

House of Representatives

Supplementary Order Paper

Thursday, 6 December 2007

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

Proposed amendments

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

Clause 2

Subclause (3): to replace “**174, and**” (line 8 on page 20) with “**174(1) and (2) and**”.

New subclause (10B): to insert after *subclause (10)* (after line 7 on page 21) the following:

(10B) **Sections 85B, 135(49B), and 138(1B)** are treated as coming into force on 1 December 2006.

Subclause (11): to insert after “**193,**” (line 11 on page 22) “**239C(1),**”.

New subclause (12B): to insert after *subclause (12)* (after line 14 on page 22) the following subclause:

(12B) **Sections 40BA, 40BAB, 40BAC, 58F, 78BB, and 135(18B), (28B), and (69B)** are treated as coming into force on 20 June 2007.

Subclause (13): to replace “**and (9)(a),**” (line 16 on page 22) with “**(9)(a), and (11),**”.

Subclause (14): to omit “**(32),**” (line 25 on page 22) and “**147C,**” (line 26 on page 22).

Subclause (16): to insert after “**143B,**” (line 31 on page 22) “**144(2)(aa),**”.

Subclause (16): to insert after “**147C,**” (line 32 on page 22) “**155B, 174(1B),**”.

Subclause (16): to replace “**184(1A) and (2),**” (line 33 on page 22) with “**184(1A), (2), and (2B),**”.

Subclause (16): to replace “**199 to 199G, 201(1), (2), (3), (5)**” (line 1 on page 23) with “**198BA, 199, 199D, 201(1), (2), (3), (5), (6B)**”.

Subclause (16): to replace “**202,**” (line 2 on page 23) with “**202(2), 202BA,**”.

Subclause (16): to replace “**224E, 225, 227, 227B, 229B, 230(3), 231, 236(1B), 237,**” (lines 2 and 3 on page 23) with “**224(1A), 224E, 225, 226BB to 226BE, 226D, 227, 227BA, 227B, 230B(1), (2), (3), and (5), 231, 236(1A), 237, 240B(2),**”.

Subclause (18): to replace “**214B(2) and 220**” (line 7 on page 23) with “**197B, 199B, 199C, 199E to 199G, 214B(2), 220, 229B, 230(3), 231, and 240C(2)**”.

Heading to Part 1

To replace the heading (lines 17 to 19 on page 23) with the following:

**Part 1
Amendments to Income Tax Act 2004**

Heading before clause 4

To omit the heading (line 27 on page 23).

Clause 13(2)

Subsection (1B): to replace “section EX 51” (line 19 on page 31) with “section **EX 51(5)**”.

Clause 24

Section CX 42B(2)(a): to replace “trustee of the retirement savings scheme” (line 8 on page 39) with “retirement savings scheme”.

Section CX 42B: list of defined terms: to omit “, trustee” (line 19 on page 39).

Clause 31(2)

Subsection (1B): to replace “section EX 51” (line 7 on page 47) with “section **EX 51(5)**”.

New clauses 40BA to 40BAC inserted

To insert after *clause 40* (after line 11 on page 53) the following:

40BA Special rate or provisional rate

In section EE 28, the following is added:

Exception

“(4) This section is subject to **section FC 8I(8)** (Adjustment required for certain operating leases entered before 20 June 2007).”

40BAB Meaning of adjusted tax value

In section EE 46, the following is added as subsection (2):

Exception

“(2) This section is subject to **section FC 8I(7)** (Adjustment required for certain operating leases entered before 20 June 2007).”

40BAC Meaning of annual rate

After section EE 52(6), the following is added:

Exception

“(7) This section is subject to **section FC 8I(8)** (Adjustment required for certain operating leases entered before 20 June 2007).”

Clause 47(1)

Section EW 15D(1)(d): to replace the paragraph (lines 17 to 20 on page 68) with the following:

- “(d) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
 - “(i) section **EW 15C** applies or has applied to financial arrangement A; and
 - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge.

Section EW 15E(1)(c): to replace the paragraph (lines 14 to 17 on page 70) with the following:

- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
 - “(i) section **EW 15C** applies or has applied to financial arrangement A; and
 - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge; and

New clause 58F inserted

To insert after *clause 58E* (after line 14 on page 82) the following:

58F Branch equivalent income or loss: calculation rules

In section EX 21(30), “FC 8I” is replaced by “**FC 8H**”.

Clause 64(5)

Paragraph (d): to replace the paragraph (lines 3 to 13 on page 95) with the following:

- “(d) an interest in a non-resident holding, directly or indirectly, assets of which 80% or more by value at a time in the income year—
 - “(i) consist of fixed rate shares, or financial arrangements providing funds to a person; and
 - “(ii) are denominated in New Zealand dollars or, under NZIAS 39, are hedged items having a value in New Zealand dollars governed by a hedging instrument that is highly effective:” .

Clause 69(6)

Subsection (13): to replace “section EX 51” (line 4 on page 99) with “section **EX 51(5)**”.

Clause 75

New subsection (1B): to insert after *subclause (1)* (after line 28 on page 105) the following:

- (1B) Section EX 54B(2)(b) is replaced by the following:

“(b) reacquired the interest at the beginning of the application day; and”.

New clause 78BB inserted

To insert after *clause 78B* (after line 6 on page 115) the following:

78BB Sections FC 8H and FC 8I replaced

(1) 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 do not contemplate, at the start of the term, will be 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 that becomes a finance lease under **paragraph (c)** of the definition of **finance lease**.

“(2) The lessor and lessee must each—

“(a) calculate an adjustment for the lease; and

“(b) include the adjustment in a return of income for the tax year corresponding to 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 – unadjusted income +
unadjusted 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) **unadjusted income** is the income that the lessor or lessee derived under the lease:

“(d) **unadjusted expenditure** is the expenditure that the lessor or lessee incurred under the lease.

“(5) The period begins with the start of the term of the lease and ends with the end of the income year in which the lease becomes a finance 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.

“FC 8I Adjustment required for certain operating leases entered before 20 June 2007

- “(1) A lessor must make an adjustment under this section if the lease is an operating lease—
- “(a) entered before 20 June 2007; and
 - “(b) that is or is part of an arrangement meeting on 20 June 2007 the requirements of **paragraph (c)(i) to (iii)** of the definition of **finance lease**; and
 - “(c) with a term of the lease ending after the end of the income year including 20 June 2007; and
 - “(d) that does not meet the requirements of **section FC 8H(1)(a)** before the end of the income year after the income year including 20 June 2007.
- “(2) The lessor must—
- “(a) calculate an adjustment for the lease asset; and
 - “(b) include the adjustment in a return of income for the tax year corresponding to the income year after the income year including 20 June 2007.
- “(3) The amount of the adjustment is calculated using the formula—

$$\frac{\text{total depreciation losses}}{6.}$$

- “(4) In the formula, **total depreciation losses** is the total amount of deductions for depreciation losses for the lease asset allowed to the lessor in the period described in **subsection (5)**.
- “(5) The period begins with the start of the term of the lease and ends with the end of the income year including 20 June 2007.
- “(6) The adjustment is income under the lease of the lessor in the income year after the income year including 20 June 2007.
- “(7) The adjusted tax value of the lease asset at the beginning of the income year after the income year including 20 June 2007 is the total of the adjustment and the adjusted tax value that the lease asset would have in the absence of this section.
- “(8) For an income year beginning after 20 June 2007 in which the lease is an operating lease, the depreciation loss allowed for the lease asset other than under section EE 41(2) is five-sixths of the depreciation loss that would be allowed for the lease asset in the absence of this subsection.”

- (2) **Subsection (1)** applies for leases entered on or after 20 May 1999 and for income years including 20 June 2007 and later income years.

Clause 82B

New subclause (1B): to insert after *subclause (1)* (after line 13 on page 125) the following:

- (1B) In section HL 9(2)(c), “1956.” is replaced by “1956:” and the following is added:
- “(d) is a superannuation fund that—
 - “(i) existed before 17 May 2006; and
 - “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more paragraphs (a) and (c) to (e) of the definition of **qualifying unit trust**; and
 - “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”

Clause 82C

Subclause (2)(a): to insert before *paragraph (a)* (after line 21 on page 125) the following:

- (aa) after paragraph (b)(i), the following is inserted:
 - “(ib) replacement payments:”:

Clause 83H(3)

Heading: to replace the heading (lines 22 and 23 on page 128) with the following:

83H Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves

Paragraph (b)(i) to (iii): to replace the subparagraphs (lines 1 to 10 on page 129) with the following:

- “(i) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if **subparagraph (ii)** does not apply; or
- “(ii) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November.”

New clause 85B

To insert after *clause 85* (after line 10 on page 133) the following:

85B New section KC 6 inserted

- (1) After section KC 5, the following is inserted:

“KC 6 Rebate in respect of redundancy payment

- “(1) A person who derives a redundancy payment relating to a loss of employment is allowed as a rebate of income tax relating to the loss of employment the smaller of—
- “(a) \$3,600;
 - “(b) a sum equal to 6 cents for every complete dollar of the total amount derived by the person of redundancy payments, each of which—
 - “(i) relates to the loss of employment; and
 - “(ii) is not a payment referred to in **subsection (3)**.
- “(2) The Commissioner must not make a refund under this section before the person makes an application complying with **section 41B** of the Tax Administration Act 1994.
- “(3) A rebate is not allowed for a redundancy payment—
- “(a) relating to retirement from employment;
 - “(b) relating to loss of seasonal employment if the loss arises from the normal seasonal work cycle;
 - “(c) relating to a contract of employment for a fixed term or for the duration of a project;
 - “(d) relating to employment for a period following notice of termination of employment;
 - “(e) paid to a director of a company by the company or by a person associated with the company under section OD 8(3);
 - “(f) paid to a person by another person associated with the person under section OD 8(3);
 - “(g) paid by a person to an employee who has been paid a redundancy payment by another person associated with the person under section OD 8(3).”
- (2) **Subsection (1)** applies for redundancy payments paid on or after 1 December 2006.

Clause 135

New subclause (18B): to insert after *subclause (18)* (after line 4 on page 244) the following:

- (18B) In paragraph (b) of the definition of **finance lease**, “life” is replaced by “life):” and the following is added:
- “(c) the person enters on or after 20 June 2007 and is, or is part of, an arrangement that, when the person enters the lease or when a change in the terms of the arrangement changes the allocation or size of the risks and rewards incidental to ownership of the lease asset,—
 - “(i) involves use of the asset outside New Zealand for all or most of the term of the lease; and
 - “(ii) involves income of any person who is not the lessor, 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 a finance lease under NZIAS 17 for the lessor, or for a company that is in the same group of companies as the lessor and derives assessable income from the arrangement, or is an arrangement under which persons who do not include the lessor bear substantially all the risks and rewards incidental to ownership of the lease asset, determined as at the time the person enters the lease and taking into account later changes to the arrangement”.

New subclause (28B): to insert after *subclause (28)* (after line 18 on page 245) the following:

(28B) In paragraph (d) of the definition of **lease**, “FC 8I” is replaced by “**FC 8H**”.

Subclause (45): paragraph (a): to replace “30%” (line 14 on page 249) with “33%”.

New subclause (49B): to insert after *subclause (49)* (after line 14 on page 250) the following:

(49B) After the definition of **reduced deficit debit**, the following is inserted:

“**redundancy payment** means a source deduction payment paid—

- “(a) to a person whose employment in a position is terminated because the position is superfluous to the requirements of the person’s employer; and
- “(b) in compensation for the person’s loss of employment”.

*Subclause (56): definition of **retirement scheme prescribed rate**: paragraph (c)(ii):* to replace the subparagraph (lines 19 and 20 on page 252) with the following:

“(ii) the person is a non-resident and the retirement scheme contributor is a Maori authority and the distribution is \$200 or less:

“(iii) the person is a non-resident and the retirement scheme contributor is a Maori authority and the person supplies the Maori authority with a notice satisfying **section 28C** of the Tax Administration Act 1994; or

*Subclause (56): definition of **retirement scheme withholding rate**: paragraphs (a) and (b):* to replace the paragraphs (lines 26 to 33 on page 252) with the following:

“(a) 39%, if **paragraphs (b) and (c)** do not apply; or

- “(b) 19.5%, if **paragraph (c)** does not apply and the person is a non-resident and the retirement scheme contributor is a Maori authority and the distribution is \$200 or less; or
- “(c) the rate that the person notifies to the retirement scheme contributor as the retirement scheme prescribed rate for the person and the retirement scheme contribution—
 - “(i) before the retirement scheme contribution is made; and
 - “(ii) by a notice satisfying **section 28C** of the Tax Administration Act 1994”.

New subclause (69B): to insert after *subclause (69)* (after line 32 on page 254) the following:

- (69B) **Subsection (18B)** applies for leases entered on or after 20 May 1999 and for income years including 20 June 2007 and later income years.

Subclause (71): to omit “**(32),**” (line 1 on page 255).

Clause 138

New subclause (1B): to insert after *subclause (1)* (after line 23 on page 255) the following:

- (1B) In section OD 8(3), in the words before paragraph (a), “**KC 6,**” is inserted after “HL 9,”.

Clause 144(2): definition of complying fund rules

New paragraph (aa): to insert, before *paragraph (a)* (after line 25 on page 271), the following:

- (aa) in paragraph (a), “2,” is inserted after “schedule 1, clauses”:

Paragraph (c): to replace the paragraph (lines 4 to 6 on page 272) with the following:

- (c) paragraphs (i) and (j) are replaced by the following:
 - “(i) require, as a minimum, the same contributions to be deducted for an employee as those provided by section 66 or section 66A of the KiwiSaver Act 2006 ignoring the 8% contribution rate; and
 - “(j) prevent a person over the New Zealand superannuation qualification age from joining; and”.

Heading before clause 145

To omit the heading (line 23 on page 274).

New clause 155B inserted

To insert after *clause 155* (after line 18 on page 289) the following:

155B New section 41B inserted

After section 41A, the following is inserted:

“41B Return by person claiming rebate on redundancy payment

- “(1) A person allowed a rebate under **section KC 6** of the Income Tax Act 2004 may apply to the Commissioner for a refund.
- “(2) An application under **subsection (1)** must be made in the manner required by the Commissioner, be signed by the person, and be accompanied by—
- “(a) any information the Commissioner requires, including—
 - “(i) the amount of the payment that is a redundancy payment under **section KC 6** of the Income Tax Act 2004; and
 - “(ii) the name of the payer of the redundancy payment; and
 - “(iii) the date on which the redundancy payment was made; and
 - “(b) written verification of the details referred to in **paragraph (a)**, in a document signed by the payer of the redundancy payment or other form satisfactory to the Commissioner.
- “(3) An application for a refund must be made in the period—
- “(a) beginning after the date of the redundancy payment; and
 - “(b) ending with the day that is 4 years after the date of the redundancy payment.
- “(4) When the Commissioner has considered an application for a refund, the Commissioner must, by notice, inform the taxpayer of the amount of the rebate allowed under section KC 6 of the Income Tax Act 2004 and of the amount of refund allowed.
- “(5) A refund allowed under **subsection (1)** must be paid as if it were tax paid in excess.
- “(6) A refund allowed under **subsection (1)**, to the extent it exceeds the correct amount of refund, is recoverable as an excess credit of tax under section 142D.
- “(7) Part VII does not apply to a refund or an excess refund made under this section.
- “(8) Part IX applies to applications made under this section.”

Clause 164

Paragraph (ba): to replace “(ba)” (line 16 on page 299) with “(bb)”.

Clause 174

New subclause (1B): to insert after *subclause (1)* (after line 6 on page 307) the following:

(1B) In section 139A(5), the words before paragraph (a) are replaced by the following:

“(5) Except in the case of a late filing penalty resulting from an employer monthly schedule or from a tax return required under sections 16 to 18 of the Goods and Services Tax Act 1985, the Commissioner must, not less than 30 days before imposing a late filing penalty,—”.

New subclause (4): to add after *subclause (3)* (after line 2 on page 308) the following:

(4) **Subsection (1B)** applies for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

Clause 184

New subclause (2B): to insert after *subclause (2)* (after line 8 on page 320) the following:

(2B) Section 141B(3)(b) is replaced by the following:

“(b) where the taxpayer has no tax to pay in respect of the return period, an amount equal to the product of—

“(i) the net loss of the taxpayer in respect of the return period, ascertained in accordance with the provisions of the Income Tax Act 2007 and treated as having a positive value; and

“(ii) the basic rate of income tax for companies in the relevant return period,—”.

Subclause (3): to replace the subclause (lines 9 and 10 on page 320) with the following:

(3) **Subsections (2) and (2B)** apply for tax positions taken on or after 1 April 2008.

Clause 187(1)

Section 141ED(1): words before paragraph (a): to replace “pay a penalty” (line 19 on page 322) with “pay a shortfall penalty”.

Clause 192(2)

Section 142(1B)(a) to (c): to replace the paragraphs (lines 11 to 16 on page 328) with the following:

“(a) the 28th day of the second month following the end of the taxable period, if **paragraphs (b) and (c)** do not apply; or

“(b) the 15th day of February, if the month following the end of the taxable period is December; or

“(c) the 7th day of June, if the month following the end of the taxable period is April.”

New clause 198BA

To insert, after *clause 198* (after line 19 on page 335), the following:

198BA Keeping of business records

In section 22(2)(1), “and the occasion of making it”, is replaced by “, the occasion of making it, and any related tax credit under **section MK 1(2)** of the Income Tax Act 2007.”

Clause 199C

To replace the clause (line 19 on page 336 to line 2 on page 337) with the following:

199C Knowledge offences

In **section 143A(5)(g)**, “tax.” is replaced by “tax:”, and the following is added:

“(h) amounts of compulsory employer contributions that must be paid under **Part 3, subpart 3A** of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under **section 101(5)** of that Act.”

Clause 201

Subclause (1): to replace the subclause (line 19 on page 338) with the following:

(1) **Subsections (2) to (10)** amend section 4(1).

*Subclause (3): definition of **defined benefit scheme member**: paragraph (a): words before subparagraph (i)*: to replace the words (lines 28 to 30 on page 338) with the following:

(a) the defined benefit contributions are employer’s superannuation contributions made to, or amounts credited from within, a registered superannuation scheme (the **contributions scheme**) to fund the agreed benefits for the employee, and—

*Subclause (3): definition of **defined benefit scheme member**: paragraph (a)(ii)*: to replace “for employees generally” (lines 9 and 10 on page 339) with “to eligible employees”.

*Subclause (3): definition of **defined benefit scheme member**: paragraph (a)(iii)(A)*: to replace “to make specified superannuation contributions for the employee before 1 April 2008” (lines 16 to 18 on page 339) with “before 1 April 2008 to make defined benefit contributions”.

*Subclause (3): definition of **defined benefit scheme member**: paragraph (a)(iii)(B)*: to replace “specified superannuation contributions” (lines 24 and 25 on page 339) with “defined benefit contributions”.

*Subclause (3): definition of **defined benefit scheme member**: paragraph (a)(iii)(C)*: to replace “has had contributions” (line 28 on page 339) with “has had defined benefit contributions”.

Subclause (6): to replace *subclause (6)* (line 30 on page 340 to line 6 on page 341) with the following:

(6) In the definition of **independent trustee**,—

- (a) in paragraph (a)(i), “, administration manager, or investment manager” is omitted:
 - (b) paragraph (a)(ii) and (iii) is replaced by the following:
“(ii) is not a related company of a corporate trustee that is an investment manager, promoter, or another trustee of the share; and”:
 - (c) in paragraph (a)(viii), “does not have a director to whom any of subparagraphs (i) to (vii) would apply” is replaced by “has no director that would fail to meet any of the requirements described in subparagraphs (i) to (vii)”:
 - (d) in paragraph (b), “does not have a director to whom any of paragraph (a)(i) to (vii) would apply” is replaced by “has a director that would meet any of the requirements described in paragraph (a)(i) to (vii)”.
- (6B) In the definition of **KiwiSaver scheme**, “section 137” is replaced by “section 137 or a scheme that is included in the register only under **section 161**”.

Subclause (9)(b): definition of salary or wages, paragraph (b)(ii): to replace “redundancy payment” (line 20 on page 342) with “**redundancy payment** (as defined in section YA 1 of the Income Tax Act 2007)”.

New subclause (11): To insert, after *subclause (10)* (after line 24 on page 342), the following:

- (11) Section 4(2) is replaced by the following:
“(2) References in a provision to a period **after the Commissioner receives the first contribution** in respect of a person are references to the expiry of the relevant number of days or months after the date on which the first amount of contribution is received, or treated as received, by the Commissioner for the person in the current context of the provision, ignoring any earlier contribution received in a prior context (for example, a prior automatic enrolment and opt out of the person).”

Clause 202(2)

Words inserting paragraph (c): to replace the words (lines 1 and 2 on page 343) with the following:

- (2) In section 6(2)(b), “2007).” is replaced by “2007); or”, and the following is added:

New clause 202BA

To insert, after *clause 202* (after line 5 on page 343), the following:

202BA Outline

After section 8(5), the following is added:

- “(6) This Act also contains some of the rules that apply to complying superannuation funds. However, other rules about those

funds are contained in the Income Tax Act 2007 and the Superannuation Schemes Act 1989.”

Clause 211B

Section 59C(1)(a): to replace section 59C(1)(a) (lines 30 to 32 on page 348) with the following:

“(a) is a person to whom this Act has been applied because of a mistake described in **section 59A(a)**, and they meet the requirements of section 6 or become a person who meets the requirements of section 6:” .

Section 59C(1)(b): to replace “**section 59A**” (line 34 on page 348) with “**section 59A(b)**” .

New clause 214CB

To insert, after *clause 214C* (after line 10 on page 355), the following:

214CB Interest rate

In section 86, the following is added as subsection (2):

“(2) The interest rate calculated using the formula is expressed as a percentage, rounded to 2 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down.”

Clause 219: section 101D

Subsection (1): formula: to replace “other contributions” (line 2 on page 366) with “other contributions – hybrid schemes amount” .

Subsection (5)(b): words before subparagraph (i): to replace the words (lines 24 to 26 on page 366) with the following:

“(b) employer’s superannuation contributions made to, or amounts credited from within, (collectively, the **contributions**) a registered superannuation scheme (the **contributions scheme**), and—

Subsection (5)(b)(ii): to replace “for employees generally” (lines 1 and 2 on page 367) with “to eligible employees” .

Subsection (5)(b)(iii)(A): to replace “to make specified superannuation contributions for the employee before 1 April 2008” (lines 8 to 10 on page 367) with “before 1 April 2008 to make or credit the contributions” .

Subsection (5)(b)(iii)(B): to replace “specified superannuation contributions” (lines 16 and 17 on page 367) with “or credit the contributions” .

Subsection (5)(b)(iv): to replace the subparagraph (lines 20 to 24 on page 367) and substitute the following:

“(iv) the contributions scheme provides that the contributions vest completely in the employee in a period starting on or after the employee first becomes a member of the contributions scheme and ending no more than 5 years later:

New subsections (6) to (8): to add after *subsection (5)* (after line 31 on page 367) the following:

- “(6) **Hybrid schemes amount** is the amount given by **subsection (7)** for a registered superannuation scheme, employer and employee described in **subsection (5)(b)(i) to (iii)**—
- “(a) which do not have an amount of other contributions for the period to which the payment of gross salary or wages relates; and
- “(b) for which relevant retirement benefits are calculated by adding to the employee’s total contributions a percentage of those contributions.
- “(7) For the purposes of **subsection (6)**, the amount is calculated using the following formula:
- member’s contribution × vesting percentage.
- “(8) In the formula,—
- “(a) **member’s contribution** is the amount of the employee’s contribution for the period to which the payment of gross salary or wages relates:
- “(b) **vesting percentage** is the percentage of the employee’s total contributions to be added to those contributions 5 years after the employee first becomes a member of the registered superannuation scheme.

New clause 224(1A)

To insert, after the heading for *clause 224* (after line 1 on page 375), the following:

- (1A) In section 123(4)(b), “in force.” is replaced by “in force; and” and the following is added:
- “(c) if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, the fee as increased is not unreasonable, after having regard to any matters prescribed under section 228(p) and any guidelines published by the Government Actuary under section 127.”

New clauses 226BB to 226BE

To insert, after *clause 226B* (after line 6 on page 379), the following:

226BB Purpose of register

After section 158(a), the following is inserted:

- “(ab) to enable a member of the public to—
- “(i) determine whether a fund is approved as a complying superannuation fund under the Superannuation Schemes Act 1989; and
- “(ii) know how to contact the trustees of the fund; and”.

226BC Additional contents of register

(1) After section 161(1), the following is inserted:

“(1B) The register must contain the following information and documents for each complying superannuation fund:

“(a) the name of the fund; and

“(b) the date on which approval of the fund under section 35 of the Superannuation Schemes Act 1989 became effective; and

“(c) the names of the trustees of the fund and an address for service for the trustees; and

“(d) the date upon which the financial year of the fund ends; and

“(e) each notice of change sent or delivered under **section 37** of the Superannuation Schemes Act 1989.”

(2) After section 161(2), the following is inserted:

“(2B) The information contained on the register under this section must be kept in separate subparts of the register.”

226BD Government Actuary may refuse access to or suspend operation of register, or omit or remove, or restrict public access to, information and documents in register

Section 162(2) is replaced by the following:

“(2) The Government Actuary may omit or remove from the register any of the information or documents that relate to a KiwiSaver scheme or complying superannuation fund if—

“(a) the scheme or fund is removed from the register; or

“(b) the Government Actuary considers, in the public interest, that the information or documents should not form part of the register.”

226BE Amendments to register

Section 163(a) and (b) are replaced by the following:

“(a) to keep the register accurate and up-to-date; or”.

Clause 226C

To replace *clause 226C* (lines 7 and 8 on page 379) with the following:

226C Duty to notify changes to Government Actuary

Section 164(2) is replaced by—

“(2) This section does not apply if the change has been notified in an annual report sent or delivered under section 123 before the notice is required to be given under section 165(d).”

226D Powers of Government Actuary in event of scheme operating in contravention of this Act, etc

Section 169(3) is repealed.

New clause 227BA

To insert, after *clause 227* (after line 12 on page 379), the following:

227BA New sections 189B and 189C inserted

After section 189, the following is inserted:

“189B Duty to give notice to Government Actuary about fee increases

Any person referred to in clause 2 of the KiwiSaver scheme rules who increases a fee to which that clause applies must give notice of the increase to the Government Actuary as soon as reasonably practicable after the increase takes effect.

“189C Powers of High Court in relation to unreasonable fees

“(1) If the High Court is satisfied, on the application of a member or the Government Actuary, that any of the persons referred to in clause 2 of the KiwiSaver scheme rules have charged a fee that is unreasonable, it may order that the fee be annulled or reduced.

“(2) The High Court may make any other order it thinks fit for the purpose of giving effect to an order under **subsection (1)**.

“(3) An application for an order may be made within 1 year of the day that the fee is imposed or debited.

“(4) In determining whether a fee is unreasonable for the purposes of this section, the High Court—

“(a) must have regard to any prescribed matter; and

“(b) may, to the extent it thinks fit, have regard to any guidelines published by the Government Actuary under section 127; and

“(c) may have regard to any other matter it thinks fit.”

Clause 230B

To replace *clause 230B* (lines 20 to 23 on page 381) with the following:

230B Penalty for employer to fail to make deductions or to incorrectly make deductions

(1) In the heading to section 216, “**to make deductions or to incorrectly make deductions**” is replaced by “**or incorrectly make deductions, or to short pay compulsory employer contributions**”.

(2) In section 216(1)(b), “this Act.” is replaced by “this Act; or”, and the following is added:

“(c) has an amount (a **short paid amount**) of short payment under subpart 3 of Part 3 that relates to a compulsory employer contribution.”

(3) In section 216(2)(a), “this Act” is replaced by “this Act or if they have short paid amounts”.

- (4) In section 216(3), “to which any employer monthly schedule relates” is omitted.
- (5) In section 216(4), “in which the failure or incorrect deduction occurred” is replaced by “in which the failure to deduct, incorrect deduction, or short paid amount occurred.”

New clause 235BB

To insert after *clause 235B* (after line 20 on page 385) the following:

235BB New section 234

After section 233, the following is added:

**“234 Protection from non-compliance: Taxation (KiwiSaver)
Act 2007**

If, as a result of amendments provided by the Taxation (KiwiSaver) Act **2007**, there is non-compliance with an Act before 1 February 2008, the non-compliance is ignored unless it continues on or after 1 February 2008.”

New clause 236(1A)

To insert, after the heading to *clause 236* (after line 21 on page 385), the following:

- (1A) Clause 2(2) to (5) is repealed.

Clause 239

New subclause (1A): to insert, after the heading to *clause 239* (after line 14 on page 388), the following:

- (1A) In section 9BAA(1), “all the members” is replaced by “all or any of the members”.

Subclause (2): subsection (4B)(a): to replace “each member” (line 20 on page 388) with “each relevant member”.

New clause 239C(1)

To insert, after the heading to *clause 239C* (after line 24 on page 389), the following:

- (1) Section 34(2) is replaced by the following:
 - “(2) The application must be accompanied by all information necessary to satisfy the Government Actuary of the matters referred to in section 35.”

New clause 240(1A)

To insert, after the heading to *clause 240* (after line 15 on page 390), the following:

- (1A) In section 35(1)(a), “evidence” is replaced by “contain”.

Clauses 240B and 240C

To replace *clauses 240B and 240C* (lines 10 to 30 on page 391) with the following:

240B New sections 37 to 41 inserted

(1) After section 36, the following is added:

“41 Transitional provision relating to lodging of participation agreements

The trustees of every scheme that has been approved as a complying superannuation fund before the date of commencement of this section must send to the Government Actuary, within 28 days after that commencement date, a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the complying superannuation fund.”

(2) After section 36, the following is inserted:

“37 Duty to notify changes about complying superannuation funds to Government Actuary

“(1) The trustees of a complying superannuation fund must give notice to the Government Actuary of any changes to—

“(a) any of the information referred to in **section 161(1B)** of the KiwiSaver Act 2006; or

“(b) any information required to be contained in the register under **section 161(2)** of that Act.

“(2) This section does not apply if the change has been notified in an annual report sent or delivered under section 14 of this Act before the notice is required to be given under this section.

Compare: 2006 No 40 s 164

“38 Form of notice under section 37

“(1) A notice under **section 37** must—

“(a) be in the prescribed form (if any); and

“(b) contain, or be accompanied by, any other prescribed information or documentation; and

“(c) specify the effective date of the change; and

“(d) be given to the Government Actuary within 3 months of the later of—

“(i) the effective date of the change; or

“(ii) the trustees of the complying superannuation fund first becoming aware of the change.

“(2) References in this section to a prescribed form, or to prescribed information or documentation, are references—

“(a) to matters prescribed under section 30(b); or

“(b) if the matter is not prescribed under that section, to the equivalent matter prescribed under section 228(b) of the KiwiSaver Act 2006 in respect of notices under section 164 of that Act, with all necessary modifications.

Compare: 2006 No 40 s 165

“39 Duty to give notice to Government Actuary about fee increases

Any person referred to in clause 2 of the KiwiSaver scheme rules who increases a fee to which that clause applies in relation to a complying superannuation fund must give notice of the increase to the Government Actuary as soon as reasonably practicable after the increase takes effect.

“40 Powers of High Court in relation to unreasonable fees

“(1) If the High Court is satisfied, on the application of a member or the Government Actuary, that any of the persons referred to in **section 39** have charged a fee in relation to a complying superannuation fund that is unreasonable, it may order that the fee be annulled or reduced.

“(2) The High Court may make any other order it thinks fit for the purpose of giving effect to an order under **subsection (1)**.

“(3) An application for an order may be made within 1 year of the day that the fee is imposed or debited.

“(4) In determining whether a fee is unreasonable for the purposes of this section, the High Court—

“(a) must have regard to any prescribed matter under the KiwiSaver Act 2006; and

“(b) may, to the extent it thinks fit, have regard to any guidelines published by the Government Actuary under section 127 of that Act; and

“(c) may have regard to any other matter it thinks fit.

“(5) This section does not limit section 20 of this Act and, to avoid doubt, a breach of clause 2 of the KiwiSaver scheme rules as applied by the complying fund rules is a breach of this Act.”

240C Schedule 2—Matters to be specified in annual report

(1) In schedule 2, clause 1(o), in the words before the subparagraphs, “for the purposes of the Income Tax Act 2004” is omitted.

(2) In schedule 2, clause 1(o)(iii), “rules.” is replaced by “rules; and”, and the following is added:

“(iv) if there has been an increase in a fee referred to in clause 2 of the KiwiSaver scheme rules during the year, a certificate signed by the trustees of the fund that the fee as increased is not unreasonable, after having regard to any matters prescribed under section 228(p) of the KiwiSaver Act 2006 and any guidelines published by the Government Actuary under section 127 of that Act.”

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill.

The main substantive amendments relate to the KiwiSaver scheme, an amended definition of *finance lease*, and tax relief for redundancy payments. There are also miscellaneous remedial amendments and drafting corrections relating to the PIE rules, overseas portfolio investment rules, retirement scheme contribution rules, and tax penalty provisions.

The KiwiSaver-related amendments have the following main effects:

- The requirement that fees must not be unreasonable is extended to complying superannuation funds.
- For both KiwiSaver schemes and complying superannuation funds, any increase in fees must be notified to the Government Actuary.
- A register of complying superannuation funds is established as a sub-register of the register of KiwiSaver schemes.
- The Commissioner of Inland Revenue's discretion to validate invalid KiwiSaver enrolments is removed.
- The penalty in the KiwiSaver Act for failing to make deductions or incorrectly making deductions will be extended to employers who fail to make compulsory employer contributions required under the KiwiSaver Act 2006 until 1 April 2009.
- From 1 April 2009 Inland Revenue will impose penalties on unpaid compulsory employer contributions and employee contributions under the Tax Administration Act 1994.
- The record-keeping provisions in the Tax Administration Act 1994 will be amended so that employers and PAYE intermediaries are required to keep records of amounts relating to employer tax credits.
- The interest calculations for money held in Inland Revenue's holding account are limited to 2 decimal places.
- For KiwiSaver purposes, "redundancy payment" will be aligned with the proposed definition of "redundancy payment" to be used for tax relief purposes in the Income Tax Act 2007.

The definition of *finance lease* is widened by the addition of a paragraph under new *clause 135(18B)*. The new definition applies to leases entered on or after 20 June 2007. New *clause 78BB* replaces the provisions governing the treatment of operating leases that become finance leases after the lease is entered. A lease entered before 20 June 2007 and satisfying the new paragraph after that date is not treated as becoming a finance lease as a result. Instead, the adjusted tax value of the lease asset is increased and the lease asset is subject to an annual depreciation loss that is one-sixth less than would otherwise apply.

The tax relief for redundancy payments is introduced by new *clause 85B*, which inserts a provision establishing a tax rebate for redundancy payments made on or after 1 December 2006. The rebate is at a flat rate of 6 cents for every dollar of a redundancy payment satisfying the requirements of the section. The rebate is limited to a maximum amount of \$3,600 for the total of redundancy payments relating to a redundancy. A definition of *redundancy*

payment is inserted by new *clause 135(49B)*. A person claiming a rebate must apply to the Commissioner under a section inserted by new *clause 155B* and coming into force on 1 April 2008.
