

House of Representatives

Supplementary Order Paper

Tuesday, 11 May 2004

Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill

Proposed amendments

Hon Dr Michael Cullen, in Committee, to move the following:

New clause 4B

To insert after clause 4 (after line 6, page 11) the following:

4B Meaning of term “dividends”

(1) Section CF 2(1)(i) is replaced by the following:

“(i) all distributions to a unit holder and all other payments to and transactions with a unit holder in relation to the unit holder’s interest in the unit trust that—

“(i) would be dividends if made to or with a shareholder in relation to shares in a company; and

“(ii) are not the transfer to the unit holder of income or property referred to in **paragraph (ib)**:

“(ib) income or property of a unit trust in which a beneficial interest vests absolutely in a unit holder:”.

(2) **Subsection (1)** applies for beneficial interests that vest on or after the day on which this Act receives the Royal assent.

New clause 32B

To insert after clause 32 (after line 16, page 25) the following:

32B Granting of underlying foreign tax credit

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

“(db) if the company, as a result of the payment of the dividend, is liable to pay no income tax in relation to any part of an amount from which the dividend is sourced; or”.

- (2) **Subsection (1)** applies for dividends that are derived on or after the day on which this Act receives the Royal assent.

Clause 65

To insert after subclause (16) (after line 34, page 47) the following:

- (16B) The definition of **non-taxable bonus issue** is replaced by the following:
“**non-taxable bonus issue** means a bonus issue that is not a taxable bonus issue”.

To insert after subclause (27) (after line 9, page 49) the following:

- (27B) In the definition of **taxable bonus issue**, the following is added after paragraph (b):
“(c) a bonus issue that is made by a unit trust to a unit holder under an arrangement or decision that the unit trust will make the bonus issue instead of causing a beneficial interest in money or property of the unit trust to vest absolutely in the unit holder”.

To insert after clause 31 (line 39, page 49) the following:

- (31B) **Subsections (16B) and (27B)** apply for bonus issues that are made on or after the day on which this Act receives the Royal assent.

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill.

New clause 4B replaces section CF 2(1)(i) of the Income Tax Act 1994 with *new paragraphs (i) and (ib)*. Under *new paragraph (ib)*, a unit holder in a unit trust receives a dividend when a beneficial interest in income or property of the unit trust is absolutely vested in the unit holder. The paragraph recognises a situation that may occur with a unit holder and a unit trust but not with a shareholder and a company, although a unit holder and unit trust are usually treated by the Income Tax Acts in the same way as a shareholder and a company. Under *new paragraph (i)*, the unit holder is treated as not receiving a further dividend when the trustees of the unit trust make a legal transfer of income or property that has given rise to a dividend under *new paragraph (ib)*.

New clause 32B inserts *new paragraph (db)* in section LF 2(2) of the Income Tax Act 1994. The new paragraph provides that a resident company receiving a dividend from a foreign company will receive an underlying foreign tax credit of nil if, as a result of paying the dividend, the foreign company is exempt from tax on a part of an amount that is the source of the dividend.

New clause 65(16B) replaces the definition of *non-taxable bonus issue* in section OB 1 of the Income Tax Act 1994. The new definition removes a possible overlap with the definition of *taxable bonus issue*.

New clause 65(27B) adds *new paragraph (c)* to the definition of *taxable bonus issue* in section OB 1 of the Income Tax Act 1994. The new paragraph provides that a bonus issue by a unit trust to a unit holder is a taxable bonus issue if the unit trust makes the bonus issue instead of causing a beneficial interest in money or property of the unit trust to vest absolutely in the unit holder.
