - “(f) gives written notice to the Commissioner under subsection (9)—
 - “(i) specifying the affected property and affected class; and
 - “(ii) linking, for the purposes of this section, each item of acquired replacement property with an affected class.
- “*Suspended recovery income*
- “(2) For an affected class, the amount that may be depreciation recovery income of the person in or after the current year (the **suspended recovery income**) is the excess recovery that remains at the beginning of the current year after—
 - “(a) adjustment under subsections (3) and (6) for an earlier income year; and
 - “(b) attribution to an earlier income year by **subsections (7B) and (8)**.
- “*Depreciation recovery income*
- “(2B) The person has an amount of depreciation recovery income for the current year equal to the amount of suspended recovery income that is attributed to the current year by **subsections (7B) and (8)**.”
 - (2) In section EZ 23B(3),—
 - (a) in the words before paragraph (a), insert “an affected class of” before “affected property”;
 - (b) in paragraph (b), replace “property” with “class”.
 - (3) In section EZ 23B(4),—
 - (a) in the words before paragraph (a), insert “an affected class of” before “affected property”;
 - (b) in paragraph (a), replace “property;” with “class;”.

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- (4) In section EZ 23B(5)(a)(i),—
- (a) replace “cost of the affected property:” with “cost of the affected class:”:
 - (b) replace “linked with the affected property” with “linked with the affected class”.
- (5) In section EZ 23B(6)—
- (a) in the words before paragraph (a), insert “an affected class of” before “affected property”:
 - (b) in paragraph (a)(ii), replace “; and” with “; or”.
 - (c) in paragraph (b), replace “property” with “class”.
- (6) Repeal section EZ 23B(7)(a) and (b).
- (7) After section EZ 23B(7), insert:
- “Depreciation recovery income: no acquisition, consent application, for building before end 2015–16 income year*
- “(7B) If a person has an amount of suspended recovery income for an affected class of buildings or grandparented structures and, by the end of the 2015–16 income year, there is replacement property (the **unconfirmed property**) that is linked to the affected class and has not been acquired and has not been the subject of an application to the appropriate authority for consent to construction,—
- “(a) the person has, in the 2015–16 income year, an amount of depreciation recovery income for the affected class equal to the suspended recovery income corresponding to the unconfirmed property; and
 - “(b) the suspended recovery income for the affected class is reduced by the amount referred to in **paragraph (a)**.”
- (8) Replace section EZ 23B(8) with:
- “Attribution of suspended recovery income to income year: other events*
- “(8) The person has, in the current year, an amount of depreciation recovery income for an affected class equal to the amount of suspended recovery income for the affected class—
- “(a) at the end of the current year, if that year is the 2018–19 income year and neither of **paragraphs (b) and (c)** apply earlier; or
 - “(b) when in the current year the person decides not to acquire more replacement property, if neither of **paragraphs (a) and (c)** apply earlier; or
 - “(c) when in the current year the person goes into liquidation or becomes bankrupt, if neither of **paragraphs (a) and (b)** apply earlier.”

52C New section EZ 23BB inserted (Interest in property acquired after depreciable property affected by Canterbury earthquakes)

After section EZ 23B, insert:

“EZ 23BB Interest in property acquired after depreciable property affected by Canterbury earthquakes

“When this section applies

- “(1) This section applies for a person and an income year (the **current year**) before the 2019–20 income year when the person,—
- “(a) in or before the current year, receives insurance or compensation (the **earthquake compensation**) for items of depreciable property (the **affected property**), each of which is—
- “(i) not depreciable intangible property; and
- “(ii) not property for which the person uses the pool method; and
- “(iii) included in 1 of the categories (an **affected class**) of the person’s depreciable property referred to in **subsection (12)(b)**; and
- “(iv) not linked with replacement property under section EZ 23B; and
- “(b) is entitled to the earthquake compensation because each item of the affected property, as a result of a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011, is affected by—
- “(i) damage meeting the requirements of section EE 47(4) (Events for purposes of section EE 44); or
- “(ii) a disposal and reacquisition under section EZ 23C; and
- “(c) would have, in the absence of this section, from the earthquake compensation for the affected class, depreciation recovery income under section EE 48 (Effect of disposal or event) in or before the current year; and
- “(d) has a total amount of depreciation loss under section EE 48 for the affected class that, treated as a positive amount, is less than the total amount of depreciation recovery income referred to in **paragraph (c)** by an amount (the **excess recovery**); and
- “(e) has in the current year an interest (a **replacement interest**) in a voting interest in a company (the **owning company**) having the purpose of acquiring depreciable property (the **replacement property**) meeting the requirements of **subsection (6)**; and

- “(f) holds the voting interest in the owning company or is the settlor of a trust of which the trustee holds the voting interest; and
- “(g) gives written notice to the Commissioner under **subsection (11)**.

“Suspended recovery income

- “(2) For a replacement interest, the amount that may be depreciation recovery income of the person in or after the current year (the **suspended recovery income**) is the excess recovery, for the affected property with which the replacement interest is linked under **subsections (11) and (12)**, that remains at the beginning of the current year after—
 - “(a) adjustment under **subsections (3), (8), and (9)** for an earlier income year; and
 - “(b) attribution to an earlier income year by **subsections (8) to (10)**.

“Effect of acquiring interest in replacement property if suspended recovery income from affected class

- “(3) If the person acquires a replacement interest and links the replacement interest with an affected class, the amount given by **subsection (4)**—
 - “(a) is an amount of suspended recovery income for the replacement interest; and
 - “(b) is a reduction in the amount of the depreciation recovery income for the affected class.

“Suspended recovery income for replacement interest and reduction of suspended recovery income for affected class

- “(4) The amount under **subsection (3)(a) and (b)** for a replacement interest and affected class is—
 - “(a) zero, if the cost of the affected property in the affected class equals or is less than the total of the fractional interest values for other replacement interests acquired by the person with or before the replacement interest; or
 - “(b) the amount calculated using the formula—

$$\frac{\text{limited replacement cost} \times \text{excess}}{\text{affected cost.}}$$

“Definition of items in formula

- “(5) In the formula,—
 - “(a) **limited replacement cost** is the lesser of—
 - “(i) the fractional interest value of the replacement interest;
 - “(ii) the amount by which the total cost for the person of the affected property in the affected class

exceeds the total amount of the fractional interest values of other replacement interests acquired by the person with or before the replacement interest:

“(b) **excess** is the excess recovery for the affected class:

“(c) **affected cost** is the total cost for the person of the affected property in the affected class.

“Requirements for replacement property

“(6) An item of replacement property for a person or owning company must—

“(a) be included in the same category under **subsection (12)(b)** as the affected class with which the person links the item, if the affected class is described in **subsection (12)(b)(i) or (ii)**; and

“(b) be located in greater Christchurch as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011, if the item is a building or commercial fit-out.

“Depreciation recovery income and suspended recovery income

“(7) The amount of suspended recovery income for a person’s replacement interest is not depreciation recovery income for the person arising from the replacement interest unless it is attributed to an income year by **subsections (8) and (9)**.

“Depreciation recovery income: disposal of replacement property by owning company

“(8) If the owning company in which a person has a replacement interest disposes of the replacement property in an income year, and **subsection (10)** does not apply earlier,—

“(a) the person has, in the income year for the replacement interest, an amount of depreciation recovery income equal to the fractional interest value of the replacement interest calculated under **subsection (13)**; and

“(b) the suspended recovery income for the replacement interest is reduced by the amount referred to in **paragraph (a)**.

“Depreciation recovery income: no acquisition, consent application, for building before end 2015–16 income year

“(9) If a person has an amount of suspended recovery income for a replacement interest arising from replacement property that is a building and, by the end of the 2015–16 income year, replacement property (the **unconfirmed property**) for the replacement interest has not been acquired by the owning company and is not the subject of an application by the owning company to the appropriate authority for consent to construction,—

- “(a) the person has, in the 2015–16 income year, an amount of depreciation recovery income for the replacement interest equal to the suspended recovery income corresponding to the unconfirmed property; and
- “(b) the suspended recovery income for the replacement interest is reduced by the amount referred to in **paragraph (a)**.

“Depreciation recovery income: other events

- “(10) The person has, in an income year, an amount of depreciation recovery income equal to the suspended recovery income for a replacement interest and affected property, and the suspended recovery income for the replacement interest and affected property is reduced to zero,—
 - “(a) at the end of the income year, if—
 - “(i) the income year is the 2018–19 income year; and
 - “(ii) the owning company does not acquire the replacement property relating to the replacement interest and the affected property before the end of the income year; and
 - “(iii) neither of **paragraphs (b) and (c)** apply earlier; or
 - “(b) when in the income year the person disposes of the replacement interest, if neither of **paragraphs (a) and (c)** apply earlier; or
 - “(c) when in the income year the person goes into liquidation or becomes bankrupt, if neither of **paragraphs (a) and (b)** apply earlier.

“Notice of election for affected property

- “(11) A person choosing to rely on this section to suspend in a current year the recognition of suspended recovery income from earthquake compensation must give written notice to the Commissioner—
 - “(a) for the earliest income year (the **estimate year**) in which the amount of the earthquake compensation for the affected property can be reasonably estimated, by the later of 31 January 2012 and the date on which the return of income is filed for the estimate year; and
 - “(b) if the current year is after the estimate year,—
 - “(i) for each income year between the estimate year and the current year, by the date on which the return of income is filed for that income year; and
 - “(ii) for the current year, by the date on which the return of income is filed for the current year.

“Contents of notice of election

- “(12) A notice under **subsection (11)** must—

- “(a) describe the affected property; and
- “(b) indicate in which of the following categories each item of affected property is included:
 - “(i) a building or grandparented structure;
 - “(ii) commercial fit-out;
 - “(iii) depreciable property not referred to in **subparagraphs (i) and (ii)**; and
- “(c) give details of each item of replacement property in which a replacement interest is held in the current year, and the affected class to which the person is linking the replacement interest; and
- “(d) for each replacement interest held in the current year, give the amount of the expenditure by the owning company on the replacement property, the shareholding of the person’s holding entity in the owning company, and the shareholding of the person in, or the fraction of the trust corpus that has been settled by the person on, the person’s holding entity; and
- “(e) for each category of replacement property, give the amount of the suspended recovery income at the end of the current year; and
- “(f) for each category of replacement property, give the amount of depreciation recovery income for the current year.

“*Formula for calculating fractional interest value*

- “(13) For a person with a replacement interest in replacement property, the fractional interest value of the replacement interest for the purposes of this section is the value calculated using the formula—

person’s fractional interest × replacement expenditure.

“*Definition of items in formula*

- “(14) In the formula,—
- “(a) **person’s fractional interest** is—
 - “(i) the voting interest of the person in the owning company; or
 - “(ii) the fraction calculated by multiplying the voting interest in the owning company held by the trustee of a trust of which the person is a settlor by the fraction of the trust corpus that has been settled by the person:
 - “(b) **replacement expenditure** is the amount of the expenditure by the owning company on the replacement property.

“Relationship to subpart EE

“(15) This section overrides subpart EE (Depreciation).

“Defined in this Act: adjusted tax value, amount, assessable income, building, commercial building, commercial fit-out, depreciable property, depreciation loss, depreciation recovery income, grandparented structure, income year, liquidation, notice, return of income”.

52D Sections EZ 23C to EZ 23G repealed

- (1) Repeal sections EZ 23C to EZ 23G.
- (2) **Subsection (1)** applies for the 2016–17 and later income years.

New clause 55B

After *clause 55* (page 49, after line 12), insert:

55B New heading and sections EZ 65 to EZ 69 inserted

- (1) After section EZ 64, insert:

“Damage from Canterbury earthquakes

“EZ 65 Insurance for Canterbury earthquake damage of property: deemed sale and purchase

“When this section applies

“(1) This section applies for a person and an item of depreciable property and an income year before the 2019–20 income year when—

- “(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
- “(b) the person is entitled to an amount of insurance or compensation for the damage to the item; and
- “(c) the item is assessed by the payer of the insurance or compensation (the **insurer**) as uneconomic to repair; and
- “(d) the damage does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44).

“Deemed sale and repurchase of item

“(2) The person is treated as, on the date of the Canterbury earthquake,—

- “(a) disposing of the item for the amount of insurance or compensation; and
- “(b) reacquiring the item for zero consideration.

“Relationship with section EE 52

“(3) This section overrides section EE 52 (Amount of depreciation recovery income when compensation received).

“Defined in this Act: amount, depreciable property, income year

“EZ 66 Insurance for Canterbury earthquake damage of property: limit on depreciation recovery income

“When this section applies

- “(1) This section applies for a person and an item of depreciable property and an income year before the 2019–20 income year when—
- “(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
 - “(b) the person is entitled to an amount of insurance or compensation for the damage to the item; and
 - “(c) the damage does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44); and
 - “(d) **section EZ 65** does not apply for the item.

“Limit on depreciation recovery income under section EE 52

- “(2) If the person would derive depreciation recovery income under section EE 52 (Amount of depreciation recovery income when compensation received) in an income year for the item in the absence of this section, the person derives in the income year an amount of depreciation recovery income equal to the lesser of—
- “(a) the amount of depreciation recovery income under section EE 52 that the person would derive in the income year for the item in the absence of this section;
 - “(b) the total of the amounts of depreciation loss for which the person has been allowed deductions for the item.

“Relationship with section EE 52

- “(3) This section overrides section EE 52.

“Defined in this Act: amount, deduction, depreciable property, depreciation loss, depreciation recovery income, income year

“EZ 67 Item treated as available for use if access restricted due to Canterbury earthquake

An item of depreciable property is treated for an income year as being available for use while access to the item is affected by a restriction imposed due to the effects of a Canterbury earthquake (as defined in section 4 of the Canterbury Earthquake Recovery Act 2011), if—

- “(a) the item was used or available for use immediately before the restriction was imposed; and
- “(b) the item would be used or available for use in the absence of the restriction; and
- “(c) the income year is the 2018–19 or an earlier income year.

“Defined in this Act: depreciable property, income year

“EZ 68 Insurance for Canterbury earthquake damage causing disposal: optional timing rule for income, deductions

“When this section applies

- “(1) This section applies for a person and an item of depreciable property when—
- “(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
 - “(b) the damage—
 - “(i) results in the item being affected by a disposal and reacquisition under **section EZ 67**; or
 - “(ii) meets the requirements of section EE 47(4) (Events for purposes of section EE 44); and
 - “(c) the person is entitled to an amount of insurance or compensation for the damage to the item; and
 - “(d) the person chooses to apply this section for all items of depreciable property meeting the requirements of **paragraphs (a) to (c)**.

“Attribution of income from insurance and disposal

- “(2) If the amount of insurance or compensation for the damage (the **insurance receipt**) is derived or able to be reasonably estimated before the end of the 2018–19 income year, the person’s income from the insurance receipt and the consideration derived from the disposal of the item is attributed to the earlier of—
- “(a) the 2018–19 income year;
 - “(b) the first income year in which—
 - “(i) the amount of the cost of disposing of the item (the **disposal cost**) is or has been incurred or able to be reasonably estimated; and
 - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated; and
 - “(iii) the consideration from the disposal of the item is or has been derived or able to be reasonably estimated.

“Attribution of deductions

- “(3) If the disposal cost is incurred or able to be reasonably estimated before the end of the 2018–19 income year, the person’s deductions for the disposal cost and for depreciation loss under section EE 48 (Effect of disposal or event) are attributed to the earlier of—
- “(a) the 2018–19 income year;
 - “(b) the first income year in which—
 - “(i) the disposal cost is or has been incurred or able to be reasonably estimated; and

- “(ii) the insurance receipt is or has been derived or able to be reasonably estimated; and
- “(iii) the consideration from the disposal of the item is or has been derived or able to be reasonably estimated.

“Relationship with other sections

- “(4) This section overrides sections EE 1, EE 22, and EE 48 (which state when depreciation loss and depreciation recovery income arise) in relation to the timing of the person’s—
 - “(a) income from the insurance receipt and consideration from the disposal of the item:
 - “(b) deductions for the disposal cost and depreciation loss.
- “Defined in this Act: amount, deduction, grandparented structure, income, income year

“EZ 69 Insurance for repairs of Canterbury earthquake damage: optional timing rule for income, deductions

“When this section applies

- “(1) This section applies for a person and an item of depreciable property when—
 - “(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
 - “(b) the damage—
 - “(i) does not result in the item being subject to a disposal and reacquisition under **section EZ 65**; and
 - “(ii) does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44); and
 - “(c) the person is entitled to an amount of insurance or compensation for the damage to the item; and
 - “(d) the person chooses to apply this section for all items of depreciable property meeting the requirements of **paragraphs (a) to (c)**.

“Attribution of income from insurance

- “(2) If the amount of insurance or compensation for the damage (the **insurance receipt**) is derived or able to be reasonably estimated before the end of the 2018–19 income year, the person’s income from the insurance receipt is attributed to the earlier of—
 - “(a) the 2018–19 income year:
 - “(b) the first income year in which—

- “(i) the amount of expenditure for total repair of the damage (the **repair cost**) is or has been incurred or able to be reasonably estimated; and
 - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated.
- “*Attribution of deductions for repairs*
- “(3) If the repair cost is incurred or able to be reasonably estimated before the end of the 2018–19 income year, the person’s deductions for the repair cost are attributed to the earlier of—
 - “(a) the 2018–19 income year:
 - “(b) the first income year in which—
 - “(i) the repair cost is or has been incurred or able to be reasonably estimated; and
 - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated.
- “*Relationship with other sections*
- “(4) This section overrides sections CG 4, EE 22, and EE 52 (which provide for receipts of insurance or indemnity payments) in relation to the timing of the person’s—
 - “(a) income from the insurance receipt:
 - “(b) deductions for the repair cost.
- “Defined in this Act: amount, deduction, income, income year”.
- (2) **Subsection (1)** applies for the 2016–17 and later income years.

New clause 59B

After *clause 59* (page 49, after line 30), insert:

59B Section FZ 7 replaced (Valuation of group assets: insurance proceeds from Canterbury earthquake)

Replace section FZ 7 with:

“FZ 7 Valuation of group assets: insurance proceeds from Canterbury earthquake

“*When this section applies*

- “(1) This section applies for the purposes of sections FE 16 (Total group assets) and FE 18 (Measurement of debts and assets of worldwide group) and a person if—
 - “(a) an asset of the person’s New Zealand group is damaged as a result of a Canterbury earthquake, as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
 - “(b) the asset is impaired or derecognised, under generally accepted accounting practice as a result of the damage; and
 - “(c) insurance for the damage is recognised at a later date under generally accepted accounting practice.

“Optional treatment of insurance

- “(2) The person may choose to include an amount of the insurance, corresponding to the amount of the impairment or the derecognised value of the asset, in the value of the total group assets of the person’s New Zealand group during the period—
- “(a) beginning with the impairment or derecognition of the asset; and
- “(b) ending before the earlier of—
- “(i) the recognition of the amount of insurance:
- “(ii) the beginning of the 2019–20 income year.

“Corresponding treatment for worldwide group

- “(3) If a person includes an amount under **subsection (2)** in the value of the total group assets of the person’s New Zealand group for a period, the person must include the amount in the value of the total group assets of the person’s worldwide group for the period.

“Notice to Commissioner

- “(4) A person choosing to apply **subsection (2)** for an income year must give to the Commissioner—
- “(a) notice that the person has applied this section for the income year; and
- “(b) the amount of income that would arise under section CH 9 (Interest apportionment: excess debt entity) for the income year in the absence of this section; and
- “(c) the amount of income that arises under section CH 9 for the income year after the application of this section; and
- “(d) further information required by the Commissioner.

“Form and timing of notice

- “(5) The information required by **subsection (4)** must be given—
- “(a) in the form and by the means prescribed by the Commissioner; and
- “(b) no later than the later of 30 November 2012 and the day by which the person is required to make a return of income for the corresponding tax year.

“Defined in this Act: Commissioner, generally accepted accounting practice, income year, return of income, total group assets”.

Explanatory note

This Supplementary Order Paper proposes a number of changes to existing tax law in the *Income Tax Act 2007* relating to the consequences of the Canterbury earthquakes. The changes include:

- extending the time for the expiry of the current measures from the end of the 2015–16 income year to the end of the 2018–19 income year:

- limiting current measures that allow the recognition of a person's income from compensation for damaged depreciable property to be deferred if the person intends to acquire replacement property; deferral after the 2015–16 income year will not be available for income from a building unless the person applies before the end of the 2015–16 income year for consent to construction of a replacement building;
- allowing the recognition of a person's income from compensation for damaged depreciable property to be deferred if the person acquires voting interests in a company that is intended to acquire replacement property;
- providing for the recognition of income from an insurance payment for damaged property if the insurance payment is derived after a disposal of the property.

Current *section EZ 23B* allows the recognition of a person's income from damaged depreciable property to be deferred if the owner gives notice to the Commissioner that the owner intends to acquire replacement property. The amount of income deferred is referred to as *suspended recovery income*. *New subsections (7B) and (7C)* are inserted to limit the deferral after the 2015–16 income year for damaged buildings to situations in which an application for consent to construct a replacement building has been made. Other changes clarify the operation of the section in conjunction with *new section EZ 23BB*.

New section EZ 23BB is inserted as a companion provision to current *section EZ 23B*. It allows the recognition of income arising from compensation for depreciable property to be deferred if the owner gives notice to the Commissioner that the owner intends to acquire an interest in a company that will acquire replacement property. The main purpose of the section is to cater for situations in which the owner of an affected building is investing in the construction of a replacement building as part of a group of investors. The section also applies to depreciable property other than buildings.

In order to extend the period allowed for deferring the recognition of income, several provisions with limited application periods need to be re-enacted. In particular, *sections EZ 23C to EZ 23G* need to be replaced. Those sections apply for the 2010–11 to 2015–16 income years. They were originally inserted after *section EZ 23B* because that section related to the Canterbury earthquakes. However, *section EZ 23B* relates to depreciation and is in a sequence of sections also relating to depreciation. *Sections EZ 23C to EZ 23G* do not relate directly to depreciation and will be re-enacted elsewhere under a new heading as *sections EZ 65 to EZ 69*. *Section FZ 7*, which also needs to be replaced, is not moved.

Sections CZ 25 and CZ 26 are amended to update cross-references and improve some wording.

In *section EE 52, new subsection (4)* provides that if damaged property is disposed of before compensation is received, the compensation will be treated as being derived immediately before the disposal.
