

House of Representatives
Supplementary Order Paper

Tuesday, 15 March 2005

**Taxation (Base Maintenance and Miscellaneous Provisions)
Bill**

Proposed amendments

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

Clause 2

To insert after clause 2(9) (after line 19, page 5) the following:

- (9B) **Sections 57B to 57E, 60(26B) and (27B), and 85(1A) and (1B)** are treated as coming into force on 21 December 2004.

To replace clause 2(11) (lines 22 to 24, page 5) with the following:

- (11) **Sections 39 to 44, 60(8), (8B),(10), (11), (14), (15), (17) to (19), (24) to (26), (29), 62B, 69 to 74, 80(3), (3B), (5) to (8), (10) to (12), (14) to (16), and (19)** come into force on 1 July 2005.
- (12) **Sections 4 to 37, 46 to 48, 50, 51, 54, 55(1) and (3), 56, 58, 59, 60(1) to (7), (9), (12), (13), (20) to (23), (27) and (28), 61 to 63, 85(1) and (2), 93, 94, 97, 99, and 104** come into force on 1 October 2005.

Clause 43

To insert in clause 43, in the formula in section FG 8G(1) (in line 24, page 45), “- FRS” after “EQV”.

To insert in clause 43, in the formula in section FG 8G(1) (in line 25, page 45), “+ PSCH – NSCH” after “AEQI”.

To insert in clause 43, after the definition of item EQV in section FG 8G(1) (after line 25, page 46), the following:

- FRS is the financial value for the measurement day of fixed rate shares, each of which is—
- (a) issued by a member of the New Zealand banking group; and
 - (b) owned by a person who is resident in New Zealand; and

- (c) included in the value of item EQV; and
- (d) issued by the member—
 - (i) on or after 1 January 2005;
 - (ii) before 1 January 2005, if the measurement period begins on or after 1 January 2010

To insert in clause 43, after the definition of item AEQI in section FG 8G(1) (after line 12, page 49), the following:

PSCH is the sum of the amounts for the tax year, each of which is listed in schedule 11B, part A (Amounts affecting New Zealand net equity for New Zealand banking group of registered bank)

NSCH is the sum of the amounts for the tax year, each of which is listed in schedule 11B, part B

To insert in clause 43, after section FG 8G(4) (after line 23, page 50), the following:

- “(5) The Governor-General may, from time to time by Order in Council,—
 - “(a) insert in schedule 11B, part A (Amounts affecting New Zealand net equity for New Zealand banking group of registered bank) a definition of an amount to be included in item PSCH for the purposes of subsection (1):
 - “(b) insert in schedule 11B, part B a definition of an amount to be included in item NSCH for the purposes of subsection (1):
 - “(c) amend or delete a definition of an amount in schedule 11B:
 - “(d) set, replace, or repeal a figure for the threshold amount for the purposes of paragraph (a) of the definition of item DMT in subsection (4):
 - “(e) set, replace, or repeal a figure for the interest rate of return for the purposes of paragraph (a) of the definition of item IRR in subsection (4).
- “(6) An Order in Council under **subsection (5)** may—
 - “(a) come into effect on or after 1 July 2005:
 - “(b) apply for measurement periods and quarters that—
 - “(i) are in the 2005–06 or a subsequent income year; and
 - “(ii) commence on or after 1 July 2005.

New clauses 52B inserted

To insert after clause 52 (after line 16, page 61) the following:

52B Resident withholding tax deductions to be credited against income tax assessed

- (1) In the heading to section LD 3, “**deductions**” is replaced by “**payments**”.
- (2) In section LD 3(2), in the words before paragraph (a)—
 - (a) “deducted from” is replaced by “paid in relation to”:
 - (b) “deduction” is replaced by “payment”.
- (3) In section LD 3(2), in the words after paragraph (d), “deducted” is replaced by “payments”.

New clauses 57B to 57E inserted

To insert after clause 57 (after line 39, page 66) the following:

57B Deduction of resident withholding tax

- (1) The heading before section NF 2 is replaced by “**Liability to pay resident withholding tax**”.
- (2) The heading to section NF 2 is replaced by “**Liability to pay resident withholding tax**”.
- (3) Before section NF 2(1), the following is inserted:

“(1A) A person is liable to pay to the Commissioner, in relation to a payment that is or includes resident withholding income, a tax (called **resident withholding tax**) of an amount given by **subsection (1) or (1B)** if—

 - “(a) the person makes the payment and is required to make a deduction of resident withholding tax from the payment:
 - “(b) the person is a RWT proxy for the payer of the resident withholding income, the recipient of the resident withholding income, and the resident withholding income.

“(1AB) A person who makes a payment that is or includes resident withholding income must deduct resident withholding tax from the payment if the person is not excluded by the rest of this section from liability to make the deduction.”
- (4) In section NF 2(1), the words before paragraph (a) are replaced by “If a person makes a payment that is or includes resident withholding income and is required to deduct resident withholding tax from the payment, the person must make a deduction—”.
- (5) After section NF 2(1), the following is inserted:

“(1B) A person who is a RWT proxy for a payer of resident withholding income and a payment of resident withholding income in the form of a taxable bonus issue must pay to the Commissioner the amount of resident withholding tax given by the following formula:

$$a \times b$$

where—

- a is the appropriate rate of resident withholding tax, expressed as a percentage, specified in schedule 14, clause 1 or 1C
- b is the amount under section CD 7C of the dividend that is the taxable bonus issue.”

57C New section NF 2AA inserted

After section NF 2, the following is inserted:

“NF 2AA Election to be RWT proxy

- “(1) A person is a **RWT proxy** for a payer of resident withholding income and a payment that is or includes the resident withholding income if—
- “(a) the person gives to the Commissioner a notice of election under **subsection (2)**; and
 - “(b) the payer is a unit trust who is a non-resident; and
 - “(c) the recipient is a natural person; and
 - “(d) the recipient has requested the person to act as an RWT proxy in relation to the payer and the resident withholding income; and
 - “(db) the person has agreed to act as an RWT proxy in relation to the recipient; and
 - “(e) the resident withholding income is a taxable bonus issue under paragraph (d) of the definition of the term; and
 - “(f) the payment is made while the election in the notice is effective.
- “(2) A notice of election must be in a form acceptable to the Commissioner and contain—
- “(a) an election by the person to be a RWT proxy for taxable bonus issues by the payer; and
 - “(b) the name and postal address of the payer; and
 - “(c) the date from which the election is effective.
- “(3) An election by a person to be a RWT proxy is effective from the date nominated in the notice of election until the later of the following:
- “(a) the date nominated in a notice in a form acceptable to the Commissioner of cancellation of the election that the Commissioner receives from the person:
 - “(b) the date on which the Commissioner receives from the person the notice of cancellation of the election.”

57D Election to apply higher rate of deduction

(1) Section NF 2A(1) is replaced by the following:

- “(1) A person entitled to receive a payment to which section NF 2(1) or (1B) relates may elect, in the manner required by the interest payer or RWT proxy, that the payment be subject to

resident withholding tax at a rate specified in schedule 14, clause 1(a), (b), or (c).”

- (2) In section NF 2A(3),—
- (a) “each deduction” is replaced by “each deduction or payment under section NF 2(1B)”;
 - (b) “the deduction” is replaced by “the deduction or payment”.

57E Payment of deductions of resident withholding tax to Commissioner

After section NF 4(8), the following is added:

- “(9) For the purposes of this section, a RWT proxy who is required to pay resident withholding tax in relation to a payment of resident withholding income is treated as having deducted the resident withholding tax from the payment at the time of the payment.”

Clause 60

To insert after clause 60(8) (after line 39, page 68) the following:

- (8B) Paragraph (e) of the definition of **fixed rate share** is replaced by the following:

“(e) in sections **FG 8G** (New Zealand net equity of New Zealand banking group) and LF 2 (Granting of foreign underlying tax credit) has the meaning given in section LF 2(3)”.

To insert after clause 60(26) (after line 25, page 71) the following:

- (26B) In the definition of **resident withholding tax**, “Deduction of resident withholding tax” is replaced by “Liability to pay resident withholding tax”.

To insert after clause 60(27) (after line 29, page 71) the following:

- (27B) After the definition of **royalty**, the following is inserted:
“**RWT proxy** is defined in **section NF 2AA** (Election to be RWT proxy)”.

To omit from clause 60(28) the definition of **ultimate parent** (lines 1 to 3, page 72).

To add after clause 60(28) (after line 3, page 72) the following:

- (29) Before the definition of **unadjusted income tax liability**, the following is inserted:
“**ultimate parent** is defined in **section FG 8C** (New Zealand banking group of registered bank) for the purposes of that section”.

New clause 62B inserted

To insert after clause 62 (after line 11, page 72) the following:

62B New schedule 11B inserted

After schedule 11, schedule 11B in **Schedule 2** of this Act is inserted.

Clause 73

To insert in clause 73, in the formula in section FG 8G(1) (in line 24, page 83), “- FRS” after “EQV”.

To insert in clause 73, in the formula in section FG 8G(1) (in line 25, page 83), “+ PSCH – NSCH” after “AEQI”.

To insert in clause 73, after the definition of item EQV in section FG 8G(1) (after line 25, page 84), the following:

- FRS is the financial value for the measurement day of fixed rate shares, each of which is—
- (a) issued by a member of the New Zealand banking group; and
 - (b) owned by a person who is resident in New Zealand; and
 - (c) included in the value of item EQV; and
 - (d) issued by the member—
 - (i) on or after 1 January 2005:
 - (ii) before 1 January 2005, if the measurement period begins on or after 1 January 2010

To insert in clause 73, after the definition of item AEQI in section FG 8G(1) (after line 17, page 87), the following:

- PSCH is the sum of the amounts for the income year, each of which is listed in schedule 11B, part A
- NSCH is the sum of the amounts for the income year, each of which is listed in schedule 11B, part B

To insert in clause 73, after section FG 8G(4) (after line 28, page 88), the following:

- “(5) The Governor-General may, from time to time by Order in Council,—
- “(a) insert in schedule 11B, part A a definition of an amount to be included in item PSCH for the purposes of subsection (1):
 - “(b) insert in schedule 11B, part B a definition of an amount to be included in item NSCH for the purposes of subsection (1):
 - “(c) amend or delete a definition of an amount in schedule 11B:
 - “(d) set, replace, or repeal a figure for the threshold amount for the purposes of paragraph (a) of the definition of item DMT in subsection (4):

“(e) set, replace, or repeal a figure for the interest rate of return for the purposes of paragraph (a) of the definition of item IRR in subsection (4).

“(6) An Order in Council under **subsection (5)** may—

“(a) come into effect on or after 1 July 2005:

“(b) apply for measurement periods and quarters that commence on or after 1 July 2005.

Clause 80

To insert after clause 80(3) (after line 11, page 96) the following:

(3B) Paragraph (e) of the definition of **fixed rate share** is replaced by the following:

“(e) in sections **FG 8G** and LF 2 has the meaning given in section LF 2(3)”.

New clause 80B inserted

To insert after clause 80 (after line 15, page 98) the following:

80B New schedule 11B inserted

After schedule 11, schedule 11B in Schedule 2 of this Act is inserted.

Clause 84B

To insert, after clause 84, (after line 30, page 104) the following:

84B Resident withholding tax deduction tax certificates

(1) After section 25(10), the following is inserted:

“(11) In this section, a dividend referred to in section NF 2(1B) of the Income Tax Act 2004 is treated as interest.”

(2) **Subsection (1)** is treated as applying on and after 21 December 2004.

84C Records to be kept for purposes of resident withholding tax

(1) In section 26(1),—

(a) in the words preceding paragraph (a), “deduction of resident withholding tax from” is replaced by “payments of resident withholding tax in relation to”.

(b) in paragraph (a), “deduction” is replaced by “payment”.

(c) in paragraph (b), “deduction” is replaced by “payment”.

(2) In section 26(2), in the words preceding paragraph (a), “resident withholding tax from” is replaced by “pay resident withholding tax in relation to”.

(3) In section 26(2)(a), “deduction” is replaced by “payment”.

(4) **Subsection (1) to (3)** are treated as applying on and after 21 December 2004.

84D Provision of tax file numbers

- (1) In section 27(1), “resident withholding tax deduction” is replaced by “resident withholding tax payment” and “by a payer” is omitted.
- (2) **Subsection (1)** is treated as applying on and after 21 December 2004.

Clause 85

To insert before clause 85(1) (after line 31, page 104) the following:

- (1A) In section 33A(1)(b)(iv), “Interest” is replaced by “Interest or a dividend referred to in section NF 2(1B) of the Income Tax Act 2004”.
- (1AA) In section 33A(1)(b)(x), subparagraph (B) is replaced by the following:
 - “(C) was not resident withholding income under section NF 2(1A)(b); and.”
- (1AAB) In section 33A(2), paragraphs (cb)(ii) and (f) are repealed.

Clause 87B

To insert after clause 87 (after line 11, page 105) the following:

86B Statement of payment of deductions of withholding tax

- (1) In section 50,—
 - (a) the section heading is replaced by:

Statement of payment of resident withholding tax
 - (b) “deduction” is replaced by “payment” wherever it appears.
- (2) **Subsection (1)** is treated as applying on and after 21 December 2004.

86C Resident withholding tax deduction reconciliation statements

- (1) After section 51(6), the following is added:

“(7) In this section, a dividend referred to in section NF 2(1B) of the Income Tax Act 2004 is treated as interest.”
- (2) **Subsection (1)** is treated as applying on and after 21 December 2004.

New Schedule 2 added

To add after the Schedule (after line 18, page 115) the following:

Schedule 2 62B, 80B
**New schedule 11B inserted in Income Tax Act 1994
and Income Tax Act 2004**

Schedule 11B FG 8G
**Amounts affecting New Zealand net equity for New
Zealand banking group of registered bank**

Part A
Amounts added to equity value

Part B
Amounts subtracted from equity value

Explanatory note

The amendment to *clause 2* adjusts some commencement dates of clauses in the *Taxation (Base Maintenance and Miscellaneous Provisions) Bill*.

The amendments to *clauses 43 and 60* and the insertions of *new clauses 52B, 57B to 57E, and 62B* affect *Part 1* of the *Taxation (Base Maintenance and Miscellaneous Provisions) Bill*, which amends the *Income Tax Act 2004*.

The first 4 amendments to *clause 43* add *new items FRS, PSCH and NSCH* to the formula in *section FG 8G(1)*. The formula gives the New Zealand net equity for the New Zealand banking group of a registered bank. The insertion of *new item FRS* means that fixed rate shares do not count towards the New Zealand net equity. The amounts included in *new items PSCH and NSCH* will be given by *new schedule 11B* of the *Income Tax Act 2004*. That schedule is currently empty.

The fifth amendment to *clause 43* adds *new subsections (5) and (6)* to *section FG 8G*. The new subsections grant the Governor-General a power to amend *new schedule 11B* by Order in Council.

New clause 52B amends *section LD 3* so that a payment by a RWT proxy of RWT on a taxable bonus issue will be a credit to the recipient of the taxable bonus issue.

New clauses 57B to 57E provide for a person to elect to be a *RWT proxy*. A RWT proxy is liable to pay resident withholding tax on the value of a taxable bonus issue that is issued by a nominated non-resident unit trust to a resident who is a natural person.

An amendment to *clause 60* adds a new *subclause (8B)*. The new subclause inserts, in the definition of *fixed rate share*, a cross reference to *section FG 8G(1)*.

New clause 62B inserts, into the *Income Tax Act 2004*, the *new schedule 11B* that is contained in *new Schedule 2* of the bill.

The amendments to *clauses 73 and 80* and the insertion of *new clause 80B* affect *Part 2* of the *Taxation (Base Maintenance and Miscellaneous Provisions) Bill*, which amends the *Income Tax Act 1994*. The changes correspond to the amendments to *clauses 43 and 60* and the insertion of *new clause 62B*.

Amendments to *clause 85* introduce new amendments to *section 33A* of the *Tax Administration Act 1994*. The effect of the new amendments is that a taxable bonus issue on which a RWT proxy has paid resident withholding tax will not result in the recipient's being required to make a return of income.

New schedule 2 contains a *schedule 11B* that is inserted in both the *Income Tax Act 1994* and the *Income Tax Act 2004*.
