Student Loan Scheme Bill

Commentary on the Bill

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OVERVIEW

The Student Loan Scheme Bill introduces legislation to reform the way student loans are repaid, the way borrowers can manage their loans and the way loans are to be administered. It also rewrites the current student loan legislation. The bill replaces the Student Loan Scheme Act 1992, and generally applies from 1 April 2012.

The changes proposed in the bill are the first part of wider reforms to the tax system to support the Government's plans for economic growth. Such a tax system should deliver certainty for taxpayers, allow customers to interact with Inland Revenue speedily, provide value for money, and build trust and integrity in the system, leading to high compliance.

To achieve this, there must be greater emphasis on improving technology to move taxpayers (or, in this case, student loan borrowers) into an electronic environment with improved services that deliver greater certainty and lower compliance costs for both taxpayers and Inland Revenue.

The main purpose of the bill is to make it easier for borrowers to manage their loans, pay back what they owe, and encourage earlier repayment. It is not intended as a wider review of student loan scheme policy.

The bill also introduces a number of minor policy and technical changes to simplify and improve some functions of the student loan scheme.

Transforming the administration of the student loan scheme

Transforming the administration of the student loan scheme has three elements. The first is implementing a new loan management solution which will allow borrowers to manage their loans in an electronic environment, giving them a seamless view of their loan from the time they borrow the money to when it is repaid. Improved technological capabilities will also allow Inland Revenue to increase the services it can provide to borrowers. The second element will simplify the loan repayment process by removing the current annual assessment for the vast majority of borrowers whose income is from salary and wages only. Under the proposed changes, repayment deductions made from salary and wages will be considered full and final for the pay-period. To reduce the time borrowers must spend on managing their loan accounts, and to improve the overall service to borrowers, minor under- or over-payments will be ignored. The third element to the administrative reforms will simplify the current interest rule, replace the late payment penalty with less punitive rules and replace the penalty rules for student loans with those applying to other taxes to give more certainty to borrowers.

Context

The importance of the student loan scheme to the Government is two-fold. While supporting the Government's commitment to open access to education by providing financial support, the scheme also represents a significant Crown asset, with over 560,000 borrowers and a nominal value of $10.3 billion. The portfolio is currently projected to grow to $14.5 billion by 2014–15, driven by growth in the number of new borrowers. Lending exceeds repayments and there is evidence that borrowers' compliance with their repayment obligations is declining as student loan debt continues to grow.

Administration of the student loan scheme is complex, with multiple organisations administering parts of the scheme. This means borrowers must interact with a number of administrators, sometimes making it difficult for borrowers to have a clear view of their overall loan position. Inland Revenue collects student loan repayments, on a system originally designed to collect tax. It is largely paper-based, requires annual assessments, and is complex and inflexible. The policy of annual assessment results in a complicated annual interaction with borrowers and generates compliance and administration costs. The paper-based system also presents difficulties in maintaining communication with borrowers who are based overseas. Transforming Inland Revenue's administration of the student loan scheme from paper-based to more electronic communication with borrowers seeks to address these problems.

Application date

The majority of the changes will apply from 1 April 2012.

Moving borrowers to an electronic environment

ELECTRONIC ADMINISTRATION OF THE STUDENT LOAN SCHEME

(Clauses 10 to 15, and 203 to 207)

Summary of proposed amendments

The bill contains amendments to allow information and notices to be provided electronically to borrowers and enable borrowers to access and manage their loan from anywhere and at anytime. Similarly, borrowers sending information to Inland Revenue, such as changes to their personal details and elections, will do so by electronic means.

Application date

The amendments will apply from 1 January 2012.

Key features

The proposed amendments introduce changes that will allow borrowers to manage their loan accounts by interacting with Inland Revenue electronically. As well as having online access to up-to-date loan information 24-hours a day anywhere in the world, borrowers will be able to communicate with Inland Revenue electronically to manage their loans.

Background

Some borrowers cannot easily contact Inland Revenue about their loan, especially if they are based overseas. Also most student loan scheme processes are paper-based. In addition, the student loan scheme repayment system is based on a computer system designed for tax collection. It is therefore difficult and expensive to administer, and requires significant resources to deal with system-generated errors.

A new loan management solution will offer borrowers the advantages of a modern electronic environment and allow Inland Revenue to deliver improved services to borrowers. A modern electronic environment provides borrowers with services tailored to suit individual needs, the ability to access relevant personal information and make it easier for borrowers to manage their loans with greater certainty. The main benefits for borrowers are:

- increased certainty and reduced compliance costs;
- fewer contacts that have to be made and easier electronic communication with Inland Revenue;
- improved quality of information for both borrowers and Inland Revenue;
- faster processing times by Inland Revenue; and
- improved timeliness and accuracy of responses to borrowers.

CONSOLIDATED VIEW OF TOTAL LOAN BALANCE, AND TRANSFERRING INFORMATION AND LOAN ADVANCES

(Clauses 10 to 15)

Summary of proposed amendments

Amendments deal with how information is to be shared between the loan manager and Inland Revenue, and enable Inland Revenue to provide borrowers with a consolidated view of their total loan balance.

Application date

The amendments will apply from 1 January 2012.

Key features

The amendments introduce the following changes:

- Inland Revenue will provide borrowers with a consolidated view of their total loan balance, removing the need to contact two agencies to obtain this information;
- the near real-time transfer of a borrower’s loan advance information and contact details from the loan manager to Inland Revenue. As loan advances are drawn down or borrowers’ contact details are changed, this information will be transferred to Inland Revenue to keep borrowers better informed of their loan details and obligations. Inland Revenue will inform borrowers of their total loan balance by providing them with access to view their loan on an internet site; and
- the sharing of information between the loan manager and Inland Revenue about people applying for student loans to confirm the applicant’s identity and to prevent fraud and ensure loans are assigned to the correct borrowers.

Background

Currently, student loans are transferred once a year from the loan manager to Inland Revenue, generally in February each calendar year. This annual transfer makes it difficult for borrowers to ascertain their total level of borrowings at any given time, particularly if they are still studying, and therefore possibly regularly drawing down on the loan. Borrowers are sent statements of their loan balances from both the loan manager and Inland Revenue or have to go to the two organisations' websites to view this information. The proposed near real-time transfer of information will allow borrowers to easily access timely information about their total amount of student loan from a single website which will be managed by Inland Revenue.

The transfer of information will also allow Inland Revenue to maintain more up-to-date contact details for student loan borrowers. Often borrowers change their contact details frequently and it is difficult for Inland Revenue to maintain current contact details for all borrowers. The contact details being transferred will also include electronic addresses, when these are available. Consultation on the major policy reforms proposed in this bill showed considerable support for electronic communication. The transfer of electronic contact details will help facilitate this.

INFORMING AND NOTIFYING BORROWERS

(Clauses 203 to 207)

Summary of proposed amendments

The bill will change the way Inland Revenue communicates with borrowers. The most significant change provides Inland Revenue with greater use of electronic channels when communicating with borrowers, making it easier for borrowers to manage their loans and lowering administrative costs for Inland Revenue.

Application date

Most amendments will apply from 1 April 2012, while changes to the transfer of the consolidated loan balance will apply from 1 January 2012.

Key features

The amendments introduce the following changes:

- Inland Revenue will communicate with borrowers electronically when an active email address is available;
- Inland Revenue will make as many services as possible available electronically to enable borrowers to self manage their loans; and
- Inland Revenue will provide borrowers with personal access to information about their loan on the Inland Revenue website.

There will be four different ways for Inland Revenue, borrowers and employers to communicate with each other. These are to inform, notify, notify a person in writing, and formally notify.

"Inform" means for Inland Revenue to provide information to the borrower in a passive way, typically by providing a website or physical service where borrowers can access relevant information, or by giving public notice. For example, when Inland Revenue communicates with borrowers on matters that do not need to be specifically brought to a person's attention, and when it is appropriate for a borrower to access the information at their convenience. It will be used mainly to provide borrowers with a consolidated view of their total loan balance, but also to provide general information – for example, a change to the repayment threshold.

"Notify" means for the borrower or Inland Revenue to actively communicate information through a broad range of methods. This can be notified by paper, by telephone, in person, by electronic means, or any other manner acceptable to the Commissioner. This method will be used when a degree of flexibility over the form of communication is appropriate because of the type of information required. For example when a borrower is required to notify Inland Revenue about an absence from New Zealand. If a borrower is notified through a borrower portal on the Inland Revenue website, the Commissioner will also have to draw the borrower's attention to the information being available on the web by sending a text message or email to the borrower.

"Notify a person in writing" means to communicate using the methods available in "Notify", including by electronic means such as an email, but excludes in person or by phone. This form of communication will be used to communicate with borrowers in a formal way, when it is not appropriate for the information to be communicated in person or by phone. It may be used, for example, to notify borrowers of an assessment, that they have an unpaid amount that must be paid, or that late payment interest has been changed.

"Formally notify" means to communicate to borrowers in writing and on paper. Electronic communications are excluded from this definition. Although it is used infrequently throughout the bill, an example of this type of communication is outlined in clause 162, which provides for the escalation of objections to the chief executive of the Ministry of Social Development. If a borrower wishes to escalate an objection under this provision, they are required to formally notify the chief executive of this in writing.

Background

The current student loan notification requirements for Inland Revenue are very restrictive and often must be in the form of a formal letter. Currently, Inland Revenue sends out 26 million letters a year, including letters to student loan borrowers, largely because of these and similar restrictions. The proposed changes to the form of communication allowed should provide greater flexibility so Inland Revenue can tailor services to the needs of borrowers, and adapt as new channels of communication become common. They will also allow much more extensive use of electronic communications, a move strongly supported during consultation with borrowers. It will particularly benefit borrowers who are based overseas, who are often mobile, and who because of international timelines, find it difficult to contact Inland Revenue during working hours.

Methods of meeting repayment obligations

PAY-PERIOD REPAYMENT OBLIGATIONS

(Clauses 28 to 65)

Under the bill the method of meeting a repayment obligation differs depending on the type of income. There are three classes of income:

- salary or wages, the treatment of which is outlined in the following six sections;
- pre-taxed income (for example, interest and dividend income), which are outlined in the *Pre-tax repayment obligation* section; and
- other income (for example, business or rental income), which is outlined in the *Alignment with provisional tax payment dates for borrowers required to file a return of income* section.

Summary of proposed amendments

For salary and wages earners, who make up the majority of borrowers, the bill proposes removing the annual assessment process (or "square-up"), and deductions from their salary and wages will be treated as satisfying their repayment obligations on a pay-period basis.

Salary and wage earners will continue to have deductions made for student loan repayments from that income. The deductions will continue to be calculated as they are now:

(pay-period salary or wage – pay-period repayment threshold) x repayment percentage

For the majority of borrowers whose income is largely from salary or wages, the amount deducted for a pay-period will be the borrower's final repayment obligation for that pay. This will provide certainty every pay-day that the repayment obligation has been met. This means there will be no annual square-up for these borrowers. This should result in a reduction of overdue debt assessments, and a significant reduction in compliance and administration costs.

Application date

The amendments will apply from 1 April 2012.

Key features

The amendments introduce changes that will:

- remove the annual assessment process for the majority of borrowers;
- remove annual under-payments and debts for the majority of borrowers;
- provide more certainty for borrowers that they have met their repayment obligation; and
- lower compliance and administration costs.

The bill introduces two new concepts. The first is to treat some types of income differently for different borrowers. This means different rules for salary and wage earners compared with other borrowers, to ensure the rules are tailored for each group.

Secondly, the bill emphasises a pragmatic approach to the previous annual assessment process. This means that for borrowers with salary or wage income only or those with a mix of pre-taxed income and salary or wage income, small under-deductions will not be actioned and small over-deductions will not be refunded. Instead, these will be applied towards the loan balance. This system will invariably produce instances where borrowers may be better or worse off than in an annual system. Overall, however, these borrowers will benefit because the new system provides greater certainty and improved services.

Background

Although for some borrowers the annual assessment process provides certainty of liability, it imposes compliance costs for the majority of borrowers and administration costs for Inland Revenue.

The annual assessment generates a large and increasing number of contacts between borrowers and Inland Revenue, which reduces the extent to which Inland Revenue can provide higher value services to borrowers.

It is a more appropriate mechanism for a period-based tax such as income tax where accuracy is important and timeliness is less so. It may be a less appropriate mechanism for the majority of borrowers for whom a high degree of accuracy is not required but greater emphasis on timeliness is required – for example, salary or wage earners.

For these reasons, the annual assessment requirement will be removed for individual borrowers and greater emphasis placed on accurate deductions during the year.

UNUSED REPAYMENT THRESHOLD TRANSFER FOR SECONDARY JOBS

(Clauses 35 to 42)

Summary of proposed amendments

The bill contains amendments to allow borrowers whose income is solely from salary or wages,[1] who have two or more jobs at the same time and whose income from their main job is under the repayment threshold[2] to apply for and use any unused repayment threshold from their main job against their secondary jobs.

Under the general deduction rules, deductions are made from a borrower's main job at 10 percent of each dollar of income over the pay-period repayment threshold and at 10 percent of each dollar of income from each of a borrower's secondary jobs.

The amendment allows borrowers who would otherwise be subject to higher deductions to be treated the same as borrowers who earn an equivalent income from one job.

Application date

The amendments will apply from 1 April 2012.

Key features

The bill introduces the following changes:

- borrowers with secondary jobs may use any unused repayment threshold currently \$19,084 from their main job to reduce deductions from second jobs;
- borrowers must apply to Inland Revenue prospectively to use this facility;
- borrowers must estimate income each quarter; and
- borrowers who do not apply must have deductions from secondary jobs at 10 percent of each dollar of salary and wages.

Detailed analysis

Borrowers who earn salary or wages and/or pre-taxed income only, earn less than the pay-period repayment threshold from their main job, and have job(s) will be able to apply the unused repayment threshold from their main job to their second job. The unused repayment threshold is the difference between the estimated pay-period income from the main job and the pay-period repayment threshold. If the borrower does not make use of this option, repayment deductions will be made from the first dollar of income from the secondary jobs as currently applies under the Student Loan Scheme Act 1992.

[1] This group also includes borrowers who receive salary and wages and pre-taxed income only.

[2] The repayment threshold is the income threshold below which borrowers are not required to make loan repayments. Currently this threshold is \$19,084 for the 2010-11 tax year.

Clauses 36 to 42 set out the criteria, application process and the obligations for borrowers who wish to take advantage of this option. Applications must be prospective.

This option is not available to borrowers who are required to file a return of income for tax purposes (that is, borrowers that have a mixture of salary and wages, and business-type income). As is the case now, these borrowers can apply for a special deduction rate for their salary and wages to ensure that during the year they do not have deductions made that are more than required, or may receive a refund, if applicable, when their annual assessment is completed.

Borrowers applying to use an unused repayment threshold must make a fair and reasonable estimate of their income for the next quarter. They may re-estimate their income during the quarter and must do so if the original estimate is no longer fair and reasonable. Inland Revenue will determine the un-used threshold and the appropriate deduction rate to be applied to the secondary income. A special deduction rate certificate will be issued to the borrower, setting out the new deduction rate, the period to which it should be applied, and requiring the borrower's employer to make deductions at the new rate. The certificate replaces any other deduction code or rate in place at the time and ceases to have effect, either at the end of the period specified in the certificate or on the date notified by the Commissioner or the borrower.

Example

Kate has two jobs and a student loan. In her main job, she works as a part-time lab technician and earns $260 to $320 each week, depending on what shifts she is given. Her second job is for a nursing service company where she is employed to provide care for an elderly person. She earns between $150 and $250 a fortnight.

On 12 April 2011 Kate applies to transfer any "unused' repayment threshold from her main job to her secondary job. While her wages fluctuate, she has no reason to expect that her income will change significantly over the next three months. Therefore, she uses what she earned in the last month as the basis for a reasonable estimate of her income over the next three months – $280 a week from the laboratory and $194 a fortnight from her second job. In response to her application, Inland Revenue confirms that she has an "unused" repayment threshold of $87 a week (that is, the weekly repayment threshold of $367 minus her average weekly wage of $280) to transfer from her main job to her second job. Because Kate's second job is paid fortnightly the weekly unused repayment threshold of $87 is converted to a fortnightly amount of $174. Inland Revenue issues Kate a special deduction rate certificate to provide to the nursing care company that specifies the deduction rate to be applied to her second job from her next pay onwards. The deduction rate has been determined as follows:

- expected amount of repayments each fortnight are ($194 – $174) x 10% = $2;
- deduction rate to be applied to each dollar of fortnightly salary to get the appropriate deduction is $2/$194 = 1 %.

On 14 May 2011 Kate accepts a promotion to a supervisor role in the laboratory and her weekly wage increases to $400 a week. Because her primary income has increased Kate is required to re-estimate her income and inform Inland Revenue of the change. When she does this, she is advised that the special deduction rate will no longer apply to her income from the second job. This is because she no longer has an unused repayment threshold to use, as her increased wage from her main job is more than the pay-period threshold. She is required to tell the nursing care company that the special deduction rate no longer applies. She does this and the nursing care company starts future repayment deductions from the first dollar of income from that job. As Kate's wage from her main job has increased and is now over the pay-period threshold, the laboratory will automatically start deductions at 10% of each dollar over the pay-period repayment threshold.

Background

Currently, borrowers with secondary employment earnings have repayment deductions made at 10% from the first dollar of income from their secondary jobs. They can currently apply for a special deduction rate to apply to their secondary income so that the deductions don't exceed their estimated repayment obligation for the year, or request a refund of any excess repayments made when the annual assessment has been completed. The new provisions will be available when the annual assessment for salary or wages has been removed for borrowers. This will ensure that those borrowers do not have too much deducted from their salary or wages.

SALARY AND WAGE DEDUCTION EXEMPTION FOR FULL-TIME, FULL-YEAR STUDENTS

(Clauses 48 to 54)

Summary of proposed amendments

The bill provides an exemption to the requirement for borrowers to have salary and wage deductions. This exemption is for borrowers who are full-time, full-year students who expect to earn less than the annual repayment threshold (currently $19,084). Borrowers can apply for this exemption by making a prospective declaration stating that they reasonably expect their income to be less than the annual repayment threshold for the relevant tax year so they are not to be burdened by repayments. This retains the current treatment of these borrowers.

Application date

The amendments will apply from 1 April 2012.

Key features

The amendments introduce the following changes:

- full-time, full-year students who expect to earn under the annual repayment threshold can apply for an exemption from having student loan deductions; and
- borrowers must apply for the exemption prospectively.

Detailed analysis

Borrowers can make a declaration in accordance with clause 49 that they are in full-time study for the full-year and that they reasonably expect their income will not exceed the annual repayment threshold for the relevant tax year. The declaration must be prospective.

Clauses 48 to 54 set out the criteria, process and the obligations on borrowers who wish to take advantage of this option to prevent repayments being deducted from their salary and wages. Clause 48 specifies the criteria that a borrower must meet to be eligible for this exemption. The exemption is not available to borrowers who are required to file a return of income for tax purposes (such as borrowers who have a mixture of salary and wages, and business-type income). As is the case now, these borrowers can apply for a special deduction rate for their salary and wages or may receive a refund, if applicable, when their annual assessment is completed. The exemption is not intended to provide a blanket exemption for borrowers in full-time study.

At the time of the declaration, the borrower must expect to meet the criteria for a particular tax year. The link between the required period of study and a particular tax year is necessary in order to measure a borrower's annual income to determine whether they have earned more than the annual repayment threshold.

Upon receiving a declaration from a borrower, Inland Revenue will provide a notice to the borrower setting out the period to which the exemption applies. When the borrower notifies their employer that they have been granted an exemption, the employer must not make standard student loan deductions from the borrower's salary and wages. The borrower or the Commissioner can still request an employer to make extra deductions.

Borrowers may withdraw their declaration by notifying Inland Revenue and their employer, and must do so as soon as practicable if they will no longer meet the criteria.

The exemption ceases to apply at the earlier of the end of the period stated in the notice to the borrower or the date on which the borrower withdraws their declaration, or the date of the change in circumstances.

Example 1

Sam decides to study for a post-graduate qualification. His course starts on 4 March 2013 and is expected to finish at the end of November 2013. It is more than 80 percent of the full-time equivalent study and the course duration is more than 32 weeks, and he therefore meets the full-time, full-year criteria for an exemption for the 2013–14 tax year. He intends to find employment during term breaks in April, June and December to reduce the amount he needs to borrow. He has no other income and he does not expect to earn more than the annual repayment threshold for the 2013–14 tax year. Sam applies in March 2013 for an exemption and is granted one for the 2013–14 tax year.

When Sam begins work in April he provides his employer with the notice granting him the exemption and his employer does not make student loan repayment deductions from his wages.

In the December term break Sam's job changes and his wages increase to the point that his income for the year will exceed the annual repayment threshold. Sam must now notify his employer and Inland Revenue that he is no longer eligible for an exemption. He does so and is also required to notify his employer of the student loan repayment code that must follow his tax code. Sam's employer starts student loan repayment deductions from his wages at 10% of each dollar over the pay-period repayment threshold.

Example 2

Holly decides to study for a degree. She intends to start her course half-way through the year in July 2013. Her course finishes in November 2013. She intends to enrol for the following year from March 2014. Her course is 80% of equivalent full-time study and she expects to earn under the annual repayment threshold for the 2013–14 tax year. The length of her course precludes her from being eligible for an exemption in the 2013–14 tax year because the course is less than 32 weeks in duration in that year.

Background

Currently borrowers who work for short periods while studying and who expect their annual income to be less than the annual repayment threshold are not required to advise their employer that they are a borrower. Subsequently, they do not have deductions made from their salary and wages. However, because the changes introduced in the bill will remove the annual assessment for the majority of borrowers, any borrower who earns over the weekly threshold will be subject to student loan deductions. For students who take up employment during their holidays, this could limit their earnings and increase the amount they need to borrow. This point came through strongly during public consultation, with many comments arguing that an exemption for full-time, full-year students was warranted.

The policy for the exemption is to provide relief for borrowers who are in full-time study and earn over the pay-period repayment threshold during term breaks, but whose total income for the year is below the annual repayment threshold. This means that in practice, full-time, full-year students with student loans will be treated in the same way as they are now and will not be required to have deductions made from their salary or wages.

SIGNIFICANT UNDER- AND OVER-DEDUCTIONS

(Clauses 46 and 47, 57 to 62)

Summary of proposed amendments

The bill contains amendments that allow the Commissioner not to take corrective action for under- and over-deductions of student loan repayments unless the amounts are considered to be significant.

For the vast majority of borrowers, whose income is largely from salary and wages, loan repayment deductions will be treated as having satisfied the borrower's repayment obligations on a pay-period basis.

In some circumstances PAYE and employer errors can result in inaccurate deductions, resulting in either under- or over-deductions. Under the proposed changes in the bill, unless the under- or over-deductions are significant, the Commissioner will not take action to refund or seek further repayments.

Clause 57 allows the Commissioner to have the discretion to set thresholds for corrective action. This will enable more significant employer errors to be rectified by refunds for significant over-deductions, or extra deductions from the borrower's future salary and wages for under-deductions. If extra deductions cannot be made from future salary or wages – for example, because the borrower is no longer working, clauses 46 and 47 enable the Commissioner to make an assessment of the amount of under-deduction that ought to have been paid with a requirement that the amount assessed be paid by a due date.

Application date

The amendments will apply from 1 April 2012.

Key features

The bill introduces the following changes:

- Commissioner-set thresholds for not taking action on under- and over-deductions, unless they are significant;
- the Commissioner must inform borrowers of the thresholds each year;
- borrowers can request the Commissioner determine if a significant over-deduction has been made;
- borrowers can request a refund for a significant over-deduction;
- the Commissioner can collect significant under-deductions from future salary and wages; and

- the Commissioner can issue a special assessment with a specific due date when it is not possible or not appropriate to collect under-deductions from a borrower's future salary and wages.

Background

The discretion to set thresholds for taking corrective action in relation to incorrect deductions is one of the core principles underlying the student loan scheme reforms. This discretion will provide the flexibility to manage any risks to the integrity of the student loan scheme, while taking into account overall administrative resources. This discretion will also be coupled with accountability, by publishing any thresholds set by the Commissioner to ensure transparency.

EXTRA DEDUCTIONS FROM SALARY AND WAGES

(Clauses 33 and 43 to 45)

Summary of proposed amendments

The bill allows Inland Revenue or borrowers to request employers to make additional student loan deductions from a borrower's salary or wage, using a new "SLADR" tax code. Clauses 33 and 43 to 45 set out the rules in relation to these deductions.

Borrowers may ask their employer make extra deductions at an extra deduction rate or a specific amount. This may be because the borrower wishes to pay unpaid amounts or to make excess repayments to reduce their loan balance which may qualify for the 10% excess repayment bonus.

The Commissioner may require extra deductions if a borrower has not had enough deducted through the standard deductions – for example, when a borrower has had a significant under-deduction identified, or to collect unpaid amounts when collection of the unpaid amount through other means has been unsuccessful.

As well as these extra deductions, employers will still be required to deduct the standard deductions for the same pay-periods.

The changes will allow Inland Revenue to more accurately administer repayments.

Application date

The amendments will apply from 1 April 2012.

Key features

The bill introduces the following changes:

- the Commissioner may request extra deductions for either significant under-deductions or unpaid amounts;
- the Commissioner can request a deduction up to 5% in addition to the standard deduction rate of 10%;
- borrowers can also request extra deductions; and
- extra deductions must be made using the new tax code "SLADR" to separately identify them.

Background

While the current legislation allows extra deductions to be made, the bill proposes that a different tax deduction code be used to clearly identify these deductions as separate from the standard "SL" tax code or special deduction rate deductions.

With the removal of the annual assessment for the majority of borrowers, it is necessary to distinguish the extra deductions from standard deductions so they can be applied to the purpose they were intended, rather than being treated as meeting a salary or wage repayment obligation, such as making excess repayments or repaying unpaid amounts. Having the new "SLADR" tax code will enable Inland Revenue to more accurately identify and administer additional repayments.

SPECIAL ASSESSMENTS

(Clauses 46 and 47)

Summary of proposed amendments

To ensure the integrity of the salary or wage repayment deduction process, the bill contains amendments that will allow the Commissioner to make an assessment to determine the deductions that ought to have been made from a borrower's salary and wages and require payment of that amount in 30 days.

Application date

The amendments will apply from 1 April 2012.

Key features

Under clause 46 the Commissioner will be able to make an assessment to determine the amount of deductions a borrower should have had deducted from their salary or wages and which has not been collected through other means.

The Commissioner will be able to make a special assessment in relation to borrowers who earn salary or wage income, or salary and wage and pre-taxed income such as dividend or interest income.

Special assessments will be able to be used when:

- a borrower has prevented extra deductions from being made to repay a significant under-deduction;
- the Commissioner is unable to obtain extra deductions from future salary or wages from a borrower within a reasonable period of time to repay a significant under-deduction; or
- a borrower has caused standard deductions not to be made through their action or inaction, whether deliberate or not.

Borrowers will be notified that a special assessment has been carried out, the amount that has been assessed, and the due date by which the assessed amount must be made. The due date must be at least 30 days after the assessment has been made. If the assessed amount is not paid in full by the due date it will be treated as an unpaid amount and subject to late payment interest from the due date.

The assessment will not be used for borrowers who are required to file a return of income for tax purposes (for example, borrowers who have a mixture of salary and wages, and business-type income). These borrowers' repayment obligations will be determined on an annual basis, as they are now.

Background

Under the student loan scheme reforms, the vast majority of borrowers will be considered to have met their salary or wage repayment obligation on a pay-period basis through the deductions made by their employer. Generally, employers will make the correct deductions each pay-period. From time to time, however, there may be circumstances when there has been a significant under-deduction that the Commissioner has been unable to collect or considers will be unable to collect within a reasonable timeframe through extra deductions. In these situations, and when a borrower has caused standard deductions not to be made, a process is required to ensure that signficiant under-deductions are collected.

PRE-TAXED REPAYMENT OBLIGATIONS

(Clauses 4 and 66 to 80)

Summary of proposed amendments

The bill provides a separate loan repayment mechanism for borrowers who have pre-taxed income, such as income from interest or dividends, or salary or wages from casual agricultural employment or election day employment and do not have to file an annual return for tax purposes. These borrowers will now be required to make an online declaration of their pre-taxed income. The bill also sets out how and when their repayment obligation must be paid.

Application date

The amendments will apply from 1 April 2012.

Key features

"Pre-taxed income" is income that is not required to have student loan deductions made from it. It is defined as interest, dividends, a taxable Māori authority distribution, a personal service rehabilitation payment, salary or wages from employment as a casual agricultural employee or as an election day worker.

A new pre-taxed loan repayment obligation will apply to borrowers who have either a mixture of pre-taxed income and salary or wages, or who have solely pre-taxed income and who are not required to file a return of income. The pre-taxed loan repayment obligation process is designed to assess and collect repayments relating to income derived from sources that are not required to have student loan deductions made when the borrower would not otherwise be required to declare that income for tax purposes as income tax has already been withheld from it.

The pre-taxed income repayment obligation does not apply to borrowers who are required to file a return of income for tax purposes (that is, borrowers that have a mixture of salary and wages, business-type income, and pre-taxed income). Repayment obligations for those borrowers are determined on an annual basis, taking into account income they derive from all sources, as currently happens.

Deductions for certain types of expenditure will be allowed to be offset against a borrower's pre-taxed income before determining the borrower's pre-taxed loan repayment obligation. These types of expenditure are set out in the definition of "allowable expenses" in clause 4. The result of offsetting these expenses will be the borrower's net pre-taxed income.

The pre-taxed loan repayment obligation will apply to borrowers who earn $1,500 or more net pre-taxed income for a tax year and whose combined income from net pre-taxed income and salary or wages for a tax year is $1,500 or more than the annual repayment threshold.

The annual assessment to determine a borrower's pre-taxed income repayment obligations will not include deductions from salary or wages. Borrowers who derive pre-taxed income and salary or wages will have the deductions from their salary and wages treated as satisfying their repayment obligations for that income on a pay-period basis.

Detailed analysis

Declaration and assessment of pre-taxed income

Borrowers will no longer have to file an annual return and instead will make an annual declaration of pre-taxed income in a prescribed electronic format either on 7 July following the tax year in which the income was received, or a later date if the borrower has an extension of time to declare their pre-taxed income.

The Commissioner will make an assessment of a borrower's repayment obligations in relation to pre-taxed income from the information contained in the declaration, and the information Inland Revenue holds relating to the borrower's salary or wage income. Borrowers must be notified of the amount assessed. This may be done electronically.

Calculation and payment of pre-taxed loan repayment obligations

The pre-taxed loan repayment obligation is calculated differently depending on the amount of a borrower's salary or wage income for the tax year.

The pre-taxed loan repayment obligation for borrowers who have salary or wage income for a tax year that is equal to or greater than the annual repayment threshold, is calculated by multiplying the net pre-taxed income by the loan repayment percentage.

The calculation is modified slightly for borrowers whose salary and wage income is less than the annual repayment threshold. For these borrowers, an adjustment will be made for the difference between the annual repayment threshold and their salary or wage income to give those borrowers the full benefit of the annual repayment threshold.

The borrower's pre-taxed repayment obligation will be used to determine whether they are required to make interim payments for the next tax year, and whether they are required to pay any outstanding pre-taxed repayment obligation by one due date or will be able to spread the payment over a number of due dates.

Remaining repayments and due dates

Remaining repayments are the difference between the borrower's actual pre-taxed loan repayment obligation, calculated at the annual assessment, and the amount the borrower paid towards their loan repayment obligation for that tax year.

The dates on which remaining repayments are due to be paid depends on the size of the borrower's pre-taxed loan repayment obligation and whether they estimated their pre-taxed repayment obligation for the tax year.

Pre-taxed loan repayment obligations less than $1,000

If a borrower's pre-taxed repayment obligation for a tax year is less than $1,000, the borrower must make one remaining repayment which is calculated using the formula in clauses 74(2) and (3). The one remaining repayment for this group of borrowers will be due on the next provisional tax date that corresponds to the borrower's balance date, and that immediately follows the date on which the borrower was required to file their declaration of pre-taxed income for the tax year. This is regardless of whether the borrower is liable for provisional tax. If a borrower has an extension of time to file their declaration of pre-taxed income, the remaining loan repayment is due on the next date in columns B, D, or F of schedule 3 of the Income Tax Act 2007.

For example, borrowers with a March balance date who therefore are required to file their declaration on 7 July and have a loan repayment obligation of less than $1,000, will have one remaining repayment due on 28 August of that year. If the same borrower had an extension to file a declaration by 31 March the next year, the remaining repayment would be due on 7 May in that next year.

Pre-taxed loan repayment obligations between $1,000 and $16,000

If a borrower's pre-taxed loan repayment obligation for a tax year is $1,000 or more the borrower must make three remaining repayments using the formula in clauses 74(2) and (3). The remaining repayment dates for this group of borrowers must be made on each of the interim payment dates that immediately follow the date the borrower was required to file their declaration of pre-taxed income for the tax year. As a result these payments may be made on interim payment dates that fall due for the following tax year. These dates are outlined in columns B, D, and F of the table "Payment of provisional tax and terminal tax" in schedule 3 of the Income Tax Act 2007.

For example, for borrowers with a March balance date who file their declaration on 7 July, the remaining payments will be due on the following dates, 28 August, 15 January and 7 May, being the same dates the borrower would be required to make interim payments for the next tax year. If the same borrower had an extension to file their declaration by 31 March the next year, the remaining repayments would be due on 7 May, 28 August in that next year, and 15 January in the following year.

Pre-taxed loan repayment obligations of $16,000 or more, or estimated

If the borrower has a pre-taxed loan repayment obligation for the year of $16,000 or more, or has estimated their loan repayment obligations, their payments are due to be paid on the three interim payment dates for that year. Therefore, any difference between what was required to be paid as interim payments and what was liable to be paid for the year, is overdue and subject to late payment interest as unpaid amounts from the dates they were due.

For example, if a borrower either estimated their pre-taxed repayment obligation or has a pre-taxed repayment obligation for a tax year of $16,000 or more for the 2012–13 tax year, they were required to make three interim payments on 28 August 2012, 15 January 2013 and 7 May 2013. The borrower completes their declaration on 7 July 2013 and as a result their interim payments are less than their repayment obligation for the year. The difference (remaining repayments) is due on the interim payment dates for the year, being 28 August 2012, 15 January 2013 and 7 May 2013. As these dates have passed, interest is charged on the amounts due at those dates. This provides an incentive for borrowers to calculate and pay the correct amount, and is the same treatment that applies for provisional tax payments.

Interim payments

Borrowers with a pre-taxed loan repayment obligation of $1,000 or more for a tax year will be required to make interim payments for the following year to limit the likelihood of a large underpayment of their repayment obligation for that tax year. These interim payments are due on the three standard provisional tax payment dates. For borrowers with a March balance date, interim payments are due on 28 August, 15 January and 7 May. (For more information on the timing of interim payments, see the next section, *Alignment with provisional tax payment dates for borrowers required to file a return of income*.)

Borrowers with a pre-taxed loan repayment obligation for a tax year of less than $1,000 will not be required make interim repayments towards the next tax year's pre-taxed loan repayment obligation. This is in line with the rules that apply to borrowers who are required to file a return of income for tax purposes.

Borrowers who are required to make interim payments can calculate them using one of two methods: the standard method or estimate their loan repayment obligation.

For borrowers who use the standard method, their interim repayments are based on the previous tax year's pre-taxed loan repayment obligation uplifted by 5% (or if the borrower has not filed their declaration of pre-taxed income for the previous year, the pre-taxed repayment obligation for the tax year that immediately precedes the previous tax year is uplifted by 10%). The uplifted amount is then divided by the number of interim payments the borrower is required to make.

If a borrower estimates their pre-taxed income loan repayment obligation, the interim payments are calculated according to the formula in clause 76(2).

The dates when interim payments are due align with the due dates for the payment of provisional tax. The specific dates will depend on the borrower's balance date and on whether the tax year is a transitional year for the borrower. For most borrowers with a March balance date, those dates would be 28 August, 15 January and 7 May.

Example

Peter has salary or wage income of $30,000 which is above the repayment threshold of $19,084. Student loan repayment deductions are correctly made from his salary or wage income. Peter also earns $15,000 of interest income for the 2012–13 tax year and files his pre-taxed income declaration on 7 July 2013. Peter has made no payments towards his pre-taxed repayment obligation during the year. The Commissioner assesses Peter's pre-taxed repayment obligation at $1,500, being 10% of his interest income which is required to be paid in three remaining repayments on 28 August 2013, 15 January 2014 and 7 May 2014.

Peter will also be required to pay interim payments for the 2013–14 tax year. Peter's interim payments for the 2013–14 year are 105% of his pre-taxed loan repayment obligation for the 2012–13 tax year: 105% x $1,500 = **$1,575** divided by the number of due dates.

His interim repayments are due on three dates and so one-third ($525) is due on each of the following dates – 28 August 2013, 15 January 2014 and 7 May 2014.

Background

Because the annual assessment process for the vast majority of borrowers is being removed, borrowers who have income from sources that are not required to have student loan deductions made from them, and who are not required to file a return of income for tax purposes will now need to file a declaration of pre-taxed income and make loan repayments similar to provisional tax payments.

ALIGNMENT WITH PROVISIONAL TAX PAYMENT DATES FOR BORROWERS REQUIRED TO FILE A RETURN OF INCOME

(Clauses 81 to 96 and 106)

Summary of proposed amendments

The bill contains amendments to generally align the payment of interim payments for student loans with the provisional tax payment dates for borrowers who are required to file a return of income for tax purposes. Amendments also allow certain borrowers to pay any outstanding loan repayment obligation for a tax year over a number of due dates. The changes apply to borrowers who are required to file a return of income because, for example, they have business income.

Application date

The amendments will apply for the 2012 tax year and subsequent tax years.

Key features

Borrowers who are required to file a return of income for tax purposes will be required to meet their student loan repayment obligations in a similar manner to their income tax obligations. The due dates for student loan repayment obligations for this group of borrowers will generally be aligned with provisional tax payment dates.

These borrowers will continue to have standard deductions from their salary or wages, and will continue to have an annual assessment to determine their repayment obligations. This will include a square-up of all their income (including salary or wages, and pre-taxed income) and repayments, including deductions from their salary and wages in the same way they do currently.

There are no changes to the annual return and assessment process except that the Commissioner may notify borrowers electronically of the amount assessed.

Borrowers who are required to notify the Commissioner of their world-wide income under clause 106 will also be required to meet their repayment obligations in the same manner as borrowers required to file a return of income for tax purposes.

Detailed analysis

Calculation of "other income" loan repayment obligations

Borrowers who have net income for a tax year equal to or less than the annual repayment threshold will have no other income loan repayment obligation for that tax year.

Borrowers who have net income for a tax year that is more than the annual repayment threshold will have their "other income" repayment obligation for that tax year determined as follows:

Other income repayment obligation = [10% x (Net income – annual repayment threshold)] – salary and wage deductions

The borrower's other income loan repayment obligation will be used to determine whether they are required to make interim payments for the next tax year, and whether they are required to pay any remaining repayments by one due date or whether it is paid over a number of due dates.

Example

Helen has net income for the tax year of $42,000, comprising $30,000 in salary income and $12,000 from a rental property. The student loan deductions from her salary and wages amount to $1,000. Because Helen had income from a rental property, she is required to file a return of income for tax purposes. When she files her return of income her other income repayment obligation is calculated as follows:

other income repayment obligation	= [10% x ($42,000 – $19,084)] – $1,000
	= $1,291.60

Remaining repayments and due dates

A borrower is required to make remaining repayment(s) if their repayment obligation for the year is greater than the amount they paid, such as interim payments and salary or wage deductions during the year. The calculation method is outlined in clause 86.

A borrower's remaining repayments and the dates these are due to be paid depend on the size of the borrower's other income repayment obligation and whether they had estimated their other income repayment obligation for the tax year.

If a borrower's other income loan repayment obligation for a tax year is less than $1,000, the borrower is required to make one remaining repayment which is calculated using the formula in clauses 86(2) and (3). The remaining repayment for this group of borrowers will be due on the provisional tax due date that immediately follows the date the borrower was required to file a return of income for the tax year.

If the borrower's other income loan repayment obligation is $1,000 or more, they are required to make remainder repayments on the same dates as their provisional tax is due (except if they use the GST ratio method to calculate provisional tax they pay on 28 August, 15 January and 7 May). If a borrower has an extension of time to file their return of income, and has not used the estimation method to determine their interim payments, the remaining repayments are due on the provisional tax due dates that follow the date the borrower was required to file their return of income for the year.

If the borrower has used the estimation method or has another income repayment obligation of $16,000 or more, then the due dates are the provisional tax due dates for the tax year. This is the same system that applies for provisional tax and provides an incentive for borrowers to accurately estimate their repayment obligation.

Example

Jim has a March balance date, and is required to file his tax return by 7 July 2013. For student loan purposes, Jim has an other income repayment obligation of $800 for the 2012–13 tax year. He will be required to pay his remaining repayment on 28 August 2013, which is his provisional tax date that follows 7 July 2013.

Example

Mary has business income as a personal trainer. She has a March balance date for tax purposes and has until 31 March 2014 to file her tax return for the 2012–13 tax year under an extension of time arrangement. Mary has an "other income repayment obligation" of $18,000 for that year. However she only paid $12,000 during the year as interim payments and has a remainder payment of $6,000. As Mary's other income loan repayment obligation was more than $16,000, her remaining repayments of $2,000 are due on each of the interim payment due dates of 28 August 2012, 15 January 2013 and 7 May 2013. As these dates have passed, late payment interest will be charged from these dates.

Interim payments

Borrowers with an other income repayment obligation for a tax year of $1,000 or more must make interim payments towards the other income loan repayment obligation for the next tax year. The dates these payments are required to be made will be the same dates these borrowers are required to pay their income tax under the provisional tax rules except if a borrower uses the GST ratio method to calculate their provisional tax. In this case the borrower pays their interim payments on 28 August, 15 January and 7 May.

There is no change for borrowers with an other income loan repayment obligation for a tax year of less than $1,000. They will not be required to make interim repayments towards the next tax year's other income loan repayment obligation.

Borrowers who are required to make interim payments can calculate them using one of two methods:

- either the standard method; or
- the estimation method.

For borrowers who use the standard method, their previous tax year's other income loan repayment obligation is uplifted by 5% (or if the borrower has not filed their return of income for the previous year, the other income loan repayment obligation for the tax year immediately preceding the previous tax year is uplifted by 10%). The uplifted amount is divided by the number of interim payments the borrower is required to make to give the payment amount due on each of the interim payment due dates.

If a borrower estimates their other income repayment obligation, the interim payments are calculated according to the method described in clause 88(2).

Generally the dates that interim payments will be due are the same dates a borrower's provisional tax would be due. There are exceptions for borrowers who use the GST ratio method for provisional tax or who do not pay provisional tax who will make interim repayments on the three standard dates.[3] For a borrower with a March balance date these would be 28 August, 15 January and 7 May. There are other exceptions if the tax year is a transitional year for the borrower.

Borrowers in this category with income sources that may result in a loss will be able to apply for a reduced deduction rate for repayments from any salary and wages they may earn.

Background

These amendments should make it easier for borrowers with income sources in addition to salary and wages to manage their repayments by aligning the student loan payment dates with provisional tax payment dates.

Currently these borrowers have a terminal loan repayment obligation, which is the amount of the repayment obligation outstanding for a tax year after any salary and wage deductions, interim payments and voluntary payments are credited to the repayment obligation for that tax year. The terminal payment is currently due and payable as one amount on the borrower's terminal tax date for income tax.

Allowing certain borrowers, who have a terminal payment of $1,000 or more, to spread that payment over a number of remaining repayment dates alleviates some of the pressure of meeting their obligations on one date. As smaller payments are required over a number of dates, borrowers may be more likely to meet their obligations and avoid getting into debt.

In addition, the current under-estimation penalty for those who estimate provides weak incentives for borrowers to estimate correctly and will be removed and replaced with late payment interest from the first interim payment due date.

[3] Borrowers who use the GST ratio method to calculate their provisional tax will make three student loan interim payments on the dates specified in columns B, D, and F of the "payments of provisional tax and terminal tax" in schedule 3 of the Income Tax Act 2007 that correspond to the borrower's balance date.

Interest and alignment of penalties with income tax rules

OVERSEAS-BASED INTEREST AND LATE PAYMENT INTEREST

(Clauses 124 to 135)

Summary of proposed amendments

Overseas-based borrowers' loans are subject to interest, which is currently set at 6.6% for the 2010–11 tax year. Loans for New Zealand-based borrowers are interest-free. This reflects the contribution that these borrowers make to New Zealand society.

Borrowers who do not pay their repayment obligations by the due date are currently subject to a late payment penalty of 1.5% which compounds monthly and is equivalent to approximately 19.56% per annum.

The bill contains amendments to the way interest charges are administered and also replaces the late payment penalty rules with a less punitive late payment interest rate so student loan debt does not become insurmountable.

Application date

The amendments will apply from 1 April 2012.

Key features

The bill introduces the following changes:

- StudyLink will cease to charge interest.
- Inland Revenue will only charge interest when borrowers are overseas-based.
- Overseas-based interest will be charged at the base interest rate, which is currently 6.6%.
- The current late payment penalties of approximately 19.56% per annum will be replaced by late payment interest which will be set at the significantly lower rate of 4% above the base interest rate (currently 6.6%) giving a combined rate of 10.6% per annum.
- The late payment interest rate will be reduced by 2% if the borrower enters into an instalment arrangement.
- Interest will not be charged if the unpaid amount is less than $500. In these cases the unpaid amount will be added back to the loan balance.

Detailed analysis

Overseas-based interest

Currently, interest is charged by StudyLink on loan advances for the period prior to the loan being transferred to Inland Revenue. Once the loan is transferred, Inland Revenue writes off the interest charged by StudyLink. Inland Revenue subsequently charges interest (currently 6.6%) on all loans and writes off that interest for borrowers who meet the interest-free criteria. Under the changes proposed in the bill, StudyLink will no longer charge interest. Instead, interest will only be charged by Inland Revenue for borrowers who are based overseas.

Late payment interest

Late payment interest will replace the current late payment penalty rules that are applied to student loans. Borrowers who do not meet their loan repayment obligations will be subject to late payment interest on the total unpaid amount at the base interest rate plus a penalty margin of 4% each year. Based on the current base interest rate of 6.6%, this gives a late payment interest rate of 10.6%. The penalty margin will be lowered to 2% for borrowers who enter into instalment arrangements, giving a total interest rate of 8.6%, based on the current base interest rate.

This replaces the monthly 1.5% (equivalent to 19.56% a year) late payment penalty which currently applies. As well as creating simpler consequences for non-payment, the replacement of penalties with late payment interest is also intended to reduce the rate at which student loan debt grows which is seen by some as a barrier to keeping up-to-date with current repayment obligations.

$500 threshold

Clause 129 provides that a borrower is liable to pay late payment interest if the total unpaid amounts are $500 or more. This amount may be changed by regulation. This is a change from the current policy of not charging late payment penalties on individual unpaid amounts less than $334. In addition, the Commissioner may refrain from collection if the unpaid amounts total less than $500.

Unpaid amounts in these circumstances will be added back to the loan balance and collected as part of the borrower's general repayment obligations.

Background

Borrowers with repayment obligations who fail to pay on time are currently subject to monthly compounding late payment penalties of 1.5%. To facilitate the move to a dedicated loan management system and reduce the extent to which overdue amounts grow due to penalties, late payment penalties will be replaced with an interest charge.

PENALTIES AND OFFENCES

(Clauses 148 to 159)

Summary of proposed amendments

The bill contains amendments that will impose penalties for offences relating to the late or non-filing of information by borrowers, and aligns the imposition of both civil and criminal penalties for non-compliant activities with those that apply to other tax offences.

The bill also replaces the penal repayment obligation that applies for repayment obligations with a student loan shortfall penalty to align this with the treatment of borrowers who have taken an incorrect tax position.

Application date

The amendments will apply from 1 April 2012.

Key features

The bill introduces the following changes:

- late filing penalties will be imposed for incomplete or absent declarations or notifications in certain circumstances;
- student loan shortfall penalties will be imposed at the same rate that would apply from taking an incorrect tax position; and
- penalties for wilfully or negligently failing to provide information to Inland Revenue will be aligned with those for other tax types.

Detailed analysis

Late filing penalty

Under the proposed changes, a borrower will be liable for a late filing penalty if they do not complete and provide the required declaration of their pre-taxed income as specified in clause 68, or notify Inland Revenue of their world-wide income as specified in clause 106, and the Commissioner has previously notified the borrower that the penalty will be imposed if they do not provide the declaration or notification.

The late filing penalty imposed will be the same amount that applies for income tax purposes, depending on the borrower's income. For example, the penalty imposed will be $50 if the borrower's income is less than $100,000, $250 if the borrower's income is between $100,000 and $1,000,000, and $500 if their income is over $1,000,000.

The borrower will not be liable for a late filing penalty if he or she has other income and a late filing penalty has been imposed under the Tax Administration Act for the same declaration or notification.

Student loan shortfall penalties (clauses 150 to 154)

The current penalty that applies to cases of evasion of assessment or payment of a repayment obligation will be replaced with a new student loan shortfall penalty. The student loan shortfall penalty will apply when a borrower:

- has taken an incorrect tax position which is lower than the correct tax position; and
- is also liable to pay a shortfall penalty for income tax.

Borrowers may also be liable to pay a student loan shortfall penalty if taking an incorrect tax position has also reduced their student loan repayment obligation.

The student loan shortfall penalty can be up to 150% of the shortfall in the borrower's repayment obligation, and will be the same percentage rate imposed for the borrower's income tax shortfall. This will ensure that borrowers who do not comply are penalised on the whole shortfall, and not just the income tax amount.

Criminal offences (clauses 155 to 159)

Criminal offences currently in the Student Loan Scheme Act relate to wilfully or negligently failing to provide correct information. These offences will be replaced with the criminal offences that apply for tax purposes, such as strict liability offences, and knowledge and evasion offences. The same maximum penalty amounts that apply for income tax offences will also apply to student loan offences.

The current offences for aiding and abetting an offence will be retained, but with higher penalty amounts to reflect those imposed in relation to tax, as will the offence relating to prejudicing employees because of their student loan liability. However, there will be no change to the penalty amount for the latter offence and the $2,000 penalty will continue to apply.

Background

The bill will bring penalties for not complying with filing, information provision, and repayment obligations more into line with those for taxes generally. These changes are intended to:

- encourage borrowers to pay the correct interim instalments when due;
- bring the rules up-to-date with changes to equivalent tax obligations (for example, higher penalties for evasion and the introduction of a late payment penalty); and
- reduce any tendency for borrowers to give student loan obligations a lower priority than tax repayment obligations.

Miscellaneous amendments

Exemptions from the requirement to be present in New Zealand

(Clauses 16 to 22 and schedule 1)

There are currently a number of exemptions from the requirement that borrowers must be present in New Zealand for at least 183 days to qualify for an interest-free loan. The policy intent of the exemptions was that borrowers should not lose their status as New Zealand-based borrowers for the time that they meet the conditions of an exemption. An error in the Student Loan Scheme Act 1992 means that a borrower is given interest-free treatment from the first day they meet the conditions of an exemption, rather than allowing that time to contribute towards satisfying the 183-day requirement. Clauses 16 to 22 and schedule 1 correct this error and treat borrowers who meet the conditions for the exemption as though they are present in New Zealand for that time.

The amendments will apply from 1 April 2012.

Repayment obligations for overseas-based borrowers

(Clauses 97 to 105, and 107 to 109)

The existing repayment obligation rules for overseas-based borrowers mainly remain the same under the proposed legislation, with the exception of when a borrower has a repayment obligation that is limited to the loan balance. Borrowers who currently have their repayment obligation limited to their loan balance continue to have interest charged on their outstanding loan balance and as these borrowers do not meet the interest-free criteria they will have a small loan balance left at the end of the tax year equivalent to the interest charged for that year. This results in the borrower having a small residual repayment obligation for the next year. The bill addresses this problem by including the interest charges which will be payable for the year in the overseas-based repayment obligation for these borrowers.

Example

A borrower has a loan balance of $900, which means currently the borrower has a repayment obligation of $900 due in two instalments on 30 September and 31 March. The borrower makes a payment on each instalment due date of $450 which meets their repayment obligation for that tax year. However, the borrower has been charged approx $45 in interest for the year. This will leave the borrower with a small loan balance for the next year of $45, which will have to be paid in two instalments to meet the next year's repayment obligation. This will continue until the borrower's loan balance is less than $20 and the loan balance can be written off under the small balance write-off provisions.

Under the proposed amendments, the $45 interest will be included in the repayment obligation for the first year and at the end of that year there will be no residual loan balance and no further repayment obligation for the next year.

The amendments will apply from 1 April 2012.

Payment priorities

(Clauses 186 to 189)

The current student loan scheme legislation has limited detail on how payments should be allocated to a borrower's repayment obligation and loan balance. It simply refers to payments being credited first against any interest charged, and secondly against the principal outstanding. The bill expands on these provisions to provide greater detail and certainty for borrowers about how and when their payments and deductions will meet their repayment obligations and debt or unpaid amounts and how those payments and deductions will reduce the various parts of a borrower's total loan balance.

Clause 187 will require that payments and extra deductions (except standard salary or wage deductions, and payments or extra deductions identified to pay debt or unpaid amounts) will satisfy the following obligations in due date order:

- remaining repayments;
- interim payments;
- overseas-based borrower repayment obligations;
- late filing penalties;
- student loan shortfall penalties; and
- amounts specially assessment by the Commissioner.

However, the date order rule does not apply when the due date for payment of an obligation has passed. Also when two payments are made on the same date and one of those payments is an interim payment, the interim payment will be satisfied last.

Clause 188 requires that all payments and salary and wage deductions that are not identified to pay debt/unpaid amounts, will be first off-set against any overseas-based interest that has been charged, and secondly, the loan balance. However, the amount off-set must not exceed the borrower's total obligations for that tax year. Any amount that exceeds the total obligations for that tax year will be first off-set against any late payment interest charged, and secondly, any unpaid amounts, thirdly any remaining overseas-based interest, and then against the loan balance.

Clause 189 requires that payments and salary or wage deductions (such as extra deductions) that are identified as intended to pay debt or unpaid amounts, will be off-set first against any late payment interest charged, and secondly, any unpaid amounts. Any part of an identified payment that exceeds the late payment interest charged and the unpaid amount will be off-set against any overseas-based interest that has been charged and then against the loan balance.

The amendments will apply for the 2012 tax year, and subsequent tax years.

Excess repayments

(Clauses 110 to 123)

Payments and deductions in excess of a borrower’s repayment obligation for a tax year will generally form part of a borrower’s excess repayment. “Excess repayment” is defined in clause 111 as is a salary or wage deduction or a payment received by the Commissioner in a tax year from a borrower that is in excess of the borrower’s repayment obligations for the tax year and any amount that is due and payable for a prior tax year.

However, for the majority of borrowers, salary or wage deductions will only be considered an excess repayment if they are considered to be a significant over-deduction, according to the threshold set by the Commissioner. Over-deductions that are below the Commissioner-set threshold will not be considered as an excess repayment.

If a borrower makes payments in excess of their repayment obligations for the current or prior tax years, the Commissioner must as soon as practicable, notify the borrower. The borrower can then put the excess repayment towards the consolidated loan balance (and may qualify for the 10% repayment bonus), elect to receive a refund, or credit the excess to a future repayment obligation.

10% excess repayment bonus

Currently, when a borrower has an excess repayment of $500 or more they will be entitled to a 10% bonus which reduces the borrower’s consolidated loan balance, provided they don’t elect for the excess repayment to be refunded or credited to a future repayment obligation.

The major change to this policy in the bill is to exclude the 10% excess repayment bonus from minor over-deductions that occur through the PAYE system. This change is required to enable PAYE deductions to satisfy borrower’s repayment obligations on a pay-period basis. Any over-deductions that are determined as significant over-deductions (as determined by the Commisioner in clauses 57 and 60) will be eligible for the 10% bonus, provided the other criteria for the bonus are met.

In addition, operational changes will mean that borrowers who wish to have additional amounts deducted from their salary or wages through the PAYE system and put towards an excess repayment for the purposes of the bonus can do so. Employers and PAYE intermediaries will be required to identify or “tag” these payments as separate from standard salary or wage deductions when providing this information to the Commissioner, through the Employer Monthly Schedule. This will allow the current practice to continue, where some borrowers have their employer deduct additional amounts from their salary and wages.

The changes will apply from 1 April 2012.

Instalment arrangements

(Clauses 146 and 147)

The bill contains amendments to allow borrowers to apply to enter into an instalment arrangement to pay any late payment interest and the unpaid amount over a period of time. If an instalment arrangement is granted by the Commissioner, the late payment interest rate charged on the unpaid amount is reduced by 2%. Non-compliance with an instalment arrangement will result in the instalment arrangement being cancelled and the late payment interest rate restored to the full rate.

The changes will apply from 1 April 2012.

Interactions with loan contracts and disclosure requirements

(Clauses 214 and schedule 7)

The migration of current borrowers to the electronic environment is key to the new student loan repayment management system, and to Inland Revenue's ability to offer improved services to borrowers. While Inland Revenue will take reasonable steps to inform all borrowers of the changes, obtaining consent from all borrowers for electronic disclosure is not feasible. The bill will also provide a set of comprehensive rules that govern how student loans are repaid and the process for making disclosures to borrowers. These protections are similar to those provided by the current consumer credit legislation..

The bill contains amendments to exempt student loan contracts from the requirements of the Credit Contracts and Consumer Finance Act 2003 and the Credit Contracts Act 1981. This will ensure that information can be communicated in an electronic form without the consent of a person as long as the person for whom the communication is intended is directly alerted to it in some manner. .

The amendments will apply from 1 April 2012.

Establishment and administration fees – Budget 2010 changes to the student loan scheme

(Clauses 8 and 181)

The bill makes several changes to the student loan administration fee structure. The current administration fee imposed by StudyLink will be renamed the "student loan establishment fee", and a new annual Inland Revenue administration fee will be introduced.

In addition, as part of Budget 2010, the student loan establishment fee will be increased from $50 to $60 for all loan accounts established for study beginning on or after 1 January 2011. Until 31 March 2012 this fee will be imposed by contract. From 1 April 2012, it will have statutory authority as provided in this bill.

The new annual Inland Revenue fee will apply from 1 April 2011, with the first charge to borrowers being on 31 March 2012.

The Student Loan Scheme Act 1992 will specify the amount of the establishment fee and the administration fee. Any future changes to these amounts will be made by regulations. In addition, the bill proposes that a student loan contact is not considered a loan contract under the Credit Contracts and Consumer Finance Act 2003 or the Credit Contracts Act 1981.

Transitional provisions

(Schedules 5 and 6)

Schedules 5 and 6 provide for the transition from the existing Student Loan Scheme Act 1992 to the new Act. These provisions generally provide that the 1992 Act continues for the proper administration and completion of all matters relating to the 31 March 2012 tax year and prior years.

The new Act will apply to the administration and completion of matters relating to tax years from 1 April 2012 onwards.

However, for loan advances made on or after 1 January 2012, the new Act and other provisions related to loan transfers will come into force from 1 January 2012. This date is the start of the academic year and will provide a smooth transition for borrowers from the Student Loan Scheme Act 1992 to the new Act.

Comparative table of old and the new sections

Section reference current Act	Clause reference in Bill
1	1
2	4
2(2)	17
2(3)	18
2A	6
3	7
Part 1: Transfer of loan balances to Commissioner for collection	
4	14
5	15
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7	161
8	162
9	163
10	164
11	165
12	14(2)
13(1)	13
13(2)	25
Part 2: Collection of repayments from New Zealand-based borrowers	
14(1)	Part 2, subparts 1 to 3
14(2)	107(b)
14(3)	183(1) & (2)
14A	106
15	46 & 47, 70, 82
16	196
17	28
17B	29
18	30
19(1)	31 & 33
19(2)	32(2)
19(3)	65
20	32
20A(1) to (2)	43
20A(3)	44

20A(4)	45
20A(5)	44(2)
20A(6)	44(1)(b)
20A(7)	44(3)
21	39 to 42, 93 to 96, and 140 to 142
22	56
23	34
24	55
25	64 & schedule 2
26 to 30	71 to 79, 82 to 91 and schedules 3 & 4
Part 3: Collection of repayments from overseas-based borrowers	
31	98
32	99
32A - repealed in Act	N/A
32B - repealed in Act	N/A
33	100
34	102
35	103
36	104
36A	107
36B	101
Part 4: Miscellaneous provisions applying to the student loan scheme	
37	23
38	24
38AA	125 & 126
38AB	17
38AC	18
38AD	19
38AE(1) to (7A) & (9)	20
38AE(8)	21
38AEA to 38AJA	Schedule 1
38AJ(1)	20(1)
38AJ(2)(a) to (b)	21(b) and schedule 1 clause 7(1)
38AJ(2)(c)	21(c)
38AJ(2)(d)	106
38AJ(3)	22
38AJ(4)	Schedule 1 clauses 1 and 7(2)

38AJA(1)	20(1)
38AJA(2)	Schedule 1 clause 8(1)
38AJA(3)	Schedule 1 clause 9(a)
38AJA(4)(a)(i)	21(b) & schedule 1 clause 8(1)(b)
38AJA(4)(a)(ii)	21(b) & schedule 1 clause 9(b)
38AJA(4)(b)	21(c)
38AJA(4)(c)	106
38AJA(5)	22
38AJA(6)	Schedule 1 Clauses 1 and 8(2)
38AJA(7)	20(4)
38AK	125 & 126
38AL	17
38AM	128
38A – repealed in Act	N/A
38B – repealed in Act	N/A
38C – repealed in Act	N/A
38D – repealed in Act	N/A
39 – repealed in Act	N/A
40 – repealed in Act	N/A
41 – repealed in Act	N/A
42(1)	134
42(2) to (4)	N/A
42(4)	N/A
43(1)	127
43(2) to (4)	135
44(1)	129(1)
44(2)	129(2) & 131
44(3)	4 Definitions of "outstanding obligation" and "unpaid amount"
44A	N/A
44B	N/A
45	132 & 133
45A	110
45B	111
45C	115
45D	116
45E	117
45F	118 & 119

45G	120
45H	121
45I	N/A
46	185
47	184
48 & 49	186
50	187, 188 & 189
51(1)(a)	122
51(1)(b)	N/A
51(2) to (5) & 51A	136
52	129(1)
53	138
54, 55, 55A, 55B	139
55C	143
55D(1)	144
55D(2) & (3)	145
56 to 57	110 to 113, & 123
57A to 57D	N/A
58	114
58A	112
59	194
60	191
60A	190
61	182
62	200
62A	201
62B	202
63	197
63A	198
Part 5: Challenges after transfer of loan balance to Commissioner	
64	174
65	175(1)
65A	170
66	175(2)
66A – repealed in Act	N/A
66B	176
67	172

68	178
69	179
69A(1)	167
69A(2)	N/A
69B	175
70 – repealed in Act	N/A
71 – repealed in Act	N/A
72 – repealed in Act	N/A
73 – repealed in Act	N/A
74 – repealed in Act	N/A
75 – repealed in Act	N/A
76 – repealed in Act	N/A
Part 6: Offences and penalties	
77 to 79	155
80 – repealed in Act	N/A
81	156
82	157
83	158
84	159
85	150 to 154
86 – repealed in Act	N/A
Part 7: Regulations and miscellaneous matters	
87	208
88	Schedule 6 Clause 2
Part 8: 2007–08 transitional provisions for fresh start for certain borrowers	
89 to 105	N/A
Part 9: Other transitional provisions	
106 to 111	N/A
112	N/A