

# House of Representatives

# Supplementary Order Paper

Tuesday, 7 February 2012

## Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill

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### *Proposed amendments*

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

#### *Clause 2*

*Subclause (10)*: to omit “**37, 38, 39**” (line 5 on page 8) and substitute “**35B(2), 37, 38, 39(1A), (1) and (2)**”.

*New subclause (17B)*: to insert, after *subclause (17)* (after line 16 on page 8), the following:

(17B) **Sections 88(12C), 88B, 89(a), and 90B** are treated as coming into force on 1 January 2011.

*Subclause (18)*: to omit “**36, 62, 88(3), (5), (6), and (8)**” (line 17 on page 8) and substitute “**35B(1), (3) and (4), 36, 39(1B), (1C), (1D), and (1E), 55B, 55C, 62, 88(3), (5), (6), (8), (8B), (12CB), and (14B)**”.

#### *New clause 35B*

To insert, after *clause 35* (after line 22 on page 18), the following:

#### **35B Limitation on deductions by persons with interests in look-through companies**

- (1) In section HB 11(5)(c), “paragraph (b)” is replaced by “paragraph (b) by the person or another person”.
- (2) Section HB 11(7)(a) is replaced by the following:
  - “(a) income that the person has by virtue of section HB 1 in the income year and previous income years:
  - “(ab) if the person has FIF income or a FIF loss, an amount equal to the difference between the amount that would, under section HB 1, be the person’s proportion of the dividend paid by a FIF to the LTC if section CD 36(1) (Foreign investment fund income) were ignored, and

the amount that is the person's FIF income, for the relevant income year and FIF."

- (3) Section HB 11(12) is replaced by the following:

*“Some definitions*

- “(12) In this section,—

**“guarantor** means—

- “(a) a person (**person A**) who has an effective look-through interest for the LTC, if—

“(i) person A, ignoring section HB 1, secures the relevant debt by guarantee or indemnity:

“(ii) an owner's associate of person A secures the relevant debt by guarantee or indemnity:

- “(b) a person who is not described in **paragraph (a)(i) and (ii)** but who secures the relevant debt by guarantee or indemnity, if person A or an owner's associate also secures the relevant debt as described in **paragraph (a)(i) or (ii)**

**“look-through company deduction** means, for the person and the income year, the amount of the deductions that the person would be allowed if they were treated as having only income and deductions arising from the application of this subpart

**“owner's associate** means a person who does not have an effective look-through interest for the LTC and who is—

- “(a) a relative of a person who has an effective look-through interest for the LTC:

- “(b) a trustee who is associated in their capacity of trustee, with a person who has an effective look-through interest for the LTC

**“recourse property** means property which a creditor has recourse to, to enforce a guarantee or indemnity for the relevant debt, if the guarantee or indemnity expressly provides recourse to only that property

**“secured amounts** means, for the person, the lesser of the following applicable amounts:

- “(a) the amount of the look-through company's debt ignoring section HB 1 (the **secured debt**) for which the person is a guarantor, divided by the total number of guarantors for the secured debt:

- “(b) the proportion of the market value of recourse property that is attributable to the person, net of higher-ranking calls whether actual, future or contingent.”

- (4) In section HB 11, in the list of defined terms, “FIF loss”, “guarantor”, “owner's associate”, and “recourse property” are inserted.

*Clause 39*

*New subclause (1A)*: to insert, before *subclause (1)* (before line 9 on page 19), the following:

(1A) Section HG 11(7)(a) is replaced by the following:

- “(a) income that the partner has by virtue of section HG 2 in the income year and previous income years:
- “(ab) if the partner has FIF income or a FIF loss, an amount equal to the difference between the amount that would be the partner’s share of the dividend paid by a FIF to the limited partnership if section CD 36(1) (Foreign investment fund income) were ignored, and the amount that is the partner’s FIF income, for the relevant income year and FIF.”

*New subclauses (1B) to (1E)*: to insert, after *subclause (1)* (after line 16 on page 19), the following:

(1B) In section HG 11(12), after the definition of **capital contribution**, the following is inserted:

“**guarantor** means—

- “(a) a partner, if—
  - “(i) the partner secures the relevant debt by guarantee or indemnity:
  - “(ii) the partner’s associate secures the relevant debt by guarantee or indemnity:
- “(b) a person who is not described in **paragraph (a)(i) and (ii)** but who secures the relevant debt by guarantee or indemnity, if the partner or a partner’s associate also secures the relevant debt as described in **paragraph (a)(i) or (ii)**”.

(1C) In section HG 11(12), in the definition of **partner’s associate**, paragraph (a), “partner” is replaced by “partner, but excluding a person under paragraph (v) of the definition of **relative** in **section YA 1** (Definitions)”.

(1D) In section HG 11(12), the definition of **secured amounts** is replaced by the following:

“**recourse property** means property which a creditor has recourse to, to enforce a guarantee or indemnity for the relevant debt, if the guarantee or indemnity expressly provides recourse to only that property

“**secured amounts** means, for the partner, the lesser of the following applicable amounts—

- “(a) the amount of the limited partnership’s debt ignoring section HG 2 (the **secured debt**) for which the partner is a guarantor, divided by the total number of guarantors for the secured debt:

- “(b) the proportion of the market value of recourse property that is attributable to the partner, net of higher-ranking calls whether actual, future or contingent.”
- (1E) In section HG 11, in the list of defined terms, “FIF loss”, “guarantor”, and “recourse property” are inserted.

*New clauses 55B and 55C*

To insert, after clause 55 (after line 13 on page 23), the following:

**55B Qualifying companies: transition into partnership**

- (1) In section HZ 4B(5), in the words before the paragraphs, “subsection (2)” is replaced by “subsection (2) for the transitional income year and later years”.
- (2) Section HZ 4B(5)(a) is replaced by the following:
- “(a) for calculating amounts under section HG 11(5)(a) for shares that were held at the end of the income year (**the last year**) before the transitional income year, they may choose to use the market value or the accounting book value of those shares as at the end of the last year. Calculations under section HG 11(7)(b) and (8)(b) are changed to account for the valuation under this paragraph; or”.

**55C Qualifying companies: transition into look-through companies**

- (1) In section HZ 4C(2), in the words before the paragraphs, “the look-through company” is replaced by “the look-through company for the transitional income year and later years”.
- (2) Section HZ 4C(2)(a) is replaced by the following:
- “(a) for calculating amounts under section HB 11(5)(a) for shares that were held at the end of the income year (**the last year**) before the transitional income year, they may choose to use the market value or the accounting book value of those shares as at the end of the last year. Calculations under section HB 11(7)(b) and (8)(b) are changed to account for the valuation under this paragraph; or”.

*Clause 88*

*New subclause (8B)*: to insert, after *subclause (8)* (after line 33 on page 33), the following:

- (8B) The following is inserted in the appropriate alphabetical order:
- “**guarantor** is defined in—
- “(a) **section HB 11(12)** (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section:

- “(b) **section HG 11(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.

*New subclauses (12B) and (12C):* to insert, after *subclause (12)* (after line 10 on page 34), the following:

- (12B) The following is inserted in the appropriate alphabetical order:

“**owner’s associate** is defined in **section HB 11(12)** (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section”.

- (12C) In the definition of **ownership interest**, “and section YC 18B (Corporate reorganisations not affecting economic ownership)” is replaced by “, and in sections YC 18B and **YC 19B** (which relate to corporate reorganisations)”.

*New subclause (14B):* to insert, after *subclause (14)* (after line 33 on page 34), the following:

- (14B) The following is inserted in the appropriate alphabetical order:

“**recourse property** is defined in—

- “(a) **section HB 11(12)** (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section:

- “(b) **section HG 11(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.

*New clause 88B*

To insert, after *clause 88* (after line 22 on page 35), the following:

**88B When sections YC 8 to YC 19 apply**

In section YC 7, in both the heading and the text, “YC 19” is replaced by “YC 19B”.

*Clause 89*

To omit *clause 89* (lines 23 to 26 on page 35) and substitute the following:

**89 Reverse takeovers**

In section YC 18(6),—

- (a) “this section” is replaced by “ this section and **section YC 19B**”:

- (b) “as determined under section” is replaced by “determined by applying section” in each place where it appears.

*New clause 90B*

To insert, after *clause 90* (after line 30 on page 35), the following:

**90B New section YC 19B**

After section YC 19, the following is inserted:

**“YC 19B Treatment when certain trusts terminated**

*“When this section applies*

“(1) This section applies when—

“(a) a trust established for the sole benefit of the New Zealand government or an overseas government is terminated; and

“(b) all the ownership interests held by the trustees of the trust in a company are transferred to the government beneficiary.

*“Date of acquisition of shares*

“(2) The government beneficiary is treated as acquiring the ownership interests transferred by the trustees on the date the trustees acquired the ownership interests.

*“Definition*

“(3) In this section, **ownership interest** has the meaning given in section YC 18(6).”

Defined in this Act: company, New Zealand, ownership interest, trustee

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### **Explanatory note**

This Supplementary Order Paper (SOP) proposes amendments to the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill. The changes are remedial and technical in nature. The changes—

- correct issues with some definitions in the look-through company and limited partnerships deduction limitation regimes. Multiple guarantors, associated guarantors, and multiple guarantees are dealt with on the basis of apportionment. Limited recourse guarantees are dealt with on the basis of apportionment of property at risk;
- correct application and valuation issues for the initial basis calculations when transitioning from a qualifying company to either a look-through company or a limited partnership;
- allow certain FIF-related amounts to count positively in the basis calculation for look-through companies and limited partnerships;
- allow continuity of corporate shareholding for tax purposes when a trust established for the sole benefit of a government beneficiary is terminated and the shareholding is transferred to the government body.

*Clause by clause analysis*

Changes to *clause 2* provide appropriate commencement dates for the inserted clauses.

*New clause 35B* amends *section HB 11(7) of the Income Tax Act 2007 (the Act)* and replaces *section HB 11(12) of the Act* to correct the calculation of FIF income in the look-through companies deduction limitation regime and to insert new definitions for *guarantor*, *owner's associate*, and *recourse property* for that regime. Also, the definition of *secured amounts* is corrected, so that the calculation of secured amounts in the look-through companies deduction limitation regime is on an apportionment basis.

*New clause 39(1A)* amends *section HG 11(7) of the Act* to correct the calculation of FIF income in the limited partnerships deduction limitation regime.

*New clauses 39(1B) to (1E)* amend *section HG 11(12) of the Act* to insert new definitions of *guarantor* and *recourse property*, and to amend the definition of *partner's associate*, for the limited partnerships deduction limitation regime. Also, the definition of *secured amounts* is corrected, so that the calculation of secured amounts in the limited partnerships deduction limitation regime is on an apportionment basis.

*New clause 55B* amends *section HZ 4B of the Act* to correct application and valuation issues for the initial basis calculations when transitioning from a qualifying company to a limited partnership.

*New clause 55C* amends *section HZ 4C of the Act* to correct application and valuation issues for the initial basis calculations when transitioning from a qualifying company to a look-through company.

Changes to *clause 88* provide appropriate definitions, in *section YA 1 of the Act*. *New subclause (8B)* inserts a definition of *guarantor* consequential to the changes in *new clauses 35B and 39(1B)*. *New subclause (12B)* inserts a definition of *owner's associate* consequential to the changes in *new clause 35B*. *New subclause (12C)* amends the definition of *ownership interest* consequential to allowing continuity of corporate shareholding for tax purposes when a trust established for the sole benefit of a government beneficiary is terminated and the shareholding is transferred to the government body. *New subclause (14B)* inserts a definition of *recourse property* consequential to the changes in *new clauses 35B and 39(1B)*.

*New clause 88B* amends *section YC 7 of the Act* consequential to allowing continuity of corporate shareholding for tax purposes when a trust established for the sole benefit of a government beneficiary is terminated and the shareholding is transferred to the government body.

*New clause 89* amends *section YC 18 of the Act* consequential to allowing continuity of corporate shareholding for tax purposes when a trust established for the sole benefit of a government beneficiary is terminated and the shareholding is transferred to the government body.

*New clause 90B* inserts a *new section YC 19B of the Act* to allow continuity of corporate shareholding for tax purposes when a trust established for the sole

benefit of a government beneficiary is terminated and the shareholding is transferred to the government body.

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