

Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Bill

Commentary on the Bill

Hon Peter Dunne
Minister of Revenue

First published in August 2009 by the Policy Advice Division of Inland Revenue, PO Box 2198,
Wellington 6140.

Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Bill; Commentary on
the Bill.

ISBN 978-0-478-27172-0

CONTENTS

Overview	1
Policy changes	3
Interest-free loans for residents of Realm countries	5
Overseas study	6
Miscellaneous minor and technical amendments	7
Increased deduction rate	9
Interest-free loans for borrowers returning to New Zealand	10
Other technical amendments	11

OVERVIEW

The main changes in the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Bill introduce amendments to extend interest-free loans to certain borrowers who are overseas. To encourage borrowers who want to live in and make a contribution to a Realm country – Niue, the Cook Islands, Tokelau or the Ross Dependency – borrowers who are present in one of these countries for 183 or more days will be entitled to an interest-free loan. Interest-free loans will also be available to students engaged in full-time study overseas under a formal exchange programme approved by the New Zealand Government or a formal agreement between a New Zealand education provider and an overseas tertiary education provider.

The bill also makes eight minor or technical amendments to:

- Allow the Commissioner of Inland Revenue to increase the standard rate for repayment deductions from salary and wages from 10 cents in the dollar to up to 15 cents for borrowers who have failed to have the correct deductions made or pay any other amount when it was due. The increased deductions will apply until any shortfall, including any late payment penalties, has been fully repaid.
- Allow the loans of borrowers who return to New Zealand to be interest-free for the time they are back in New Zealand if they fully repay the loan before they have been back in New Zealand for 183 days.
- Remove the current limitation on the prior tax years for which borrowers may seek relief on hardship grounds from payment of a repayment obligation. At present relief is limited to the year immediately preceding the current tax year.
- Insert a formula to determine the student loan interest rate.
- Increase the period in which a loan may be fully repaid without incurring any additional interest from 15 to 30 days.
- Include world-wide income in an income-contingent assessment only for the period that a borrower is entitled to an interest-free loan.
- Clarify that a borrower may only obtain the benefit of the volunteer exemption if the organisation for which the borrower is working was a “named” organisation at the time the borrower did that work.
- Change the reference to the countries that volunteers must work in from the “United Nations” to the “Organisation of Economic Cooperation and Development”.

Policy changes

INTEREST-FREE LOANS FOR RESIDENTS OF REALM COUNTRIES

(Clauses 10(2) to (5), 13 and 25(2))

Summary of proposed amendment

The bill introduces an exemption for borrowers in Realm countries from the requirement that they be present in New Zealand to qualify for an interest-free loan. The change reflects the special relationship that Realm countries have with New Zealand and aims to encourage borrowers who want to remain in and make a contribution to these countries to do so.

Application date

The change will apply from 1 April 2009.

Key features

Section 38AE of the Student Loan Scheme Act 1992 is being amended to allow a further exemption to the requirement that borrowers reside in New Zealand to qualify for an interest-free loan. New section 38AIA sets out the conditions of the exemption. Borrowers will qualify for an interest-free loan if they are present in a Realm country – Niue, the Cook Islands, Tokelau or the Ross Dependency – for 183 or more days. The purpose of the amendment is to encourage those who want to live in and make a contribution to these countries to do so. Their student loans will be interest-free, as if they were still living and working in New Zealand.

Borrowers will need to provide Inland Revenue with whatever information is needed to establish their annual income and presence in one or more of these countries, and to pay their annual liability as it falls due. Consequential change is being made to section 65A of the Student Loan Scheme Act 1992.

Background

Interest-free loans were introduced from 1 April 2006 to encourage borrowers to remain in, or return to, New Zealand. Niue, the Cook Islands and Tokelau have a special relationship with New Zealand, which gives their residents an automatic right to reside and work here. Extending interest-free loans to borrowers residing in these countries recognises that special relationship.

OVERSEAS STUDY

(Clauses 8, 9, 12, 14, 15 and 25)

Summary of proposed amendment

The bill introduces an extension of the interest-free loan entitlement to students engaged in full-time study overseas under a formal exchange programme approved by the New Zealand government, or a formal agreement between a New Zealand education provider and an overseas tertiary education provider. The change corrects an oversight in earlier legislation that disadvantaged certain borrowers studying overseas.

Application date

The change will apply from 1 April 2007.

Key features

Section 38AA of the Student Loan Scheme Act 1992 is being amended to allow a further exemption to the requirement that borrowers reside in New Zealand to qualify for an interest-free loan. New section 38AJA sets out the conditions of the exemption. Borrowers will qualify for the exemption if they are engaged in full-time study overseas under a formal study exchange programme approved by the New Zealand government, or a formal agreement between a New Zealand education provider and an overseas tertiary education. The New Zealand provider must certify that the student is enrolled in full-time study. Providers must also certify that if the studies are successful, they will be credited to a qualification offered by the New Zealand provider that is at level seven or above on the New Zealand Register of Quality Assured Qualifications. Consequential change is being made to sections 38AC, 38AJ, 38AK and 65A of the Student Loan Scheme Act 1992.

Background

Provisions in effect from 1 April 2000 to 31 March 2007 entitled borrowers who were resident in New Zealand for income tax purposes to a full interest write-off if they were engaged in full-time, full-year study. Part-time or part-year students could also qualify if their income was below a certain level. The student's New Zealand tertiary education provider was required to confirm the level of study. As this had the same effect as allowing a loan to be interest-free, when the extension of the exemption to undergraduate study was made, it was considered that these provisions were redundant and they were repealed. There is therefore a gap in interest-free loans for some students who are or were studying overseas from 1 April 2007.

Miscellaneous minor and technical amendments

INCREASED DEDUCTION RATE

(Clauses 6 and 7)

Summary of proposed amendment

Changes are being introduced that will allow the amount deducted from certain borrowers' salary and wages to be increased from 10 cents in the dollar to up to 15 cents. The amendment is aimed at borrowers who have failed to have the correct deductions made or have any other overdue amount.

Application date

The change will apply from the day after enactment.

Key features

Under new section 20A Inland Revenue can instruct a borrower's employer to make increased repayment deductions of up to 15 cents in the dollar for borrowers who have failed to have the correct deductions made in any tax year or have any other amount payable which has become overdue. The higher rate will apply until any shortfall, including any late payment penalties, has been fully repaid. The higher rate may be reduced if payment would cause serious financial hardship. Consequential change is being made to section 19 of the Student Loan Scheme Act 1992.

Background

Borrowers whose primary income exceeds the repayment threshold are required to advise their employer that repayment deductions should be made. Many borrowers fail to fulfil this obligation, which may result in large end-of-year liabilities. Other borrowers may fail to pay a liability, such as their end-of-year payment, when it falls due. The bill allows Inland Revenue to recoup any shortfall by increased future deductions from any salary and wages earned by the borrower.

INTEREST-FREE LOANS FOR BORROWERS RETURNING TO NEW ZEALAND

(Clause 16)

Summary of proposed amendment

Borrowers who return to New Zealand will be allowed an interest-free loan if they fully repay their loan before they have been back in New Zealand for 183 days. The amendment corrects a technical error relating to the requirement to be in New Zealand for 183 days to qualify for an interest-free loan.

Application date

The change will apply from 1 April 2006.

Key features

New section 38AM will allow borrowers who return to New Zealand, and fully repay their loan before they have been back for 183 days, to be granted an interest-free loan from the date they return until the date of repayment.

Background

Borrowers who return to New Zealand and fully repay their loan before they have been back for 183 days technically cease to be borrowers and therefore cannot be allowed an interest-free loan from the date they returned to New Zealand to the date they repaid their loans. The bill corrects this technicality.

OTHER TECHNICAL AMENDMENTS

The bill also makes six minor technical amendments to clarify the policy intent of interest-free loans, and an amendment to correct an unintended change made to the hardship provisions.

Hardship relief

(Clauses 19, 20, 21 and 22)

Sections 54, 55, 55A and 55B of the Student Loan Scheme Act 1992 are being amended to correct an unintended change made by the Student Loan Scheme Amendment Act 2007. That change limits the years for which relief from payment of a borrower's repayment obligations may be granted to the current tax year and the years either side. This amendment restores the position that previously applied and allows hardship relief to be granted in respect of any earlier year. However, any amount paid in respect of an earlier year before the immediately prior tax year may not be refunded.

The change will apply from the day after enactment.

Interest rate formula

(Clauses 4, 26(1) to (2), 27 and 28)

The student loan interest rate – which only affects overseas-based borrowers – is currently set using the formula in the Student Loan Scheme (Interest Rates Formulas) Regulations 2006. The formula is to be moved to the Student Loan Scheme Act 1992. This will streamline the annual setting of the interest rate. Paragraphs (ab) and (ac) of section 87(1) of the Student Loan Scheme Act 1992, the Student Loan Scheme (Interest Rates Formulas) Regulations 2006 and the Student Loan Scheme (Total Interest Rate) Regulations 2009 are consequentially repealed.

The changes will apply from 1 April 2010.

Grace period

(Clause 24)

Student loan borrowers who are advised of the amount of their outstanding loan balance and fully repay that amount within 15 days of receiving the advice have any interest charged in the intervening period cancelled. As student loans are interest-free for New Zealand-based borrowers, this provision now only affects overseas-based borrowers. It may take more than 15 days for the statement to reach the borrower and the transfer of funds to reach New Zealand. Section 60A of the Student Loan Scheme Act 1992 is therefore being amended to increase the period in which borrowers may fully repay their loan without incurring any further interest from 15 to 30 days.

The change will apply from the day after enactment.

Part-year assessments

(Clause 5)

Section 14 of the Student Loan Scheme Act 1992 is being amended to ensure that only income derived during the period in which there is an entitlement to an interest-free loan is included in establishing borrowers' income-contingent liabilities.

Borrowers' repayment obligations are aligned to their entitlement to an interest-free loan. Those entitled to an interest-free loan are assessed on an income-contingent basis, and those not entitled are assessed on the basis of the amount of their loan (subject to entitlement to the three-year repayment holiday available to overseas-based borrowers). Some borrowers may retain their residency for income tax purposes, which means that they must include their world-wide income in their tax return, but they will lose their entitlement to an interest-free loan during the year because they are out of New Zealand for 184 or more days. This amendment aligns the assessment basis with the period of entitlement to an interest-free loan.

The change will apply from the day after enactment.

Volunteer exemption – conditions

(Clause 11)

Section 38AEA of the Student Loan Scheme Act 1992 is being amended to change the reference to countries which the United Nations recognises as a developing country to countries that are listed by the Organisation for Economic Cooperation and Development as receiving official development assistance.

Borrowers who work overseas as volunteers, or for a token payment, for a charitable organisation that has been "named" by regulations may be granted an exemption to the requirement that they be present in New Zealand for 183 or more days to qualify for an interest-free loan. Changes that came into effect on 1 April 2007 require borrowers to be engaged in certain activities, two of which refer to work undertaken in countries which the United Nations recognises as a developing country. As the UN does not, in fact, do that, the requirement is being changed to countries that are listed by the Organisation for Economic Cooperation and Development as receiving official development assistance.

The change will apply from 1 April 2007.

Volunteer exemption – clarification

(Clause 10(1))

Section 38AE(1)(b) of the Student Loan Scheme Act 1992 is being amended to clarify that a borrower may only obtain the benefit of the volunteer exemption if the organisation for which the borrower is working was a "named" organisation at the time the borrower did that work.

The change will apply from the day after enactment.