

# **Taxation (Beneficiary Income of Minors, Services-related Payments and Remedial Matters) Bill**

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*Commentary on the Bill*

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# Changes to Income Tax Act 1994

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## **EXEMPTION FOR OVERSEAS STAKE MONEY**

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*(Clause 6)*

### **Summary of proposed amendment**

Stake money won by a horse or greyhound competing in any overseas race is to be exempted from income tax. This amendment ensures that stake money won in an overseas race is treated in the same manner as stake money won in a race held in New Zealand.

### **Application date**

The amendment applies from the income year beginning on 1 April 2001.

### **Key features**

Section CB 9(c) of the Income Tax Act 1994 is being amended to ensure stake money won by bloodstock and greyhounds in overseas races is exempt from income tax.

The exemption of overseas stake money under CB 9(c) will mean that expenditure relating to deriving that stake money will be non-deductible under section BD 2(b).

### **Background**

In August the Government announced that race stakes won overseas would become exempt from income tax.

Stake money is the prize money paid to the owner of a horse or greyhound that wins a race. Stake money paid in respect of a race held in New Zealand has been exempt from income tax since 1965. Stake money won in an overseas race is taxable if the owner participates in the race as part of a business. However, expenses incurred in racing, whether in New Zealand or overseas, are generally not deductible.

Overseas racing was not considered when the tax exemption for stake money won domestically was introduced in 1965. This was probably because sending horses overseas to race at this time was not as common as it is today.

A key tax principle is that business activities are subject to income tax, whereas hobbies are not. Racing can be undertaken to increase the value of bloodstock (breeding related racing) or for the personal entertainment of the owner (non-breeding related racing). As owners can generally expect that the expenses incurred in racing will exceed the stake money won, racing not related to breeding whether undertaken domestically or internationally, is more in the nature of a hobby than a business activity and should thus not be subject to income tax.

Although breeding-related racing may be closely associated with a breeding business, to limit avoidance opportunities and tax-driven behaviour, stake money won in breeding-related racing, whether undertaken domestically or internationally, should also not be subject to income tax.



## **SERVICES-RELATED PAYMENTS: RESTRICTIVE COVENANTS AND EXIT INDUCEMENTS**

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*(Clauses 7, 8, 9, 12 and 24)*

### **Summary of proposed amendments**

The bill introduces amendments to tax certain services-related payments which represent a risk to the tax base. These payments are referred to as “restrictive covenant” and “exit inducement” payments. A “restrictive covenant” payment is the consideration given for a restriction on a person’s ability to perform services. An “exit inducement” payment is the consideration given to a person to give up a particular status or position in the context of personal services.

These payments pose a risk to the personal services income tax base because they are non-taxable to the recipient and can be paid in substitution for taxable personal services income (including salary or wages), and they may be deductible in some cases to the payer.

In addition to the amendments making restrictive covenant and exit inducement payments taxable, there are a number of associated amendments. These include excluding restrictive covenant payments connected with the sale of a business from the charging provision, excluding expenditure on restrictive covenants and exit inducements from the capital prohibition rule, and including restrictive covenant and exit inducement payments made to employees within the PAYE rules.

### **Application date**

The amendments will apply to amounts derived on and after the date of enactment. This will include such amounts derived in respect of arrangements made before the date of enactment.

### **Key features**

The amendments addressing the revenue risk posed by these services-related payments relate to the restrictive covenant charging provision (new sections CHA 1 and GC 14F of the Income Tax Act 1994), the exit inducement charging provision (new section CHA 2), deductibility matters (new sections DJ 20, DJ 21 and EO 6) and the PAYE rules (section OB 1).

Under the restrictive covenant-related amendments (new sections CHA 1 and GC 14F):

- If a person gives an undertaking which has the effect of restricting the person’s ability to perform services as an employee, office holder or independent contractor, any amount derived by that person or any other person in respect of the undertaking will be taxable to that person.

- Restrictive covenant payments received on the sale of a business as a going concern will be excluded from the restrictive covenant charging provision. (This exclusion only applies if a number of conditions are satisfied.)
- A specific anti-avoidance provision is intended to ensure that the charging provision cannot be circumvented by an arrangement such as an employee making a restrictive covenant agreement with a wholly-owned company, the shares in which the employee subsequently sells to his or her employer.

The charging provision for exit inducements (new section CHA 2) will tax any amount derived by a person for a loss of a vocation, position or status, or for leaving a position.

Under the deductibility-related amendments (new sections DJ 20, DJ 21 and EO 6):

- Express relief from the exclusion for capital expenditure will be provided for persons who incur expenditure on making restrictive covenant and exit inducement payments. This will facilitate their being able to deduct such payments, thereby maintaining consistency with the treatment of expenditure on salary and wages and other payments for services.
- Restrictive covenant and exit inducement payments will be non-deductible to the extent that they relate to work of a capital nature undertaken by the recipient employee. (Salary and wages are similarly non-deductible in such a situation.)
- Recipients of restrictive covenant payments who have been taxed on them will be allowed a deduction to the extent that they have to refund the payment because they do not comply with the covenant for its full term.

Restrictive covenant and exit inducement payments made to employees will be included within the PAYE rules (section OB 1).

The ordinary tax accounting principles and provisions of the Income Tax Act 1994 will apply to determine the time at which services-related payments are included in gross income or allowed as a deduction. No special amendments are being made in this regard.

## **Background**

The New Zealand tax system generally maintains a capital-revenue boundary: capital receipts are generally not taxed, whereas revenue receipts are taxed. Boundaries in the tax system give scope for amounts that may lie on one side of the boundary to be legally recharacterised to lie on the other side of the boundary.

This boundary becomes problematic in the context of certain services-related payments. Payments that would generally be taxable in the same manner as wages and salary may be capable of being characterised as non-taxable capital payments. This creates a risk to the personal services income tax base.

There are two components to the services-related payments problem that are addressed by the amendments in the bill. The identified problem areas are “restrictive covenant” and “exit inducement” payments. A “restrictive covenant” payment is the consideration given for a restriction on a person’s ability to perform services. An “exit inducement” payment is the consideration given to a person to give up a particular status or position in the context of personal services.

The New Zealand courts have held that payments for restrictive covenants<sup>1</sup> and exit inducements<sup>2</sup> are non-taxable capital receipts.

These services-related payments are, therefore, non-taxable in the hands of the recipients, but may be deductible in some cases to the persons making the payments. The risk to the tax base results from the potential for these non-taxable capital receipts to be substituted for taxable personal services income.<sup>3</sup> Such arrangements have been increasing in recent years and are likely to continue to increase as a result of the recent increase in the top personal income tax rate to 39%.

There is also an associated risk to the integrity of the tax system in that the payment of large, tax-free amounts to some individuals may give rise to the perception that the tax system is unfair. This would undermine voluntary compliance.

The Committee of Experts on Tax Compliance (1998) reviewed the treatment of restrictive covenant and exit inducement payments and recommended that the Government consider legislation to make them taxable.

On 30 June 2000, the Government released an issues paper containing proposals to address the revenue risk posed by these services-related payments by making them taxable. In line with the generic tax policy process, submissions were invited on these proposals.

After further consideration and in the light of submissions, the Government has made two modifications to the proposals contained in the issues paper. These modifications are an exclusion for restrictive covenant payments connected with the sale of a business and the limitation of the application of the PAYE rules to payments made to employees. With these exceptions, the design of the proposed reform follows that set out in the issues paper.

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<sup>1</sup> *Henwood v Commissioner of Inland Revenue* (1995) 17 NZTC 12,271, *Commissioner of Inland Revenue v Fraser* (1996) 17 NZTC 12,607.

<sup>2</sup> *Commissioner of Inland Revenue v Fraser, Case U8* (1999) 19 NZTC 9,068.

<sup>3</sup> Personal services income includes payments made under both contracts of service (employment contracts) and contracts for services. It also includes payments made to office holders. References in this commentary to “services” or “personal services” generally include employment, and being an independent contractor and office holder. Also, examples of employment situations in this commentary generally include independent contracting and office holding.

## **Detailed analysis**

### ***Restrictive covenant charging provision***

New section CHA 1 will provide that if a person gives an undertaking which has the effect of restricting the person's ability to perform services as an employee, office holder or independent contractor, any amount derived by that person or any other person in respect of the undertaking is taxable to that person.

This charging provision is quite broad in that the contract to provide services and the restrictive covenant undertaking can be with different persons. It should cover any combination of payment and agreement between multiple entities by focusing on the restrictive covenant payment itself. This would include, for example, an arrangement such as that in the *Fraser* case, in which four entities were involved in the transaction.

The charging provision applies to any undertaking (not just a contract), whether or not the undertaking is legally valid.

The reference to "amount" in new section CHA 1 uses the definition of "amount" in section OB 1 which includes any amount in money's worth. The charging provision is, therefore, sufficiently broad to cover in-kind consideration, not just monetary payments.

The drafting of this charging provision is based on section 313 of the Income and Corporation Taxes Act 1988 (United Kingdom), which treats any payments made under restrictive covenant agreements relating to employees or office holders as taxable emoluments from employment.

### ***Sale of business exclusion from restrictive covenant charging provision***

New section CHA 1 will contain a specific exclusion for restrictive covenant payments made in connection with the sale of a business. This exclusion has been made because the main focus of the amendment is to tax restrictive covenant payments that can be substituted for taxable income from services. Restrictive covenant payments received on the sale of a business are part of a larger capital receipt (the purchase price of a business) and are less likely to be substituted for taxable income from services. Taxing restrictive covenant payments connected with the sale of a business could also impose significant compliance costs on taxpayers by forcing them to value restrictive covenants separately, when the consideration for a restrictive covenant is incorporated in a single payment for goodwill.

The exclusion for restrictive covenant payments made on the sale of a business applies only if a number of conditions are satisfied. These conditions are designed to prevent the exclusion being exploited so as to undermine the reform to tax restrictive covenant payments that can be substituted for income from services. These conditions are that:

- The restrictive covenant amount is derived as part of the consideration for the sale of a taxable activity as a going concern by the person who gives the undertaking.
- The restrictive covenant amount is consideration for an undertaking by the vendor of the taxable activity not to provide goods or services in competition with the goods or services provided by the purchaser.
- The restrictive covenant amount is paid by the purchaser to the vendor.
- The person who gives the restrictive covenant undertaking must not provide any services to the purchaser following the sale of the taxable activity, other than services that are incidental to the sale and are temporary in nature.
- The vendor and purchaser agree in writing that the transaction is a sale of a taxable activity as a going concern.

The sale of a taxable activity as a going concern includes the sale of part of a taxable activity as a going concern and also includes the sale of all of the shares in a company that is carrying on a taxable activity as a going concern.

The terms “going concern” and “taxable activity” have the meanings given to those terms under the Goods and Services Tax Act 1985 (GST Act), subject to certain modifications. The references in the “going concern” definition to “supplier” and “recipient” refer to the vendor and purchaser of the taxable activity respectively. The “going concern” definition is also modified to apply to the sale of shares in a company. The definition of “taxable activity” applying for the purpose of section CHA 1 does not include the exclusion for exempt activities contained in section 6(3)(d) of the GST Act.

### ***Restrictive covenant anti-avoidance provision***

New section GC 14F is a specific anti-avoidance provision which is designed to buttress the restrictive covenant charging provision in new section CHA 1.

Under this specific anti-avoidance provision, if an arrangement has been entered into which has an effect of avoiding the application of section CHA 1, the Commissioner may treat an amount under the arrangement as an amount to which section CHA 1 applies. The Commissioner may also treat any person affected by the arrangement as the person liable under section CHA 1.

This anti-avoidance provision is designed to address, in particular, the situation of an employee making a restrictive covenant agreement with a wholly-owned company, the shares in which the employee subsequently sells to his or her employer. This arrangement transforms a payment for a restrictive covenant into a payment for shares and the payment received by the employee from the sale of the shares may not be taxed under the other provisions of the Income Tax Act 1994. This arrangement could be enough to break the link between the payment and the restrictive covenant. Section GC 14F would ensure that an amount derived under such an arrangement would be taxable under new section CHA 1.

The enactment of section GC 14F would not preclude the application of the general anti-avoidance provisions in the Income Tax Act 1994.

### ***Exit inducement charging provision***

New section CHA 2 is the specific charging provision for exit inducements. The provision will tax any amount derived by a person for a loss of a vocation, position or status, or for leaving a position.

The new section focuses on payments for vacating a position. This is consistent with the nature of an exit inducement payment as compensation for giving something up in the course of starting a new position. It is not necessary for the provision to apply to inducements to take up a position because these are generally taxable as monetary remuneration to an employee or as business income to an independent contractor.

New section CHA 2 will cover an exit inducement payment made to compensate the payee for leaving a position of employment. The provision is also broad enough to cover the situation where the position being vacated is not an employment one – for example, a position as an independent contractor or an office such as a board membership. The exit inducement cases of *Vaughan-Neil*<sup>4</sup> and *Pritchard v Arundale*<sup>5</sup> involved a barrister and a partner in a firm of chartered accountants respectively, both being positions where the payee was a non-employee. The *Fraser* and *Case U8* cases involved taxpayers leaving positions of employment.

New section CHA 2 will cover a situation like that in the *Fraser* case, where the emphasis in the judgments was that the taxpayer was being compensated for the loss of his career as a television presenter, as well as the traditional type of exit inducement case which involves a loss of status.<sup>6</sup> The provision also encompasses a situation like that in *Case U8*, which represents an extension over previous exit inducement cases. That situation did not involve a distinct change of career or loss of social status, but only a change of employment or position within the same industry. It is necessary, therefore, for the charging provision to include compensation for a simple loss of a particular contract of services or contract for services.

The charging provision will also include an amount derived as consideration for simply leaving a position as it may be argued that in some cases there is no loss as such.

The ordering of the words “vocation”, “position” and “status” in the charging provision helps to indicate its services-related nature and thus its scope (sometimes referred to as the *ejusdem generis* rule of statutory interpretation).

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<sup>4</sup> *Vaughan-Neil v Inland Revenue Commissioners* (1979) STC 644.

<sup>5</sup> *Pritchard v Arundale* (1971) 47 TC 680.

<sup>6</sup> For example, *Jarrold v Boustead* (1964) 41 TC 701, *Pritchard v Arundale* and *Vaughan-Neil v Inland Revenue Commissioners*. In these cases, a consequence of the taxpayers changing their occupations was a loss of valued social status.

The reference to “amount” in new section CHA 2 uses the definition of “amount” in section OB 1 which includes any amount in money’s worth. The charging provision is, therefore, sufficiently broad to cover in-kind consideration, not just monetary payments.

### ***Deductibility of services-related payments***

New section DJ 20 will ensure that restrictive covenant and exit inducement payments are deductible to the payer in the same circumstances as salary and wages and other payments for services. This deductibility provision, in conjunction with the charging provisions for restrictive covenant and exit inducement payments, provides for symmetry in the tax treatment of these payments.

New section DJ 20 follows the model of providing express relief from the exclusion for capital expenditure, which is used in other places in the income tax legislation, such as section DJ 13. This means that, in order to be deductible, a payment will still need to have the connection with gross income required by the general deductibility rule in section BD 2(1)(b)(i) and (ii).

New section DJ 20 also ensures that the deductibility treatment of restrictive covenant and exit inducement payments is not concessionary in comparison with salary and wages. Salary and wages are non-deductible capital expenditure to the extent they relate to work of a capital nature undertaken by recipient employees, as in *Christchurch Press Company Ltd*.<sup>7</sup> If outright relief from the exclusion for capital expenditure was provided for restrictive covenant and exit inducement payments, these payments could never be characterised as capital expenditure, even when the work was of a capital nature. Employers could, therefore, prefer to make these payments instead of salary and wage payments if capital works were involved.

To prevent such different treatment, new section DJ 20 provides that the relief from the exclusion for capital expenditure does not apply to the extent that:

- services are performed for the payer by the employee, office holder or independent contractor who derives the restrictive covenant or exit inducement amount; and
- any expenditure would have been incurred in respect of those services but for the payment of the restrictive covenant or exit inducement amount; and
- that expenditure would have been of a capital nature.

New section DJ 21 will allow a deduction to persons who have been taxed on a restrictive covenant payment if they have to refund part or all of that payment because they do not comply with the terms of the restrictive covenant.

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<sup>7</sup> *Christchurch Press Company Ltd v Commissioner of Inland Revenue* (1993) 15 NZTC 10,206.

The deduction allowed under new section DJ 21 is limited to the lesser of the amount that is refunded and the amount that was taxed to the person under the restrictive covenant charging provision.

Also, no deduction is allowed for any payment in respect of punitive or exemplary damages, interest or the legal costs or other expenses of the person who paid the restrictive covenant amount to the person claiming the deduction.

New section EO 6 provides that the deduction under new section DJ 21 is allowed in the income year that the refund is paid.

### ***PAYE amendments***

The definition of “extra emolument” in section OB 1 will be amended to ensure that restrictive covenant and exit inducement payments made to employees are subject to withholding at source under the PAYE rules. This will include payments made to previous, current or prospective employees.

Because of the inclusion of these payments in the definition of “extra emolument”, along with their consequent inclusion in the definition of “income from employment”, an employee recipient of a restrictive covenant or exit inducement payment will not be allowed a deduction for any related expenditure (sections BD 2(2)(c) and DE 1).

### ***Timing of income and expenditure***

The ordinary tax accounting principles and provisions of the Income Tax Act 1994 will apply to determine the time at which services-related payments are included in gross income or allowed as a deduction. No special amendments are being made in this regard.

The particular tax accounting principles that apply to determine when a restrictive covenant or exit inducement payment is included in a recipient’s gross income depend on the type of taxpayer involved.

In the case of cash method taxpayers, derivation of income is based on the actual receipt of income.<sup>8</sup> So if a payment for a restrictive covenant with a three-year term is paid to an employee as a lump sum in year one, the entire amount is derived and, therefore, taxed in that year of receipt.

In the case of most taxpayers carrying on a business, the accrual or earnings method applies to determine when an amount is derived. This method is based on the right to receive income (an entitlement to bill) rather than actual receipt.<sup>9</sup> An up-front restrictive covenant payment received by an independent contractor could be spread over the term of the covenant.

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<sup>8</sup> *Bowcock v Commissioner of Inland Revenue* (1981) 5 NZTC 61,062.

<sup>9</sup> *Arthur Murray v Commissioner of Taxes* (1965) 114 CIR 314.



The ordinary statutory rules will apply to determine the timing of deductibility of these services-related payments. In particular, section EF 1 effectively requires a deduction for expenditure to be spread over the term to which the expenditure relates.<sup>10</sup> For example, in respect of an up-front \$30,000 payment made under a restrictive covenant agreement with a three-year term, the allowable deduction for each of the three years would be \$10,000.

In the case of exit inducement payments, payment is likely to be deducted in full in the year of payment. That is because section EF 1, which requires expenditure to be spread over the contract term, would not be applicable.<sup>11</sup> There is usually no enduring aspect to an exit inducement beyond the requirement that the payee start a service relationship.

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<sup>10</sup> Section BD 4 of the core provisions governs the timing of allowable deductions. Section BD 4(2) provides that if an allowable deduction is subject to a timing regime, the deduction must be allocated to an income year in accordance with that regime. “Timing regime” is defined in section OB 1 to include a regime for allocating allowable deductions to an income year other than the income year to which the allowable deduction would have been allocated in the absence of the regime. In the absence of a timing regime, the payments under a restrictive covenant agreement with a three-year term would be incurred in year one when the agreement is entered into and, therefore, would have been deductible in that year. However, the timing regime in section EF 1, relating to “accrual expenditure”, would require the expenditure on the restraint to be spread over its three-year term. “Accrual expenditure” is defined very broadly in section OB 1 to mean any expenditure that is allowed as a deduction other than expenditure covered by other specific timing regimes, such as the trading stock or accrual rules. Section EF 1(5)(d), applying to choses in action, would be used to determine the unexpired portion of any amount of accrual expenditure relating to restrictive covenants that would need to be added back into the recipient’s income, by reference to the unexpired part of the period in relation to which the restraint is enforceable. This mechanism achieves the spread of income.

<sup>11</sup> Once the payment is made there is generally no unexpired portion to be added back to income in future years in terms of section EF 1.

## **TAXING BENEFICIARY INCOME OF MINORS AT 33% RATE**

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*(Clauses 13 and 24)*

### **Summary of proposed amendment**

Certain distributions of beneficiary income to a child under the age of 16 years will be taxed at a final tax rate of 33%. This minor beneficiary rule is aimed at ensuring that families with a trust do not gain a tax advantage over families without a trust.

### **Application date**

This measure will apply from the start of the 2001-2002 income year.

### **Key features**

- Beneficiary income distributed to a minor will be taxed at a final rate of 33% when that income is derived from property which was settled on that trust by a relative or guardian of that minor or a person associated with a relative or guardian. (Section HH 3A-3B of the Income Tax Act 1994)
- A minor for the purposes of this rule is defined as a person under the age of 16 years. (Section HH 3A)
- Beneficiary income will be excluded from the rule in certain circumstances. (Section HH 3B)
- The rule will not apply if beneficiary income is \$200 or less in an income year. (Section HH 3A)
- Beneficiary income subject to this rule will be taxed at the trust level (on behalf of the beneficiary). (Section HH 3A)

### **Background**

The Government announced in the 2000 Budget that it would introduce legislation this year to require distributions of beneficiary income to minors to be taxed at a rate of 33%. These distributions are currently taxed at the marginal rate of the minor beneficiary, which may be as low as 19.5%. The Government has consulted on this proposal by means of an issues paper outlining the proposal in more detail and seeking public submissions.

The purpose of the minor beneficiary rule is to support the Government's objective of distributing the tax burden equitably through a progressive tax system. Family expenses are normally met from income earned by the parents which has been taxed at their marginal tax rates. However, by placing income-earning assets in a trust and distributing the income to the children as beneficiary income, some families are able to meet their costs out of income taxed at the marginal tax rates of the children.

Although this situation undermines the progressiveness of the taxation system, it will often not be within the ambit of the existing anti-avoidance legislation.

The incentive to place income-earning assets in a trust has increased since the current trust taxation rules were introduced, in 1988. The difference between the lowest marginal tax rate and the highest has increased, especially with the introduction of the 39% tax rate earlier this year.

The example illustrates how trusts can be used to achieve a lower tax rate on family income. Income that would have been earned by the parents and taxed at their marginal tax rates is instead distributed to a child as beneficiary income and is consequently taxed at the child's marginal tax rate.

**EXAMPLE 1 – THE TAX LIABILITY OF A FAMILY WITHOUT A TRUST**

<i>Mum</i>		<i>Tax liability</i>	
\$80,000			
\$40,000	\$8,070	\$0-38,000 taxed at 19.5%	
(income from salary/wages)		\$38,001-40,000 taxed at 33%	
\$40,000	\$14,399	\$40,000-60,000 taxed at 33%	
(income from rental properties and dividends)		\$60,001-80,000 taxed at 39%	
<i>Dad</i>		<i>Tax liability</i>	
Income from salary/wages before tax			
\$70,000	\$18,569	\$0-38,000 taxed at 19.5%	
		\$38,001-60,000 taxed at 33%	
		\$60,001-70,000 taxed at 39%	

The after-tax income of the family from salary and wages and from rental properties and dividends equals \$108,962

## EXAMPLE 2 – THE TAX LIABILITY OF A FAMILY WITH A TRUST

A family with exactly the same income places the income-earning assets of rental properties and shares in a family trust of which their two children are the beneficiaries.

<i>Mum</i>	<i>Tax liability</i>	
Income from salary/wages before tax \$40,000	\$ 8,070	\$0-38,000 taxed at 19.5% \$38,001-40,000 taxed at 33%
<i>Dad</i>	<i>Tax liability</i>	
Income from salary/wages before tax \$70,000	\$18,569	\$0-38,000 taxed at 19.5% \$38,001-60,000 taxed at 33% \$60,001-70,000 taxed at 39%
<i>Children</i>	<i>Tax liability</i>	
Income from rental properties and dividends distributed to the children as beneficiary income		
\$20,000 child 1	\$3,900	\$0-20,000 taxed at 19.5%
\$20,000 child 2	\$3,900	\$0-20,000 taxed at 19.5%

The after-tax income of the family from salary and wages and rental properties and dividends amounts to \$115,561.

### Detailed analysis

Therefore the family with a trust has an extra \$6,599 with which to meet the family's expenses, even though it has identical income from identical sources as the family without a trust.

#### *The scope of the minor beneficiary rule*

The minor beneficiary rule is not aimed at all situations in which a minor receives beneficiary income, but rather at the particular situation where families can gain a tax advantage by use of a trust. Consequently, the rule will only apply when the beneficiary income of a minor is derived from property which was settled on that trust by a relative or a guardian of that minor or a person associated with a relative or guardian.

The existing definition of a "relative" in section OB 1 of the Income Tax Act 1994 will be adopted for this purpose. Under this section, individuals are regarded as relatives when they are connected by:

- blood relationship (which includes persons within the fourth degree of relationship);

- marriage (which includes not only persons married to each other but also those with a blood relationship to their spouse); and
- adoption.

Including settlements made by a person associated with a relative or guardian ensures that settlements made by a family company, for example, are included within the rule.

For the purposes of this rule, the existing definition of “settlor” in section OB1 is being amended to ensure that a relative, guardian or his or her associate who provides services to the trust is not deemed to be a settlor. An example would be where damages for the benefit of the child are settled on a trust and the parent of the child provides free accounting services.

The minor beneficiary rule will apply to beneficiary income distributed from both discretionary and fixed trusts. It will also apply to beneficiary income distributed from a qualifying, non-qualifying or foreign trust.

*The definition of a minor*

The rule will apply only to children under the age of 16 years.

In determining whether the rule applies the trustee will look at the child’s age as at the balance date of the trust. If the minor is under the age of 16 throughout the income year, the rule will apply to all income derived in that year. If the minor turns 16 in that income year, the rule will not apply to any income derived in that income year.

*Distributions of beneficiary income which will be excepted from the rule*

There are a number of exceptions from the ambit of the rule to ensure that the rule focuses on particular situations where a family can gain a tax advantage by having income distributed as beneficiary income to a child. These include:

- beneficiary income derived from property if the settlor received that property as agent for the beneficiary from someone other than a relative, guardian or his or her associate;
- beneficiary income derived from property when the settlor has been ordered by a court to pay damages or compensation to the child;
- beneficiary income derived from property settled on the trust under the terms of a will, codicil, intestacy or any variation of these by a court, if the minor was alive within twelve months after the date of the settlor’s death;
- beneficiary income from a group investment fund;
- beneficiary income distributed to a non-resident minor;
- beneficiary income distributed to a disabled minor for whom the Child Disability Allowance is paid under the Social Security Act 1964; and
- beneficiary income distributed to minors from the Maori Trustee and Maori authorities.

### *Minimum threshold*

If beneficiary income would otherwise be subject to this rule but is \$200 or less in an income year, the minor beneficiary rule will not apply. If that income is over \$200, all of that beneficiary income will be subject to the rule.

### *Operational aspects*

Beneficiary income subject to this rule will be taxed at the trust level at a final tax rate of 33%, on behalf of the beneficiary. Consequently, beneficiary income subject to this rule will not be included when calculating the minor's final tax liability.

The trustee is required to take all reasonable steps to ascertain whether the minor beneficiary rule applies. If it clearly does apply, or if doubt exists, the trustee must withhold tax on the beneficiary income of that minor at 33% on behalf of the beneficiary. The trustee is required to include the tax withheld on this income in his or her provisional tax payments.

If a trustee fails to deduct at 33% from beneficiary income that is subject to the rule, the trustee will be liable for this tax, and penalties will potentially lie with the trustee. If the minor is mistakenly taxed at 33% when he or she should have been taxed at 19.5%, the minor can claim a refund for this additional tax in his or her return.

# TREATY OF WAITANGI FISHERIES COMMISSION

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*(Clauses 14)*

## **Summary of proposed amendments**

The proposed amendment treats the Treaty of Waitangi Fisheries Commission to be “in the course of termination” when the Commission allocates the fisheries settlement assets to iwi. The effect of this amendment is to ensure that distributions made from tax paid income will not be a distribution subject to resident withholding tax. This amendment will remove the potential for double taxation under the Maori authority rules.

## **Application date**

The amendment will apply from the date the bill is introduced into the House.

## **Key features**

A new section, HI 1A, is added to the Income Tax Act 1994 to treat the Treaty of Waitangi Fisheries Commission to be “in the course of termination”, on or after the date on which the Commission allocates the settlement assets to iwi, for the purposes of section HI 1(2).

## **Background**

The role of the Treaty of Waitangi Fisheries Commission is to administer the fisheries assets that were returned to iwi by the Crown, and to arrange for their eventual allocation to iwi.

The Commission was concerned that the “tax paid” income that it intends to distribute to iwi as part of the allocation of fisheries assets would be treated as a distribution by a Maori authority and, therefore, subject to resident withholding tax.

The Commission is treated as a Maori authority for tax purposes. The potential for double taxation of Maori authority income is a known problem under Maori authority rules. Double taxation arises because any income that a Maori authority retains for more than four years is subject to tax at the rate of 25%, and when that income is ultimately distributed it would almost always be subject to resident withholding tax at the rate of 33%.

The problem of double taxation was inevitable for the Commission because it has been prevented from distributing the fisheries assets until an agreed allocation model for determining how the fisheries assets should be distributed among iwi has been finalised.

The proposed amendment resolves the potential for double taxation problem by treating the Commission as being “in the course of termination” when it allocates its fisheries assets to iwi.

Under the current Maori authority rules, the Commissioner of Inland Revenue can determine to the extent that distributions made “in the course of termination of a Maori authority” are sourced from income that has previously been taxed to the Commission. Such distributions are not treated as distributions subject to resident withholding tax. This discretion ensures that Maori authority income is not subject to double taxation when a Maori authority is “in the course of termination”. Treating the Commission as being in the course of termination would ensure that distributions that have been previously taxed would not be distributions subject to resident withholding tax.



## **INTERNATIONAL TAX – REMEDIAL ISSUES**

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*(Clauses 16, 23, 24 and 25)*

### **Summary of proposed amendments**

Clarifying amendments to the international tax rules are being made to:

- Correctly allocate imputation credits between resident and non-resident partners when shares are owned by a partnership.
- Ensure that the correct rate of non-resident withholding tax (NRWT) is required to be paid for conduit tax relief credited non-cash dividends.
- Allow conduit tax relief to arise when a non-resident holds an interest in a New Zealand company through a wholly owned chain of holding companies.

### **Application date**

The correction to the conduit relief rules will apply retrospectively from 1 October 1997, the date of the inception of the conduit rules. The other amendments will apply from the date of enactment.

### **Key features**

- New sections LB 1(4A) and 4B of the Income Tax Act 1994 ensures that imputation credits are correctly allocated between resident and non-resident partners by recognising the effect of supplementary dividends paid under the foreign investor tax credit rules.
- Sections NG 9(1) and OB 1 are amended to ensure that the 15% rate of NRWT applies to fully conduit tax relief credited non-cash dividends. New section NG 9(1A) confirms that the NRWT required to be paid on the dividend is treated as part of the dividend when determining the extent to which a dividend is fully conduit tax relief credited and for credit allocation purposes
- Section OE 8(1) is being amended to treat conduit tax relief holding companies as non-resident companies for section OE 7(1)(b) purposes.

### **Background**

Tax practitioners have identified the following aspects of the international tax rules when the law is not consistent with its underlying policy intent.

- The formula in section LB 1(4) allocates imputation credits between partners when shares are owned by a partnership. However, the formula only allocates credits correctly if all partners are either resident or non-resident, as it does not adequately deal with the effect of supplementary dividends paid under the foreign investor tax credit rules when there is a mixture of resident and non-resident partners.
- Dividends with full conduit tax relief credits are subject to NRWT at a rate of 15%. However, the rules in section NG 9 for determining the amount of NRWT to be deducted in respect of non-cash dividends do not currently reflect this rate.
- The conduit tax relief rules relieve a company from New Zealand tax on certain foreign income to the extent that it is derived on behalf of non-resident shareholders. When the rules were introduced, New Zealand holding companies wholly owned by a non-resident were allowed to be treated as non-resident shareholders, to allow the companies they invest in to receive conduit tax relief. It was intended that relief would also be allowed when a non-resident holds an interest in a company through a wholly owned chain of companies. Current legislation does not, however, achieve this effect.

Amendments are being made to correct these deficiencies.

## **REQUIREMENT ON COMPANIES TO ADOPT MINIMUM 33% WITHHOLDING TAX RATE**

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*(Clauses 20 and 26)*

### **Summary of proposed amendment**

Companies will no longer be able to elect the 19.5 percent resident withholding tax (RWT) rate.

The change will remove the timing advantage gained by companies that choose this rate, rather than a 33 percent withholding rate matching the corporate tax rate, before making good the discrepancy by way of provisional or terminal tax. It does not apply to companies that are trustees.

### **Application date**

This measure applies from 1 April 2001.

### **Key features**

- A new section NF 2B is inserted into the Income Tax Act 1994 providing that companies begin receiving interest on or after 1 April 2001 must notify the interest payer that they are a company. This notification must be made on becoming entitled to receive interest.
- Interest payers must deduct RWT at the appropriate rate on or after receiving a notice. The appropriate rate is dependent on the election made by the company and whether it has provided a tax file number.
- The current treatment continues to apply until a company notifies interest payers of its status. To minimise compliance costs, the onus of notification lies on the company receiving the interest to determine its status, not the interest payer.
- A new section NF 2C provides that those with an entitlement to receive interest as at 31 March 2001 have until 31 May 2001 to notify their company status. Interest payers have one month after the date on which the notice is received to apply that notice. However, provision is made for the interest payer to apply a 33% or 39% withholding rate any time from receipt of the notice. This provision is intended to provide a transitional period during which interest payers can process notifications.
- Section NF 2D provides that a company entitled to receive interest payments may elect the 33% and 39% withholding rates. A non-declaration rate of 39% applies to those companies that have not provided a tax file number. The election rules mirror those applying currently, although the 19.5% RWT rate option is excluded.

- Companies that are trustees are not required to notify their company status and may continue to use the 19.5% rate. This reflects the obligation on trustees to have regard to the tax position of the trust's beneficiaries.

## **Background**

The Income Tax Act 1994 allows a person receiving an interest payment to elect, in the manner proscribed by the interest payer, to make that payment subject to withholding tax at 19.5, 33 or 39 percent.

The 2000 Budget included an announcement that the Government would legislate to remove the ability of companies to adopt the 19.5% RWT rate. Choosing this rate gives companies a short-term timing advantage before they make good the discrepancy upon payment of provisional or terminal tax.

## **DEFINITION OF “QUALIFYING PERSON” FOR FAMILY ASSISTANCE**

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*(Clause 24)*

### **Summary of proposed amendment**

A potential problem in the legislation is being addressed by ensuring that family assistance is provided only to families who have been in New Zealand for 12 months at any time and are resident here for tax purposes at the time of claiming an entitlement to family assistance.

### **Application date**

The amendment will apply from the beginning of the 1992-93 income year.

A savings provision has been inserted to ensure that families who have claimed a credit before the date of introduction of the bill are not disadvantaged.

### **Key features**

The definition of “qualifying person” in section OB 1 of the Income Tax Act 1994 will be amended to ensure that for family assistance purposes a qualifying person is someone who has been in New Zealand for 12 months at any time and is resident in New Zealand for income tax purposes at the time of claiming an entitlement to family assistance.

### **Background**

Family assistance consists of family support, the family tax credit, the child tax credit and the parental tax credit and is provided to families who fulfil the eligibility criteria.

The definition of “qualifying person” in the family assistance tax credit rules ensures that families who go overseas and are still resident in New Zealand can continue to claim family assistance credits. Examples are armed service personnel in overseas operational areas or peacekeeping roles or volunteer service abroad, or families overseas on business.

This definition is too wide, however, and has the effect of potentially providing assistance to families who were once resident in New Zealand and who are now permanently overseas and have no connection to New Zealand. This amendment ensures that family assistance is provided only to those who are resident in New Zealand for tax purposes at the time of claiming an entitlement to family assistance.

Families who go overseas and remain resident in New Zealand for tax purposes, such as people serving in the armed services, will remain eligible for these credits.

## **TAX SIMPLIFICATION – MINOR REMEDIAL AMENDMENTS**

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*(Clauses 4, 5, 17, 24, 29, 31 and 34)*

### **Summary of proposed amendments**

Minor remedial amendments relating to the tax simplification reforms for wage and salary earners implemented from 1 April 1999 are being made to the Income Tax Act 1994 and the Tax Administration Act 1994. They do not involve policy changes.

The amendments are intended to clarify the responsibilities of non-filing taxpayers and Inland Revenue's obligations to those taxpayers by:

- ensuring that the legislation does not require non-filing taxpayers to calculate and meet their tax liability;
- confirming that the liability to deduct income tax rests with employers, not with employees who are non-filing taxpayers;
- confirming that the definition of "non-filing taxpayers" includes those to whom Inland Revenue is not required to, or to whom Inland Revenue is prohibited from sending an income statement; and
- clarifying Inland Revenue's role in relation to non-filing taxpayers who will not receive an income statement.

### **Application date**

The amendments are intended to work in conjunction with the tax simplification reforms for wage and salary earners and will apply from when those reforms took effect, the 1999-2000 income year.

### **Key features**

The amendments to the Income Tax Act 1994 are:

- Sections BB 2 and BC 2 are being clarified so that obligations under the core provisions are consistent with the tax simplification reforms.
- Section LD 1 is being clarified so that it deals appropriately with credits of tax in relation to non-filers.
- "Filing taxpayer" becomes a defined term.
- The definition of "non-filing taxpayer" is being amended to spell out Inland Revenue's role in relation to the income statement process.

The amendments to the Tax Administration Act 1994 are:

- Section 15B is being expanded to clarify that non-filing taxpayers are not obliged to calculate their tax.
- Section 33A is being corrected to reflect Inland Revenue's role in relation to the income statement process.
- A new section 141JA is being inserted to ensure that penalties for non-payment of tax do not apply to non-filing taxpayers.

### **Background**

The Taxation (Simplification and Other Remedial Matters) Act 1998 removed the need for individuals to fill out yearly income tax returns if their only income is from wages, salary or New Zealand interest and dividends. Instead, employers were required to supply monthly returns to Inland Revenue on the PAYE deducted for each employee. Over a million taxpayers were affected by the reforms.

The remedial amendment in the bill merely finetune that legislation.





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# Changes to Tax Administration Act 1994

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## **TAX SIMPLIFICATION FOR BUSINESS**

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*(Clauses 28, 33, 40, 41 and 42)*

### **Summary of proposed amendments**

Amendments are being made to the Tax Administration Act 1994 and the Goods and Services Tax Act 1985 to improve voluntary compliance by preventing small failures from creating significant compliance costs. The proposed amendments will:

- provide substantial relief from the initial late payment penalty for those who pay a few days late;
- cancel incremental late payment penalties where obligations under an instalment arrangements are being met; and
- move the payment of GST on the value of fringe benefits from GST returns to FBT returns.

### **Application dates**

The amendments will take effect from 1 April 2002. In particular:

- The initial late payment penalty will be applied in two stages for payments that become overdue on or after 1 April 2002.
- The incremental late payment penalty cancellation criteria will apply to instalment arrangements entered into on or after 1 April 2002.
- FBT returns due after 1 April 2002 will include calculations and payments for GST adjustments for fringe benefits.

### **Key features**

- Late payment penalties are imposed by section 139B of the Tax Administration Act 1994. That section is being amended to apply the initial late payment penalty in two stages, 1% the day after the due date and a further 4% seven days after the due date.
- Section 139B of the Tax Administration Act 1994 is also being amended to cancel incremental late payment penalties each month taxpayers comply with their obligations under instalment arrangements.
- Three amendments are being made to the Goods and Services Tax Act 1985 to move the return of the GST adjustment for fringe benefits to FBT returns:
  - Section 20 is being amended so that the output tax associated with the adjustment is no longer part of the calculation of tax payable.

- Section 21I is being amended so that where goods and services are supplied or deemed to be supplied in relation to fringe benefits, that supply takes place at the time the fringe benefits are provided or granted to employees.
- Section 23A is being amended to require that the GST adjustment is paid with the associated FBT.

## **Background**

The *Less Taxing Tax* discussion document, released in September 1999, outlined potential tax simplification measures for businesses. Some of those measures were included in the Taxation (FBT, SSCWT and Remedial Matters) Bill and the Taxation (Annual Rates, GST and Miscellaneous Provisions) Bill, introduced earlier this year. The initiatives proposed in this bill continue the programme of tax simplification for businesses.

## **Detailed analysis**

### ***Phased application of the initial late payment penalty***

An initial late payment penalty of 5% applies when the due date for payment passes. The penalty reinforces a fundamental obligation of the tax system – the requirement to pay taxes by the due date. The penalty will apply:

- as a 1% penalty the day after the due date; and
- if the amount outstanding is not paid within a week of the due date, as a further 4% penalty of the total outstanding amount.

The initiative is in response to the concerns expressed during the Finance and Expenditure Committee's 1999 inquiry into the powers and operations of the Inland Revenue Department. The penalty was seen as harsh when applied to basically honest taxpayers who have failed to comply by only a few days. The 1999 Committee of Experts on Tax Compliance also expressed similar concerns.

*Less Taxing Tax* outlined a number of initiatives aimed at reducing compliance costs for businesses. In submissions on the discussion document, the initiative to phase the application of the initial late payment penalty received the most support among options to reduce the impact of the penalty. The 1% penalty supports the original due date while not overly penalising those who pay just a few days late. If overdue payments are not paid within a week after the due date, the taxpayer will be in nearly the same position as arises under the current rules. Providing some relief to those who pay just a few days late prevents the penalty becoming disproportionate to the underlying omission. It also reduces the costs associated with applications for remission.

### ***cancelling incremental late payment penalties during instalment arrangements***

The incremental late payment penalty continues to accrue on outstanding tax even if the taxpayer has entered into an instalment arrangement with Inland Revenue to meet the debt. On the successful completion of the arrangement, those penalties are cancelled.

If a taxpayer defaults on the terms of the arrangement, however, the whole arrangement is cancelled and all the accumulated incremental penalties that would otherwise have been cancelled are reinstated. As discussed in *Less Taxing Tax*, the effect of this policy is that a partial, possibly small, failure to comply with the provisions of an instalment arrangement could result in a disproportionate penalty.

Removing incremental penalties as taxpayers meet the terms of their instalment arrangements will reduce compliance costs by helping to create a more simple and certain tax treatment for those with overdue tax. It will also reward compliance and prevent the imposition of penalties disproportionate to the underlying failure.

Obligations that taxpayers will need to meet in order to have the incremental late payment penalties cancelled include:

- paying the agreed instalments by the due date;
- paying future payments by the due date;
- filing future returns by the due date; and
- informing Inland Revenue if their financial circumstances change.

### ***GST on the value of fringe benefits***

Employers are required to account for GST on some fringe benefits they provide because the provision of the benefit is regarded as a supply for GST purposes. This GST adjustment is calculated and returned with the GST return. In order to calculate the adjustment, employers must refer to the value of benefits provided in their FBT return and determine the value of output tax associated with the fringe benefits.

As outlined in *Less Taxing Tax*, the omission to make this adjustment is a common discrepancy identified in GST audits. The Committee of Experts on Tax Compliance noted that while the omission may be the taxpayer's fault, the tax system should be designed to minimise the likelihood of its occurrence.

Including the payment of GST on the value of fringe benefits into FBT returns should reduce compliance costs. While eliminating the risk of an employer forgetting to include the payment in a GST return and thereby incurring penalties for the oversight, it will also reduce the need for employers to keep records to ensure that they correctly account for GST on the fringe benefits that they provide. It should also simplify accounting procedures, because, like fringe benefit tax itself, GST on fringe benefits is an expense.

Some taxpayers may be required to make a transitional payment with their first FBT return after 1 April 2002. This will realign the payment of the adjustment with FBT returns from GST returns. Therefore the first FBT return due after 1 April 2002 will include payment for GST adjustments in relation to:

- fringe benefits accounted for in that return; and
- fringe benefits provided earlier for which an adjustment has not been made in a prior GST return.

## **OFFSETTING USE OF MONEY INTEREST AGAINST UNPAID TAX**

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*(Clause 32)*

### **Summary of proposed amendment**

Inland Revenue will be allowed to offset use of money interest payable to a taxpayer (credit interest) against a taxpayer's unpaid tax before the terminal tax due date. This amendment will reduce a taxpayer's exposure to debit use of money interest and penalties.

### **Application date**

Because the rules relating to offsetting credit interest applied from 1 April 1998, this amendment will be retrospective from that date.

### **Key features**

Section 120F of the Tax Administration Act 1994 is being amended to allow Inland Revenue to offset credit interest against a taxpayer's unpaid tax liability at the time an initial assessment is able to be made, that is the date a tax return is filed.

This amendment will not prevent taxpayers from requesting that credit use of money interest be paid out directly.

### **Background**

Under current legislation, Inland Revenue is entitled to apply credit interest against a taxpayer's unpaid tax only if the taxpayer has failed to pay the tax by the due date. This means the tax must first become overdue, exposing the taxpayer to penalties.

## **CANCELLATION OF INTEREST – REMEDIAL AMENDMENT**

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*(Clause 35)*

### **Summary of proposed amendment**

A remedial amendment clarifies the period for which taxpayers who receive both a notice of assessment and a statement of account are eligible for a cancellation of use of money interest.

### **Application date**

The amendment applies from the date of enactment.

### **Key features**

Section 183C(5) of the Tax Administration Act 1994 is being amended to clarify the period for which taxpayers will be eligible for a cancellation of interest when taxpayers make payments of unpaid tax within overlapping grace periods. The period for which interest can be cancelled will begin the day after the date that the first notice or statement is issued and will end on the day that the payment is made, providing the payment is made within the overlapping grace period.

### **Background**

Taxpayers with unpaid tax who receive either a notice of assessment or a statement of account may be eligible for a cancellation of use of money interest if they pay the full amount outstanding within a defined grace period. In some instances taxpayers may be issued with both a notice of assessment and a statement of account which results in the grace periods overlapping. Current legislation is unclear as to the period for which a taxpayer in this situation is eligible for an interest cancellation.



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# Changes to Stamp and Cheque Duties Act 1971

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## APPROVED ISSUER LEVY

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*(Clauses 21, 28, 36 and 43-49)*

### Summary of proposed amendments

To improve the equity of the approved issuer levy (AIL) rules and to ensure more consistent administration with other revenues, amendments are being made to:

- apply the compliance and penalty rules to any late payment of AIL, instead of currently imposing non-resident withholding tax (NRWT);
- clarify that persons other than the approved issuer may make payments of AIL, and still have NRWT zero-rated; and
- allow taxpayers with annual AIL liabilities of less than \$500 to make payments six-monthly instead of monthly as at present.

### Application date

The amendments apply from the date of enactment except:

- The amendment to allow persons other than the approved issuer to make payments of AIL and still be zero-rated for NRWT is retrospective to the inception of the AIL rules, 1 August 1991.
- A provision in the Taxation (Annual Rates, GST, and Miscellaneous Provisions) Bill that excluded AIL from hardship provisions of the compliance and penalty legislation is being repealed. As the original amendment had an application date of the first day of the 2001-2002 income year, its repeal has the same prospective application date.

### Key features

Sections 86I and 86K(1) of the Stamp and Cheque Duties Act 1971 are being amended retrospectively to allow persons other than the approved issuer to make payments of AIL, and still be zero-rated for NRWT.

Sections 86I and 86M of the Stamp and Cheque Duties Act 1971, section NG 1(3) of the Income Tax Act 1994, and subsections (a)(vii) and (d)(vii) of the definition of “Tax” in section 3(1) of the *Tax Administration Act* 1994 are being repealed. New sections 86H(2) and 86IA of the Stamp and Cheque Duties Act 1971 are also being added. These changes will enable the application of the compliance and penalty rules for late payment, rather than the imposition of NRWT.

Section 86KA of the Stamp and Cheque Duties Act 1971 is being added to allow taxpayers with an expected annual AIL liability of \$500 or less to make payments every six months, rather every month at present.



## **Background**

Non-resident lenders are liable for tax on interest sourced in New Zealand. This, typically, requires NRWT to be deducted at 10%, consistent with New Zealand's double tax agreements. Alternatively, the rate of NRWT can be set at zero if resident borrowers choose to pay the approved issuer levy (AIL) at 2% themselves.

Before AIL was introduced, in 1991, it was common for New Zealand banks and major corporates borrowing money internationally to have to pay a world interest rate, net of all New Zealand taxes. Although NRWT was meant to be a tax on non-residents on their New Zealand-sourced income, it had essentially become an additional cost, borne by the New Zealand borrower, of raising capital offshore. The approved issuer levy was introduced to minimise this effect.

As AIL is applied at a concessionary rate, the policy intent was that it apply only if the borrower complied with strict conditions, including payment on time. Although there was limited scope for late payments to stay within the AIL rules, a late payment of AIL usually meant a reversion to NRWT.

A reversion to NRWT was not originally considered a penalty, as in 1991 NRWT was the norm and AIL was a concession. Over time, however, as the payment of AIL has become the norm, the imposition of NRWT has become to be seen as a penalty for late payment out of line with other penalties for late payment. Thus for consistency with all other revenues administered by Inland Revenue, an amendment is being made to incorporate AIL within the compliance and penalty rules.

It was always envisaged at the time AIL was introduced that persons other than the approved issuer (borrower) should be able to make payments of AIL, and still comply with the conditions for NRWT to be zero-rated. Tax practitioners have, however, recently highlighted that this is not in fact the case. Consistent with the original policy, an amendment is being made, retrospectively to the inception of AIL, to allow zero-rating of NRWT when a person other than the approved issuer makes the payment of AIL.

As a simplification measure consistent with the resident and non-resident withholding tax rules, an additional amendment is being made to allow taxpayers with expected annual liabilities of under \$500 to make payments of AIL six-monthly rather than monthly at present.