

House of Representatives
Supplementary Order Paper

Wednesday, 20 June 2007

Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill

Proposed amendments

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

Clause 2

New subclause (12B): to insert after *subclause (12)* the following subclause (after line 19 on page 15):

(12B) **Sections 59B, 78B, and 135(18B) and (25B)** are treated as coming into force on 20 June 2007.

New clause 59B inserted

To insert after *clause 59* the following clause (after line 31 on page 40):

59B Branch equivalent income or loss: calculation rules
In section EX 21(30), “FC 8I” is replaced by “**FC 8H**”.

New clause 78B inserted

To insert after *clause 78* the following clause (after line 6 on page 55):

78B Sections FC 8H and FC 8I replaced
Sections FC 8H and FC 8I are replaced by the following:

“FC 8H Adjustment required if lease becomes finance lease

“(1) A lessor and a lessee must make an adjustment under this section if—

“(a) the lease is a consecutive or a successive lease—

“(i) that is deemed to be 1 lease under the definition of lease; and

“(ii) with a term of the lease that the lessor and lessee did not contemplate, at the start of the term, would be for more than 75% of the personal property lease asset’s estimated useful life; and

- “(iii) with a term of the lease that is more than 75% of the asset’s estimated useful life:
- “(b) the lease is an operating lease—
 - “(i) that satisfies **paragraph (c)** of the definition of finance lease at a time in the period beginning with 20 June 2007 and ending with the end of the income year that includes 20 June 2007; and
 - “(ii) with a term of the lease that ends after the end of the income year that includes 20 June 2007:
- “(c) the lease is an operating lease—
 - “(i) to which **paragraph (b)** does not apply; and
 - “(ii) that becomes a finance lease under **paragraph (c)** of the definition of finance lease at or after the start of the income year following the income year that includes 20 June 2007.
- “(2) The lessor and lessee must each—
 - “(a) adjust their income and expenditure calculated for the lease; and
 - “(b) include the adjustment in a return of income for the income year in which the lease becomes a finance lease.
- “(3) The amount of the adjustment is calculated in relation to the period described in **subsection (5)** using the formula—
finance income – finance expenditure – operating income + operating expenditure.
- “(4) In the formula—
 - “(a) **finance income** is the income that the lessor or lessee would have derived under the lease if the lease were a finance lease for the period:
 - “(b) **finance expenditure** is the expenditure that the lessor or lessee would have incurred under the lease if the lease were a finance lease for the period:
 - “(c) **operating income** is the income that the lessor or lessee would have derived under the lease if the lease were an operating lease for the period:
 - “(d) **operating expenditure** is the expenditure that the lessor or lessee would have incurred under the lease if the lease were an operating lease for the period.
- “(5) The period begins with the start of the term of the lease and ends with—
 - “(a) the end of the income year in which the lease becomes a finance lease, if **subsection (1)(b)** does not apply to the lease; or
 - “(b) the end of the income year before the income year in which the lease becomes a finance lease, if **subsection (1)(b)** applies to the lease.

“(6) If the adjustment is positive, the amount is income of the lessor or lessee in the income year in which the lease becomes a finance lease.

“(7) If the adjustment is negative, the amount is expenditure incurred by the lessor or lessee in the income year in which the lease becomes a finance lease.”

Clause 135

New subclause (18B): to insert after *subclause (18)* the following subclause (after line 26 on page 104):

(18B) In paragraph (b) of the definition of **finance lease**, “life)” is replaced by “life):” and the following is added:

- “(c) when the person enters the lease or at a later time,—
- “(i) involves or is part of an arrangement that involves use of the asset wholly or mainly outside New Zealand; and
 - “(ii) involves or is part of an arrangement that involves income of any person, arising from the use of the asset by any person, that is exempt income, or excluded income, or non-residents’ foreign-sourced income; and
 - “(iii) is an arrangement that is a finance lease under NZIAS 17 or under which a person who is not the lessor has substantially all the risks and rewards incidental to ownership of the asset”.

New subclause (25B): to insert after *subclause (25)* the following subclause (after line 34 on page 105):

(25B) In paragraph (d) of the definition of **lease**, “FC 8I” is replaced by “**FC 8H**”.

Subclause (34): to insert after the *definition of NZIAS 8* the following definition (after line 29 on page 107):

“**NZIAS 17** means New Zealand Equivalent to International Accounting Standard 17, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place” .

New subclause (58B): to insert after *subclause (58)* the following subclause (after line 2 on page 112):

- (58B) **Subsection (18B)** applies to a lease—
- (a) for the income year including the start of the term of the lease and for later income years, if the lease is entered on or after 20 June 2007:
 - (b) for income years after the income year that includes 20 June 2007, if—
 - (i) the lease is entered before 20 June 2007; and

- (ii) the term of the lease ends after the end of the income year that includes 20 June 2007.
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Explanatory note

This Supplementary Order Paper amends the *Taxation (Annual Rates, Business Taxation, Kiwi Saver, and Remedial Matters) Bill* by inserting an amendment to the definition of *finance lease* in the *Income Tax Act 2004* together with consequential amendments to that Act.

The amendment to *clause 2* provides for the commencement of the amendments on 20 June 2007, which is the date of the announcement of the change.

New *clause 59B* consequentially corrects a cross reference.

New *clause 78B* replaces *sections FC 8H and FC 8I* with a new *section FC 8H*, providing for the adjustment of the income and expenditure of lessors and lessees in leases that are reclassified as finance leases under the amended definition.

New *clause 135(18B)* amends the definition of *finance lease* by including a new *paragraph (c)*. The additional type of finance lease is an arrangement that involves an asset used outside New Zealand, with the use giving rise to income that is not assessable income, and is a finance lease under the relevant accounting standard or is an arrangement that substantially transfers the risks and rewards of owning the asset to a person who is not the lessor.

New *clause 135(25B)* consequentially corrects a cross reference.

New *clause 135(34)* inserts a definition of the relevant accounting standard.

New *clause 135(58B)* gives the application of the amended definition of *finance lease*. An affected lease that is entered before 20 June 2007 becomes a finance lease at the beginning of the following income year.
