

House of Representatives  
Supplementary Order Paper

Tuesday, 20 June 2006

Taxation (Annual Rates, Savings Investment, and  
Miscellaneous Provisions) Bill

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*Proposed amendments*

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

*Clause 2*

*Subclause (12)*: to insert after “**40**,” (line 24 on page 9), “**51**,”.

*Subclause (15)*: to omit “**51**,” (line 31 on page 9).

*Clause 51*

*Subclause (1)*: to omit from *new section EX 33(1)(c)(iv)* “fund.” (line 7 on page 41) and substitute “fund:”.

*Subclause (1)*: to add after *new section EX 33(1)(c)* (after line 7 on page 41) the following paragraph:

“(d) the rights are from shares and the person is a New Zealand resident and—

“(i) the FIF is a grey list company that meets the requirements of **subsection (1D)**; and

“(ii) the income year begins before 1 April 2012.”

*New subclause (1B)*: to insert before *subclause (2)* (before line 8 on page 41) the following subclause:

(1B) After section EX 33(1C), the following is inserted:

*“Requirements for grey list company*

“(1D) A grey list company referred to in **subsection (1)(d)(i)** must,—

“(a) on 17 May 2006,—

“(i) be listed on a recognised exchange in New Zealand; and

“(ii) have more than 20 000 shareholders who have addresses in New Zealand on the company’s share register in New Zealand; and

- “(iii) have shareholders referred to in **subparagraph (ii)** who between them hold shares in the company carrying voting interests of more than 50%; and
  - “(iv) be listed on a recognised exchange in a country listed in schedule 3, part A (International tax rules: grey list countries); and
  - “(v) be liable to income tax in a country listed in schedule 3, part A; and
  - “(vi) have assets of which more than 50% in total value are shares in other companies carrying voting interests of more than 50%; and
- “(b) in the period of 30 days beginning from the day on which the **Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Act 2006** receives the Royal assent, give to the Commissioner notice that on 17 May 2006 the grey list company met the requirements in **paragraph (a)(i) to (vi)**.”

*Subclause (2)*: to omit “**Subsection (1)** applies” (line 8 on page 41) and substitute “**Subsections (1) and (1B)** apply”.

*Clause 71*

*Subclause (1)*: to omit *new section EX 54B* (line 10 on page 59 to line 6 on page 60) and substitute the following section:

**“EX 54B FIF rules first applying to interest for period beginning on or after 1 April 2007**

*“Application of this section*

- “(1) This section applies if—
- “(a) a person has rights in a FIF—
    - “(i) on the day (**preceding day**) before an income year or portfolio entity period; and
    - “(ii) on the day (**application day**) that begins the income year or portfolio entity period; and
  - “(b) for the period ending on the preceding day, the person did not derive FIF income or loss from the rights; and
  - “(c) for the period beginning on the application day, the rights are an attributing interest; and
  - “(d) this section has not applied to the person and the rights in the FIF before the preceding day.

*“Revenue account property*

- “(2) If the interest is revenue account property of the person, the person is treated as having—
- “(a) disposed of the interest to an unrelated person immediately before the application day; and
  - “(b) reacquired the interest at the start of the application day; and

“(c) received for the disposal and paid for the reacquisition an amount equal to the cost of the interest at the time of the disposal.

“*Not revenue account property*

“(3) If the interest is not revenue account property of the person, the person is treated as having—

“(a) disposed of the interest to an unrelated person immediately before the application day; and

“(b) reacquired the interest at the start of the application day; and

“(c) received for the disposal and paid for the reacquisition an amount equal to—

“(i) the market value of the interest at the time of the disposal, if **subparagraph (ii)** does not apply; or

“(ii) the cost incurred in acquiring the interest, if the person is a natural person and the cost of the interest is greater than the market value of the interest at the time of the disposal.

“Defined in this Act: attributing interest, FIF, FIF income, loss, market value, revenue account property” .

#### *Clause 126*

To omit *subclause (36)* (lines 19 to 23 on page 103) and substitute the following subclause:

“(36) **Subsection (10)** applies for a person for the 2005–06 and later income years, unless—

“(a) the relevant income year starts before 17 May 2006; and

“(b) the person is, for that income year, a member of a consolidated group before 17 May 2006 under the law that would apply if this Act did not exist; and

“(c) for that income year, the first instalment date for payment of provisional tax by the consolidated group is before 17 May 2006.”

#### *Clause 162*

To omit *subclause (4)* (lines 24 to 28 on page 114) and substitute the following subclause:

“(4) **Subsection (2)** applies for a person for the 1997–98 and later income years, unless the person is, for the relevant income year, a member of a consolidated group under the law that would apply if this Act did not exist.”

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### **Explanatory note**

This Supplementary Order Paper amends the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill. Some amendments introduce,

for shareholders in certain grey list companies, a 5-year exemption from the changes to the FIF rules that are introduced by the bill. The transition rules for the application of the FIF rules to previously exempt interests are also amended. Other amendments ensure that people who were members of a consolidated group under the *Income Tax Act 2004* or the *Income Tax Act 1994* (as they applied before the amendment) will not be disadvantaged by a proposed retrospective amendment to the consolidated group rules.

The amendments to *clause 2* change the commencement date of *clause 51* from *1 April 2007* to the date on which the bill was introduced. The change does not affect the income years to which the provisions in *clause 51* apply.

The amendments to *clause 51* add, to new *section EX 33(1)* of the *Income Tax Act 2004*, new *paragraph (d)* and new *subsection (1D)*. The new paragraph provides that a New Zealand resident shareholder in a grey list company does not derive FIF income from shares in the company for an income year in the exemption period if the requirements of the new subsection are met. The requirements of the new subsection are that, on the day the bill was introduced: the company must be listed on a recognised exchange in New Zealand; the shareholder must be 1 of more than 20 000 who are recorded on the company's share register in New Zealand as having New Zealand addresses and who hold voting interests in the company of more than 50% in total; the company must be listed on a recognised exchange in a grey list country; the company must be liable for income tax in a grey list country; the company must have interests that are voting interests of more than 50% in other companies and are in total worth more than 50% of the company's assets; and the company must notify the Commissioner within 30 days of the Royal assent to the amendment that the company met the requirements of the new subsection on the day that the bill was introduced.

In *clause 71*, new *section EX 54B* is replaced. The new provision applies for interests that lose their exemption from the FIF rules at the start of a period beginning on or after 1 April 2007, including interests that have an extended exemption under new *section EX 33(1D)* inserted by *clause 51*.

The amendment to *clause 126(36)* changes the application of a retrospective amendment to the definition of *eligible company* in *section OB 1 of the Income Tax Act 2004*. As a result, people who are members of a consolidated group under the unamended legislation will not be disadvantaged by the retrospective amendment.

The amendment to *clause 162(4)* corresponds to the amendment to *clause 126(36)*, changing the application of a retrospective amendment to the definition of *eligible company* in *section OB 1 of the Income Tax Act 1994*. As a result, people who are members of a consolidated group under the unamended legislation will not be disadvantaged by the retrospective amendment.