

Student Loan Scheme Bill

*Officials' Report to the Finance and Expenditure
Committee on submissions on the Bill*

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Prepared by the Policy Advice Division of Inland Revenue

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OVERVIEW

The Student Loan Scheme Bill introduces changes to the way student loans are administered by Inland Revenue and StudyLink. Ten submissions were received on the bill. The two proposals which proved to be the most controversial with submitters were the changes to the assessment basis for salary and wage earners – moving from an annual basis to a pay-period basis, and to the exemption of student loan contracts from the requirements of the Credit Contracts and Consumer Finance Act 2003.

Other changes in the bill were greater use of electronic services to enable more timely provision of information and the ability for borrowers to self-manage their loans, increasing the StudyLink and Inland Revenue administration fees, aligning penalties with those that apply for other taxes, aligning the interim payment rules more closely with the provisional tax rules, and changes to interest rates.

Most submissions supported the intent of the bill, welcoming moves to improve student loan administration and reduce the compliance costs imposed on borrowers. Submitters commented that the proposed measures would reduce compliance costs for borrowers and a high degree of self-management would be a welcome improvement.

There was also support for aligning the penalties that apply to student loans with those that apply for other taxes, and the excess repayment bonus.

Three submitters raised matters that were not directly related to changes in the bill. These related to requiring borrowers to pay a deposit for each loan, the recent announcement to introduce a lifetime limit on accessing student loan funding and ways to provide further assistance to borrowers.

This report sets out officials' detailed responses to submissions. Officials have taken into account the recommendations in submissions seeking greater disclosure to borrowers following the exemption of the Student Loan Scheme from the Credit Contracts and Consumer Finance Act, and the extension of the exemption from student loan repayments for full-year students while studying full-time to also include those students with a full-time workload but who study for part of the year.

Supplementary Order Paper No. 200 – Student Loan Scheme Bill, was released by the Minister of Revenue on 14 December 2010. The SOP outlined changes to enable the Commissioner to exercise rights in the contract to recall the full amount of the student loan. No submissions were received on the SOP.

Repayment obligations for salary and wage earners determined on a pay-period basis

The bill proposes that for the majority of salary and wage earners, their repayment obligations will be determined on a pay-period basis, providing greater certainty for borrowers as their repayment obligation will be finalised each pay period or errors identified and if significant, corrected sooner.

Borrowers will focus on the pay-period income and expenses and not on their annual liability. Under this proposal borrowers will make repayments when they can afford to – that is, when their income is over the repayment threshold of \$19,084 (\$367 per week), and are not required to make repayments when they cannot afford to pay.

If a borrower is in significant financial difficulties, they will qualify for hardship and will either not be required to make repayments, or their payments will be reduced.

A borrower's loan repayments each pay-period (excluding errors and income fluctuations) will not change between the current process and that proposed in the bill. What will change is that borrowers will not be required to undertake an end-of-year return and deal with any resulting additional repayments.

Significant policy matters

PROVISION OF ELECTRONIC SERVICES

Clauses 13 to 15

Submissions

(NZ Union of Students' Associations, Whitireia Community Law Centre)

The ability for borrowers to access a greater amount of information online and to be able to self-manage their loans is supported.

The current interactions between borrowers and Inland Revenue are complicated, time-consuming and not user-friendly. Processes are generally outdated and inflexible. The provision of more online services and borrowers' ability to self-manage their loans will be of significant benefit, especially to overseas-based borrowers.

The NZ Union of Students' Associations also supports the continued provision of paper-based and phone-based communication where appropriate and necessary.

Comment

Although most communication will occur via electronic means, borrowers who, for example, do not have access to the internet will still be able to receive paper-based communication.

Recommendation

That the submissions be noted.

CHANGING THE BASIS OF ASSESSMENT FOR BORROWERS WITH SALARY OR WAGE INCOME

Clause 32

Submissions

(Lenore Bamfield, NZ Union of Students' Associations, Whitireia Community Law Centre, Auckland University Students' Association)

Currently, the same repayment obligations apply to all New Zealand-based borrowers – that is, the repayment obligation is 10 percent of the borrower's annual net income that exceeds the repayment threshold (currently \$19,084).

The bill proposes to have different repayment obligations for different classes of New Zealand-based borrowers, namely:

- repayment deductions from salary or wages which generally will be determined on a pay-period basis;
- repayment obligations on pre-taxed income is determined on an annual basis and applies when this income exceeds \$1,500; and
- repayment obligations on borrowers with other income is determined on an annual basis and is based on the borrower's taxable income.

The four submitters were against changing the basis of assessment from an annual assessment to a pay-period assessment for borrowers who have salary and wage deductions made. Their view was because of potential negative effects on borrowers, particularly those with irregular or part-time employment, and students. Although the pay-period assessment basis may benefit borrowers in the long term submitters say it may not benefit borrowers in the short term, and may lead to borrowers undertaking non-compliant actions to reduce their liability. The submitters say there could also be a disincentive for students seeking full-time work during non-study periods, which could lead to increased borrowing or reduced income available to students for their next period of study. *(Lenore Bamfield, NZ Union of Students' Associations)*

The NZ Union of Students' Associations questions whether the change in the basis of assessment is necessary as part of an efficient student loan administration and suggest if the improvements should not come at the disadvantage or cost to borrowers. The submitter says the compulsory pay-period basis of assessment for salary or wage earners should be removed and replaced by borrowers having the choice over whether they want to apply the pay-period basis of assessment. *(NZ Union of Students' Associations)*

The submitter says due to the different basis of assessment proposed in the bill, borrowers on the same total income may face different repayment obligations depending on the sources of that income. Some borrowers will have assessments and others will not and only borrowers with other income will be able to have small overpayments (below the significant overpayment threshold) refunded. *(Lenore Bamfield)*

The same submitter also refuted the following grounds for the changes in the bill:

- that the current system is complex;
- that they provide certainty for salary and wage earner borrowers;
- that the pay period is a better basis of assessment for salary and wages than current annual system;
- that the majority of overpayments are currently offset against a borrower's loan balance; and
- that the changes will result in shortened repayment times.

The following table summarises the submitter's comments on each of these points and officials' responses.

Justification for change	Submitter's comment	Officials' response
Complexity	<ul style="list-style-type: none"> The current system of an annual assessment process for all borrowers is already simple. The proposed system is complex – for example, there are two formula is to establish a pre-taxed assessment. Moving to an electronic environment would reduce complexity with an end-of-year square-up. The requirement for students applying for the full-time, full-year repayment exemption will increase their compliance costs. 	<ul style="list-style-type: none"> Retaining the current system still requires borrowers to file and IRD to assess returns. This does not reduce compliance and administration costs. The proposed system may seem legislatively complex with different calculations required in different circumstances (for example, pre-taxed assessment). However, borrowers will only have to provide data and Inland Revenue will perform the calculations. Under the proposal, borrowers with only salary or wage income will be removed from the requirement to file, with any small overpayments applied to the loan balance and under-payment not collected. <p>Retaining the assessment basis and moving to electronic filing may reduce but would not remove compliance or administration costs.</p> <ul style="list-style-type: none"> Although there are compliance costs involved with students applying for the repayment exemption, the cost of students responding to current requests to apply the SL deduction code would reduce.¹
Certainty	<ul style="list-style-type: none"> If the PAYE system is working properly then large numbers of borrowers would have their repayments correctly deducted (within a \$20 threshold). 	<ul style="list-style-type: none"> Increasing the accuracy of the PAYE system alone will not address the situation when a borrower's income fluctuates. This would still require an end-of-year assessment. Retaining the annual square-up will not reduce compliance or administration costs.
Pay-period vs annual basis of assessment	<ul style="list-style-type: none"> Not allowing student loan liabilities to be spread over the year could lead to hardship. However, relief is only available for serious financial hardship. The proposal in the bill creates an inconsistent treatment between borrowers on the same income but who derive salary or wage income compared with those who derive other income. 	<ul style="list-style-type: none"> Currently if a borrower does not qualify for serious financial hardship, they have to wait until after the end of the year to receive a refund. The current relief in the form of a refund is not timely. Instead of grouping all borrowers together, the proposals try to segment borrowers into groups to reduce compliance costs for some classes of borrowers, where appropriate – that is, borrowers with salary or wages only. <p>There is consistency within the group but not between groups of borrowers both in the current Student Loan Scheme Act 1992 and the bill. However, under the bill borrowers with salary or wage income have their repayment obligation determined on a pay-period basis. This enables both compliance and administration costs to be reduced.</p>
Majority of overpayments currently offset against loans	<ul style="list-style-type: none"> Borrowers may not be advised they may have a refund – leading to low levels of refunds. 	<ul style="list-style-type: none"> Previously Inland Revenue did not notify borrowers of potential overpayments (by way of a personal tax summary). There were 18,000 such borrowers affected in 2010 – approximately 5 percent of salary or wage borrowers. Inland Revenue has changed its policy and in the current year will provide advice to borrowers who have a potential overpayment. This will address the submitter's concerns.

¹ Inland Revenue undertakes checks of borrowers with salary and wage income to ensure they are applying the correct deduction code. As Inland Revenue is not currently aware whether a borrower is currently studying and therefore not liable the department therefore contacts borrowers seeking to change their deduction code to SL (requiring student loan deductions).

Justification for change	Submitter's comment	Officials' response
Shortened repayment times	<ul style="list-style-type: none">• In an interest-free environment, applying overpayments to the loan may not be in the borrower's best interest. This money may be needed to meet current needs.	<ul style="list-style-type: none">• If the amounts are over a threshold (yet to be determined) the overpayment will be available for refund.

Comment

The current annual system has a number of problems. They are:

- an annual basis of assessment where accuracy is achieved only at year-end;
- inaccurate deductions during the year lead to end-of-year debts and refunds;
- there is no incentive to ensure correct deductions are made during the year:
 - Inland Revenue has limited resources to review every borrower;
 - borrowers can benefit by deferring payment;
 - employers may not be required to fix mistakes (not all mistakes are able to be checked during the year so are addressed at year-end);
 - Inland Revenue undertakes annual assessments, follows up debts, and handles end-of-year contacts.

Under the pay-period proposal:

- Inland Revenue resources will be shifted from undertaking the annual assessment and collecting large debts to ensuring deductions made during the year are correct (as far as possible).
- Under the pay-period basis of assessment, greater accuracy would be achieved each payday and therefore the borrower has certainty of liability or over-deduction sooner.
- Any resulting debt/overpayment will be smaller and occur for shorter durations – enabling certain tolerances to be applied.
- If significant errors occur in a pay-period deduction, these can be considered for refund or recovery.
- If an overpayment is not a significant amount but would cause hardship, Inland Revenue can provide relief and refund the amount to the borrower.
- Inland Revenue will have the ability to move resources from the current end-of-year assessment processes to provide better services to borrowers during the year.
- Borrowers' compliance costs will fall as they will no longer be required to square-up their repayment obligations.

Twelve examples were provided in the submission by Lenore Bamfield. These examples can be grouped into five categories as outlined in the following table, along with officials' responses.

Submitter's examples	Officials' response
Income which fluctuates under and over the repayment threshold. This results in too much being deducted on an annual basis.	<ul style="list-style-type: none"> - Under the proposal, resources are put into ensuring pay-period deductions are correct (within certain tolerances). - Amounts deducted for a pay-period would be a borrowers' liability (providing certainty of liability during the year). - Significant over- or under deductions that occur will either be collected/refunded if they are significant or ignored if below the threshold. This process will occur throughout the year. - Any small overpayments (not considered significant) will be applied to the loan balance – which is to the borrower's advantage. - Relief is available if the borrower experiences hardship.
Lump sum payments received (such as redundancy, retiring, or bonus payments) results in over-deductions.	Same comments as above.
Full-time study but for only part of the year (commencing or ceasing study part-way through the year) does not qualify for the repayment exemption.	Officials agree with the submitter and an amendment is proposed below on the exemption applying to students who are undertaking full-time study for part of the year.
Deductions from secondary income (Inland Revenue's existing practice is not in keeping with the proposed legislation).	The bill resolves this by clarifying that borrowers are required to have deductions made during the year on secondary income and enables a borrower to apply any unused repayment threshold from their primary income to their secondary income.
There are different treatments for borrowers with salary and wage income and borrowers with other income.	Borrowers with other income are different from salary and wage income earners and are currently treated differently (for example, they have losses, expenses to deduct and have a different repayment system during the year). The bill continues to treat these two classes of taxpayer differently.

Recommendation

The issue of students studying full-time for only part of the year, is dealt with later in this report. With regard to the rest of the submissions it is recommended that they be declined.

OIA ON OVERPAID STUDENT LOAN DEDUCTIONS

Submission

(Lenore Bamfield)

In an oral briefing to the Select Committee, the submitter provided information received from Inland Revenue, under an Official Information Act request, on borrowers who had significant under- and overpayments.

This information showed that there were significant numbers of borrowers who had overpaid as well as a group who had a significant over-deduction.

Comment

The request for information was quite specific in its nature in that it requested the figures for the tax year, hence not allowing for under-payments to take account of the due date for payment (being the 7th February in most cases), nor for borrower requests for refunds or other forms of transfers in the case of over-payments.

To illustrate the issue, Inland Revenue looked into 16 cases where borrowers had a serious over-deduction. Although Inland Revenue cannot discuss the specific cases, the following is a general explanation of these cases.

Two cases are awaiting the student loan account to be closed. These payments were made by the borrower to pay off the remaining loan balance in total. This is a timing lag between when payment was received, the extracting of the information for the submitter, and the closing of the borrower's account.

There were four cases of borrowers who had large payments transferred from other taxpayers to offset the borrower's outstanding loan balance. Over-payment can occur, as in these four cases, when the borrower's parent or relative contributes to pay off some of the loan or all of the borrower's loan.

In five cases, the borrowers qualified for and received an excess repayment bonus. It cannot be determined whether the excess deductions made through the PAYE system were due to an incorrect tax code being applied, incorrect deductions being made by the employer, or the borrower requesting additional student loan deductions to be made from their salary or wages. In any case, the borrowers were aware of the over-deduction and have taken advantage of the excess repayment bonus.

There were two further cases of borrowers who were in a similar position to the above five borrowers, except that due to the timing of when the information was extracted, these two cases were still waiting to receive the excess repayment bonus.

In three cases borrowers had overpaid their student loans liability and had applied for the over-deductions to be refunded.

What we can draw from the above explanations is that over-deductions are not necessarily the result of errors in the tax code used or an incorrect deduction being made. Some borrowers make a choice to overpay. In the case of smaller over-payments, it is likely that the vast majority of the smaller over-deductions are caused by employers making mistakes with deductions such as using wrong tax codes or deducting the wrong amounts. Other possible causes of overpayment include: the borrower instructing the employer to make additional PAYE deductions (voluntary repayment through the PAYE system) so that the borrower's loan is repaid earlier or fluctuations in income received during the year.

The proposed pay-period basis of assessment for salary or wage earners will largely eliminate these problems as incorrect deductions (over the threshold) will be advised to the employer and/or borrower and corrected earlier rather than having to wait until the year-end square-up.

Recommendation

That the submission be noted.

WHETHER THE PAY-PERIOD BASIS COULD BE APPLIED MORE WIDELY THAN STUDENT LOANS

Submission

(Finance and Expenditure Committee)

The Committee has asked whether the policy of determining student loan repayment obligations on a pay-period basis can be applied more widely across other forms of withheld income.

Comment

In June 2010, the Government discussion document, *Making tax easier*, was released for public consultation. One of the proposals was that pay-period deductions of pay-as-you-earn (PAYE) from taxpayers' wages and salaries should be made "full and final" at the point of deduction.

The proposal was to be limited to those taxpayers who were in stable employment for 11 or more months of the tax year. The reason was because PAYE deductions for taxpayers in these circumstances are typically quite accurate. Any over- or under-deductions are often to within \$50 either way.

Feedback received was, on the whole, against the proposal. Submitters believed that so long as there is potential for error in the PAYE system, taxpayers should be able to do end-of-year filing so the error can be corrected.

Officials are currently working through the policy issues with a view to developing the proposal in a way that takes into account the concerns outlined in submissions. It is expected that a report will be sent to Cabinet in June 2011.

Recommendation

That the submission be noted.

STUDENTS WORKING PART-TIME WHILE THEY ARE STUDYING

Clauses 48 to 54

Submissions

(Lenore Bamfield, NZ Union of Students' Associations, Whitireia Community Law Centre, Auckland University Students' Association)

Submitters raised three concerns with the exemption. The first is that compared with the status quo, borrowers' compliance costs will increase and Inland Revenue will have an additional administrative function.

The second concern is that as drafted, borrowers who study full-time for part of the year may be unable to access the full-time study repayment exemption.

Thirdly, income earned by students during periods of non-study – for example, during the summer holidays, should be ring-fenced and exempt from pay-period repayments.

Issue 1: Exemption will increase compliance and administration costs

The proposed online election process for full-time students to elect the full-time study exemption, and therefore not be required to have student loan deductions made, will impose greater compliance and administration costs than the status quo.

This will set up two tiers of repayment obligations between full-time students – those who know about the exemption and those who do not. The pay-period basis would be punitive as students tend to work longer hours during non-teaching periods to supplement their income. The exemption and an advertising campaign would not mitigate the unfairness of the pay-period basis. *(NZ Union of Students' Associations, Auckland University Students' Association)*

Comment

Officials consider that although compliance and administration costs will be incurred, these costs will be kept to a minimum. Also, without a formal election process, borrowers would face greater compliance costs in dealing with attempts by Inland Revenue to apply the student loan deduction code to their salary or wage income.

Inland Revenue will ensure that the exemption available to students who are undertaking full-time study is communicated to students. This will also include but not be limited to highlighting the information on the borrower's loan account, and in other information sent to borrowers.

Recommendation

That the submission be declined.

Issue 2: Full-time study but for only part of the year

The bill provides that full-time full-year students are not required to have repayment deductions made from their salary or wages. This is achieved by borrowers applying online for a full-time full-year study exemption.

Submitters' are concerned that as drafted, borrowers who begin or cease study part-way through an income year and who are under the annual repayment threshold amount will not be able to qualify for the full-time study repayment exemption. The bill requires borrowers to study for the full year and be under the annual repayment threshold.

Comment

Officials agree with the submitters that the exemption should be extended to students who undertake the equivalent of a full-time study workload for part of a year (for example, begin or cease study part-way through a year).

However, the exemption should not be extended to part-time study involving less than a full-time study workload as this would open the exemption up to abuse by borrowers who would undertake part-time study in order to postpone their student loan repayments.

To determine whether the borrower is undertaking full-time study for the repayment exemption, officials propose that this exemption adopt the same criteria used to determine whether a qualification is full-time or part-time for eligibility for the student allowances and the Student Loan Scheme, namely, the Loan Entry Threshold (LET) table.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue 3: Ring-fence income of students during periods of non-study

Income earned by a student during periods of non-study should be exempt from pay-period repayments by ring-fencing this income. This would alleviate the problems with the exemption.

The submitter recognises that there may be administrative issues in ring-fencing holiday work, such as the definition of "holiday work" (which could be limited to a period of 12 weeks work, whether there is a minimum number of hours needed to be worked to qualify, and the transition from holiday work into non-holiday work. There may also be issues for employers in administering the holiday work exemption. (*Whitireia Community Law Centre*)

Comment

Officials agree with the concept of ensuring that the holiday period between periods of full-time study, such as the summer holidays, should qualify for the exemption. However, we do not agree with the proposal of ring-fencing the income earned during this period.

As the submitter points out, administering the ring-fencing would be difficult. It would also enable borrowers to earn over the annual repayment threshold without having to make repayments, which would treat students more favourably than other borrowers and more favourably than under the current Student Loan Scheme Act.

Instead, officials recommend that the legislation be amended to make it clear that the exemption applies in cases where:

- the student starts drawing down their loan but the study has not yet commenced;
or
- the student finishes their study for the year and intends to continue next year, or next semester (after the holidays).

This should address the concerns raised by the submitter.

Recommendation

That the submission be noted, and the changes recommended by officials be accepted.

OVERPAYMENTS OF STUDENT LOAN REPAYMENTS

Clause 111

Submissions

(Lenore Bamfield, NZ Union of Students' Associations)

The bill precludes borrowers with other income from receiving a refund of overpaid deductions from salary or wage income.

Secondly, overpayments can automatically be credited to any outstanding student loan accounts that a borrower has.

Comment

Overpaid salary and wage deductions

The bill provides for borrowers who receive other income (regardless of whether they also receive salary or wage income as well) to square-up their repayment liability at the end of the year. Any overpayment (from whatever source) will be an excess repayment and available for refunding. The submission has identified a legislative oversight in clause 111 whereby a borrower who receives both other income and salary or wages is unable to receive a refund of overpaid loan deductions on their salary or wage income.

Officials agree this is an oversight and that clause 111 should be amended to enable other income earners to receive a refund of overpaid deductions from their salary or wage income.

Recommendation

That the submission be accepted.

Offsetting of refunds against outstanding debt

The NZ Union of Students' Associations had concerns regarding Inland Revenue's ability to automatically credit any overpaid student loan payment to satisfy an unpaid amount, rather than the borrower retaining the current system of enabling the borrower to choose whether to receive the refund.

However, the current system automatically assigns any student loan payment received to repay any unpaid amounts. This is to the borrower's advantage as it reduces the borrower's exposure to late payment penalties imposed on any unpaid amounts.

When all unpaid amounts have been cleared, any remaining overpayment is assigned to repay the loan balance and the borrower is advised that they can elect to have this amount refunded if they wish. This process is continued in the bill when there is a significant overpayment.

Recommendation

That the submission be declined.

ADMINISTRATION FEES IMPOSED BY STUDYLINK AND INLAND REVENUE

Clause 181

Submissions

(Phillip Baynes, Charlotte Harpin, Auckland University Students' Association, New Zealand University Students Association, National Council of Women of New Zealand)

Five submitters raised concerns over the introduction of the \$40 annual Inland Revenue administration fee payable by borrowers with a consolidated loan balance of \$20 or more.

Two submitters stated that the underlying rationale for the fee is the belief that the student is the primary beneficiary of the loan, which ignores the significant public good that arises out of investing in tertiary education.

As the bill introduces measures to reduce the costs of administration, one submitter found it difficult to understand how the increased administration fee could be justified. Students would also be expecting fees to subsequently reduce.

The affordability of the fee was also a concern. The National Council of Women of New Zealand believed the fee could have a detrimental impact on low to middle income borrowers. Also, the imposition of the fee will extend the time needed to repay loans which is at odds with the aims of the bill to improve the rate and timeliness of repayments.

Three submitters commented that the imposition of the administration fee is inconsistent with New Zealand's commitment to the United Nations Convention on Economic, Social and Cultural Rights, which mandates a commitment to the progressive realisation of free access to tertiary education. They also said the loan contract is an agreement between the borrower and the Government and variations to the contract requires agreement of both parties. There is no provision in the contract to impose an annual administration fee and the use of executive powers to vary the contract to impose the fee is an abuse of parliamentary sovereignty. The submitters believe introduction of the fee constitutes a breach of section 21 of the New Zealand Bill of Rights Act 1990 as the imposition is effectively seizing the property of citizens.

Comment

The new Inland Revenue student loan annual account fee is designed to recover more of the costs of administering student loan accounts. Unlike commercial/banking practice, the Student Loan Scheme does not have mechanisms like interest to help cover operating costs.

The Government will continue to subsidise the annual Inland Revenue administration costs of those who are still studying and who have been charged a loan establishment fee in the same tax year. Should the administration costs change significantly, there will be a mechanism through the bill to make a regulation change to the annual Inland Revenue fee.

In 2010–11, the Crown’s cost of new lending through the Student Loan Scheme is 45.3 cents for every dollar lent. What is sometimes overlooked is that the Crown meets the largest share of the costs of tertiary education through its funding of providers, through student allowances and through the subsidy involved in interest-free loans. The splitting of costs between the Government and the student (or his/her family) recognises that there is a social/public benefit from tertiary education but that individuals who have tertiary qualifications also receive a substantial benefit in terms of higher earnings and non-financial outcomes such as lifestyle.

The \$40 fee is not expected to raise affordability issues. By comparison, the average amount of a student loan taken out in 2009 was \$6,991 (\$40 represents 0.6 percent of this amount). While the fee may extend repayment times by a small amount for some borrowers (by an estimated two months), it could also encourage other borrowers to repay their loans sooner, thereby reducing the costs of the loan scheme to the Crown.

New Zealand’s commitment to the United Nations Convention on Economic, Social and Cultural Rights requires the Government to move progressively (as economic resources permit) towards providing free and unrestricted access to tertiary education. The introduction of an administration fee does not explicitly bar students from enrolling in tertiary education nor is it likely that such a small administration fee would deter students, especially when loans are interest-free. Furthermore, there is no evidence to suggest that student loans generally pose a barrier to tertiary study. OECD analysis shows that countries that allow providers to charge fees and enable students to borrow fees with government-subsidised loans tend to have good performance on measures of access to tertiary education.

The Ministry of Education is of the view that the introduction of a \$40 administration fee does not constitute a breach of section 21 of the New Zealand Bill of Rights Act as raised by the submitters. That section upholds the right to be free from unreasonable search or seizure. The fee does not amount to “unreasonable seizure”. The Ministry of Justice has vetted the bill for any Bill of Rights implications and did not raise any concerns.

In Budget 2010, the Government decided that the new Inland Revenue administration fee would apply to borrowers with new or existing loan contracts. This is to recover some of the annual costs of borrowers who currently hold a loan with Inland Revenue. For this reason, the bill contains provisions to remove student loans from the ambit of the Credit Contracts and Consumer Finance Act for both new and existing student loan borrowers. The retrospective nature of the changes also reflects the fact that the nature and form of student loans does not fit well with the Credit Contracts and Consumer Finance Act, and that they will have their own, transparent protection under the new Student Loan Scheme Act.

To ensure that adequate consumer protections are maintained for borrowers, the bill:

- specifies the amount of the Ministry of Social Development student loan establishment fee and the annual Inland Revenue administration fee (with any future changes to these amounts being made by regulations made under the new Student Loan Scheme Act; and
- includes an obligation for the Ministry of Social Development and Inland Revenue to make appropriate disclosures to borrowers.

Recommendation

That the submissions be declined.

OVERRIDING THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

Clause 214 and schedule 7

Issue: Retrospective legislation will undermine the purpose of the disclosure outlined in the Credit Contracts and Consumer Finance Act

Submission

(Commerce Commission, National Council of Women of New Zealand, NZ Union of Students' Associations)

Disclosure under the Credit Contracts and Consumer Finance Act is required to:

- enable a borrower to be able to distinguish between different credit arrangements;
- enable borrowers to be informed on contract terms before they sign up; and
- be able to monitor performance of the credit contract.

Also changing the terms of the loan undermines:

- the initial disclosure requirements to the loan;
- the choices the borrower made in entering the contract;
- students' understanding of the rights and obligations under the loan contract; and
- increases the chance of confusion amongst borrowers regarding their rights and obligations.

Changing the consumer protections may undermine consumers' confidence in the protections afforded by the Credit Contracts and Consumer Finance Act and may undermine voluntary compliance with the Act if creditors think they can obtain a retrospective exemption if they find they have breached the Credit Contracts and Consumer Finance Act. *(Commerce Commission)*

Comment

While student loan contracts made before 4 November 2010 are credit contracts in terms of the Credit Contracts and Consumer Finance Act, there are major differences between student loans and other credit contracts. These differences reflect the fact that student loans are a heavily subsidised form of Government financial assistance to students. For example:

- Student loans are not secured.
- Student loans are income-contingent (unless the borrower is overseas-based) and the loan may never be paid off if the borrower does not earn over the repayment threshold.

- The repayment obligations of the loan are contained in legislation and not the contract.
- Student loans are interest-free for New Zealand-based borrowers so using an interest charging mechanism to recoup the costs of administering the loan is not an option for New Zealand-based borrowers.

The Credit Contracts and Consumer Finance Act was enacted to protect consumers who enter into contracts where there is generally no other legislation present. However, student loan borrowers have the protections provided by an Act of Parliament through the Student Loan Scheme Act.

The Credit Contracts and Consumer Finance Act provides for hardship relief if a borrower cannot meet his or her obligations under a contract. This is required because contracts usually have a fixed repayment amount, which can cause hardship for borrowers if their circumstances change. However, student loan repayments are income-based and repayments are responsive to fluctuations in income. Relief is also available in the bill for borrowers in cases of serious hardship.

If the student loan continued to be subject to the Credit Contracts and Consumer Finance Act the Government would be limited in the changes that could be made to the scheme because any changes could not be applied to existing contracts without the consent of the borrower. Seeking the agreement of all borrowers could be difficult as Inland Revenue is unable to contact some borrowers without incurring significant administration costs – for example, some overseas-based borrowers.

Also, if all borrowers do not agree to the changes, different administrative treatments would be required for different groups of borrowers, making the scheme difficult and costly to administer.

Furthermore, working within the Credit Contracts and Consumer Finance Act to address student loan issues (by seeking limited exemptions each time issues arise) could lead to error and inconsistencies in that legislation over time. This could result in consumer confusion about the Credit Contracts and Consumer Finance Act and creditor compliance with that Act.

Although StudyLink and Inland Revenue disclose information to borrowers, officials have considered whether there should be greater requirements for disclosure. Accordingly, officials recommend that the following amendments be made to ensure the bill reflects the spirit and intent of the Credit Contracts and Consumer Finance Act:

- that the loan manager be required to provide the borrower with a copy of the contract within six working days after the day on which the contract was entered into;
- that Inland Revenue be required to disclose details of a loan balance to include:
 - the date and amount of any interest charged to the borrower, or any late payment interest or penalty imposed;
 - the date and amount of each fee charged to the borrower; and

- a requirement for StudyLink or Inland Revenue, as appropriate, to notify borrowers of unilateral changes to either the contract or statute that increases the borrower's obligations if the borrower's updated address information is known. This notification must occur within seven months of the change being made.

Recommendation

That the submission be noted and the above changes recommended by officials be made to the bill.

Issue: Prohibiting the charging of unreasonable credit fees

Submission

(Commerce Commission)

The Credit Contracts and Consumer Finance Act provides protections against lenders charging unreasonable credit fees. The bill introduces an administration fee which can be changed by regulation and there is no requirement for fees charged under the bill to be reasonable. Borrowers do not have the right under the bill to challenge these fees.

Comment

The administration fee is based on the costs associated with collecting repayments. The proposed fee is not unreasonable.

With regard to the removal of the protection for borrowers against the setting of unreasonable fees, in credit contracts the imposition of fees is imposed by the contract and the only protections available to the debtor, in the absence of the Credit Contracts and Consumer Finance Act, would be common law. However, under the Student Loan Scheme, the imposition of fees is prescribed in legislation, which can be changed by regulation or by Act of Parliament. The Government is ultimately accountable for imposing reasonable administration fees.

Recommendation

That the submission be declined.

Issue: Hardship rights

Submission

(Commerce Commission)

The Credit Contracts and Consumer Finance Act provides protections to borrowers who are unable to meet their obligations under the credit contract due to unforeseen circumstances (including ending a relationship, illness, loss of employment or injury). To provide relief, the creditor may agree to change the terms of the contract by postponing payment or by extending the term of the loan.

If the creditor does not agree with the debtor's application, the debtor may apply to the courts for the terms of the contract to be varied.

Although the bill does provide hardship provisions, they are at the discretion of the Commissioner.

Comment

The Student Loan Scheme differs significantly from other loans. The Student Loan Scheme is income-contingent and therefore borrowers do not have to repay their loan until they reach a certain income threshold. This feature reduces the extent to which borrowers get into financial hardship.

Student loans do not have a fixed term. Some loans may never be paid off especially if the borrower has significant periods when they earn less than the repayment threshold.

The bill provides relief for borrowers who face hardship by decreasing their repayment obligations (including reducing repayments to zero).

Borrowers who are having difficulty meeting their repayment obligations can also apply to enter into an instalment arrangement for the repayment of debt.

Officials consider these features provide sufficient protection to borrowers who find themselves in hardship.

Recommendation

That the submission be declined.

Issue: Prohibition against oppression

Submission

(Commerce Commission)

Part 5 of the Credit Contracts and Consumer Finance Act provides protection if one of the parties has exercised or intends to exercise a right under the contract in an oppressive manner or uses oppressive means to get another party to enter the transaction.

In contrast, the ability for the debtor (or borrower) to challenge the decisions of the Commissioner appears to be more limited than under the Credit Contracts and Consumer Finance Act.

Comment

For part 5 of the Credit Contracts and Consumer Finance Act to apply, the contract, lease or transaction must be oppressive or a party must have exercised a right or power under the contract in an oppressive manner.

The repayment of student loan deductions is provided for by statute enacted by Parliament, which has the ability to change the Student Loan Scheme or its features if they are considered oppressive. There is also the judicial review process for the external review of a decision made by the Commissioner in order to safeguard individual interests against unreasonable administrative action taken without following proper procedures.

The bill also provides rights to challenge a number of the Commissioner's decisions on whether a borrower is New Zealand or overseas-based, whether the Commissioner's decision regarding any relief is fair and reasonable, and the Commissioner's determination regarding whether a significant over-deduction was made.

Officials consider that there is adequate protection against the Government exercising a right in an oppressive manner or using oppressive means to get people to enter into a student loan.

Recommendation

That the submission be declined

Issue: Cancellation rights

Submission

(Commerce Commission)

Debtors have the ability to cancel a contract within three days of being given notification. A debtor has to be formally notified of the contract terms within five days of the contract being made. This protection would be removed as a result of the amendment in the bill to exclude the Student Loan Scheme from being subject to the Credit Contracts and Consumer Finance Act.

Comment

Currently applicants can cancel their student loan contract within seven working days after the date that the Loan Entitlement Advice letter was sent to them. This is consistent with the provisions in the Credit Contracts and Consumer Finance Act. Officials agree that the right to cancel the contract within a defined period should be included in the bill so that applicants continue to receive that protection under the law.

This would include the provision that if an applicant receives any loan advances within that period they must repay those advances (together with any interest) within that period.

Officials recommend that this process be incorporated into the bill.

Recommendation

That the submission be accepted.

EXCESS REPAYMENT BONUS

Clauses 115 to 121

Submission

(NZ Union of Students' Associations)

The submitter has queried the impact on the excess repayment bonus in moving to a pay-period basis of assessment for salary and wage earners.

Comment

Borrowers who want their employer to deduct additional repayment deductions from their salary or wages can continue to do so. So that these amounts can be identified as qualifying for the bonus, the employer will apply a new tax code – a student loan additional deduction rate code, to these repayments.

Borrowers who have a significant over-deduction of their repayment obligations will be able to receive a refund of this amount or apply it to the loan balance and thereby qualify for the excess repayment bonus. Minor over-deductions will not qualify for the bonus.

Recommendation

That the submission be declined.

Other issues raised in submissions

REQUIRING BORROWERS TO PAY A DEPOSIT FOR EACH STUDENT LOAN APPLICATION

Submission

(Lucy Thomson-Ryan)

Borrowers should be required to pay a deposit for each student loan application (based on a percentage of the application) similar to that for a home loan. Requiring a deposit would make borrowers aware of the value of the loan, how the money world works and curb their financial spending. This proposal would also reduce the financial burden on New Zealand.

Comment

The submission is beyond the scope of the bill.

The recommendations made relate to student loan eligibility and are not within the ambit of the changes proposed in the bill which are to improve Inland Revenue's processes for collecting student loan repayments. Furthermore, there is a risk that any requirement for an upfront payment may pose a financial barrier to people accessing tertiary education. This would be contrary to the objectives of the Student Loan Scheme.

Recommendation

That the submission be declined.

LIFETIME LIMIT ON ACCESSING STUDENT LOAN FUNDING

Submission

(Nathan James Ngatai)

The submitter refers to two Budget 2010 initiatives – the student loan 7 equivalent full-time study² life-time limit and the performance test.

The submitter supports interest-free loans for borrowers who remain in New Zealand and the student loan performance test. The student loan life-time limit is also supported but the submitter suggests that some accommodation be made for life-long learning.

Comment

The submission is beyond the scope of the bill.

The student loan performance test and life-time limit were part of Budget 2010 changes and were introduced on 1 January 2011. Legislation was not required as all decisions on entitlement and eligibility criteria for a student loan are made by Cabinet and incorporated into the student loan contract.

Recommendation

That the submission be declined

² A student taking a normal year's full-time study generates an "equivalent full-time student" unit.

FURTHER ASSISTANCE TO STUDENTS

Submission

(National Council of Women of New Zealand)

The Government should investigate the feasibility of implementing a universal basic income, providing students with a living allowance during study periods. These changes would mean that no one would need to borrow to get an education and it would be an investment in the future.

Comment

The submission is beyond the scope of the bill.

Recommendation

That the submission be declined.

Matters raised by officials

ABILITY FOR COMMISSIONER TO RECALL THE LOAN

Submission

(Matter raised by officials)

Supplementary Order Paper No. 200 was released by the Minister of Revenue on 14 December. The Supplementary Order Paper enables the Commissioner to exercise rights in the loan contract to recall the loan in circumstances such as the borrower not complying with an obligation for two years. Changes included in the Supplementary Order Paper should be included in the bill at the time the bill is reported back.

Comment

No submissions were received on the Supplementary Order Paper.

Currently the Commissioner of Inland Revenue is only able to collect outstanding repayments. While this is sufficient for the majority of borrowers, there is a small minority who do not comply and for whom the recalling of the whole loan together with any outstanding interest and penalties is appropriate.

Although the ability to recall the loan is available in the student loan contract, the person able to exercise this power has changed from year to year as the definition of “lender” in the contract has changed. This can lead to administrative costs in determining which organisation has the right to exercise the recall power and in relation to which part of the consolidated loan balance. Any error can be challenged by the borrower.

As the most appropriate person to exercise the power to recall the loan is the Commissioner, the Supplementary Order Paper proposes that a legislative change be made to provide for this. Officials recommend that the Supplementary Order Paper No. 200 be incorporated in the reported-back version of the bill.

Recommendation

That the submission be accepted.

INFORMATION TO BE PASSED FROM THE LOAN MANAGER (STUDYLINK) TO INLAND REVENUE

Clause 11(2)(a)

Submission

(Matter raised by officials)

Information transferred from StudyLink to Inland Revenue to assist with the administration and collection of student loans does not currently include borrowers' phone numbers or the date that StudyLink advised the borrower of their loan via a loan entitlement advice letter. Changes should be made to give effect to these omissions.

Comment

Providing borrower phone numbers will help Inland Revenue to contact borrowers about their student loan and in the collection of outstanding repayments. Information on the date that StudyLink provided the loan entitlement advice letter is required to set up the borrower's account with Inland Revenue and for the building of system checks to ensure loan advances cannot be made earlier than the date that StudyLink provided the loan entitlement advice. Officials recommend that the bill be amended to require this information to be transferred from StudyLink to Inland Revenue. These changes would apply from 1 January 2012.

Recommendation

That the submission be accepted.

NEAR REAL-TIME TRANSFER OF LOAN ADVANCES

Clauses 9 to 15, 160 and 164

Submission

(Matter raised by officials)

When the bill was introduced, officials were still working through how the real-time transfer of loan advances from StudyLink to Inland Revenue would be administered. Now this transfer process has been finalised, officials propose a number of amendments to the bill to give effect to the details of this transfer process.

Comment

Loan advances will be transferred to Inland Revenue in a near real-time basis. This will enable the borrower to have a consolidated view of their loan balance. The changes to the process are as follows:

- Inland Revenue, rather than StudyLink, will provide a statement to borrowers advising loan advances made for the period covered by the statement.
- The statement will be provided to borrowers at least twice a year.

The period for objecting to a loan advance will still be 31 days from the date of the statement, even though Inland Revenue has issued the statement. All objections to any loan advance made will still be dealt with by StudyLink.

Officials propose that changes be made to clauses 9 to 15, 160 and 164 to provide near real-time transfer of loan advances, for Inland Revenue to issue statements, and for the objection period to be 31 days from the date the statement was issued.

Recommendation

That the submission be accepted.

INTERIM AND REMAINING REPAYMENTS

Clauses 76 and 88

Submission

(Matter raised by officials)

Officials have identified a number of problems with the way interim and remaining payments are calculated and how interest is imposed on these payments. The proposed amendments address these issues as follows:

- The provisions that deal with the calculation of interim payments (clauses 76 and 88) should provide for the interim payment amounts to be updated following the end-of-year assessment of the actual repayment obligation for the year. The provisions also need to reflect the original policy intent that the repayments apply in a similar manner to provisional tax payments.
- When a borrower repays their loan during the year, the interim repayments payable during the year are limited to the outstanding loan balance at the start of the year to avoid the borrower overpaying, or a later date, to take account of loan advances drawn down during the year. The bill does not reflect this outcome and should be amended accordingly.
- A new provision is required in the bill to ensure that interim payments are not required for a tax year when a borrower's repayment obligations from either pre-taxed or other income are less than \$1,000. This will reduce compliance costs for borrowers with small amounts of repayment obligations and reflects the original policy intent.
- Amendments are required to provide that late payment interest can only be charged on interim repayments or remaining repayments once the Commissioner has determined the borrower's repayment obligation for the year. Also, interest on interim or remaining repayments will only arise if the amount paid is less than the actual repayment obligation determined at the end of the year. These changes will ensure that borrowers who underpay their interim repayments are not penalised if at the end of the year it turns out that they have a lower or no repayment liability for the year.
- When a borrower either estimates their repayment obligation for the year or when their pre-taxed or other income repayment obligation is \$16,000 or more, they are required to take greater care in quantifying their interim repayments so they do not pay less than their end-of-year liability. This is due to the amount of revenue involved or the opportunity for abuse by these borrowers. In these situations the remaining repayments are due on the same date as the interim payments were due, and replace those interim payments. Changes are proposed to ensure that borrowers will only be subject to interest on remaining repayments not the interim payments which they have replaced.

These changes reflect the original policy intent to more closely align the treatment of interim and remaining repayments with provisional tax.

Recommendation

That the submission be accepted.

MINOR TECHNICAL ISSUES

The following matters are proposed by officials to deal with minor drafting issues.

Issue: Definition of “other income”

Clause 4

Submission

Two problems have been identified with the definition of “other income” in clause 4 of the bill. They are:

- The definition of “other income” applies only to borrowers who file returns or notify the Commissioner of their worldwide income. However, the intent was that the definition of “other income” would also apply to borrowers who are required to file returns or required to notify the Commissioner of their worldwide income under the bill but fail to do so.
- A further change is required to the definition of “other income” in clause 4 to remove the reference to the term “annual gross income” and replace it with the term “net income”. Not all references in the bill to the term “annual gross income” were correct and were previously changed to refer to net income. However, this change was omitted.

Recommendation

That the definition of “other income” be amended accordingly.

Issue: Definition of “pre-taxed income”

Clause 4

Submission

The definition of “pre-taxed income” in clause 4 should be changed to remove paragraph (d) which refers to personal services rehabilitation payments. These payments are made by ACC to attendant carers of disabled persons. These payments do not need to be included in the definition of “pre-taxed income” as attendant carers are required to file a return, and are treated as other income earners once their income goes over \$14,000 a year.

Recommendation

The definition of “pre-taxed income” be amended accordingly.

Issue: Commissioner cancelling a special deduction rate

Clause 42

Submission

When a borrower has two jobs and their income from their main job is under the repayment threshold, the Commissioner can issue a special deduction rate to the borrower for their second job to take account of the unused repayment threshold on their main job.

Clause 42 of the bill requires the employer to continue to apply the special deduction rate until the Commissioner notifies the employer otherwise. There is no requirement for the Commissioner to notify the employer in writing.

A special deduction rate can also be issued if the borrower is in hardship or if they derive other income or has a loss for the tax year. In these instances, if the Commissioner cancels the special deduction rate, he must notify the employer in writing. To correct this legislative oversight, officials propose that clause 42 be amended to require the Commissioner to provide notification to the employer in writing.

Recommendation

That the submission be accepted.

Issue: Application date of clause 57

Clause 57

Submission

Clause 57 requires the Commissioner to inform borrowers of the significant over-deduction threshold before the commencement of the income year. However, as a result of a legislative oversight, this clause does not come into force until 1 April 2012 and therefore borrowers will not be able to be informed of the threshold in the first year.

Officials propose the bill be amended so that clause 57 applies from the date of assent to enable Inland Revenue to advise borrowers before 1 April 2012.

Recommendation

That the submission be accepted.

Issue: Definition of “annual gross income” in clauses 4 and 106

Clauses 4 and 106

Submission

As currently drafted, the references to “annual gross income” in clause 106 would impose a greater liability on non-tax resident New Zealand-based borrowers than they would face as a tax-resident New Zealand-based borrower by imposing repayment obligations on their gross income instead of their net income (after expenses). To address this, officials propose that a number of minor changes be made to clauses 4 and 106 to ensure that non-tax resident New Zealand-based borrowers’ repayment obligations are based on their net income (after expenses) as occurs for tax-resident New Zealand-based borrowers.

Recommendation

That the submission be accepted.

Issue: Assessing overseas-based borrowers

Clause 101(1)

Submission

The bill provides that Inland Revenue assesses the borrower’s overseas-based repayment obligation as soon as practical after being notified by the borrower that they intend to be overseas-based or as soon as Inland Revenue becomes aware that the borrower is overseas-based.

Officials now consider that changing a borrower’s status at the point they go overseas and prior to meeting the overseas-based criteria of being absent for a continuous period of 184 or more days, is problematic. The borrower will be liable for repayment obligations when they could in fact return to New Zealand within the 184-day period and these obligations would need to be reversed. Additionally, these borrowers would have an overseas-based repayment obligation assessed, but would not be subject to interest until they met the 184-day period.

Instead officials propose that clause 101(1) be amended so that Inland Revenue will only assess the borrower’s overseas-based repayment obligations when it is aware that the person has fulfilled the overseas-based criteria. This will reduce compliance costs for borrowers.

A further change is required to remove the requirement to include overseas-based interest on repayment obligations payable by overseas-based borrowers in their final year. Currently, borrowers' repayment obligations for the year are limited to the loan balance on 31 March of the previous year. As a result, they pay off what they have been advised to pay for the year but due to the interest charged for the year this leaves a small amount owing, which leads to a repayment obligation in the following year. Previously, officials recommended that interest be included in the repayment obligations payable during the year. However, this method is not accurate in all cases and can lead to overpayments if the loan is paid off part-way through the year. To reduce the extent to which over- or underpayments occur, officials now consider that including interest in the calculation for the repayment obligation adds increased complexity and instead recommend that the overseas-based interest not be included in the calculation of repayment obligations for the final year as currently occurs under the Student Loan Scheme Act.

Recommendation

That the submission be accepted.

Issue: Ability to change the repayment obligations and thresholds of overseas-based borrowers by Order in Council

Clause 102

Submission

There is inconsistent treatment between the method used to set the repayment amounts and thresholds for overseas-based borrowers and New Zealand-based borrowers. The legislation should be consistent for both groups of borrowers.

Comment

New Zealand-based borrowers' repayment threshold (currently \$19,084) and the repayment percentage (currently 10 percent) can be changed by regulation. However, the repayment amounts and repayment thresholds for overseas-based borrowers can only be changed by legislation.

To ensure the legislation is consistent between the process for setting repayment amounts and thresholds between New Zealand-based and overseas-based borrowers, officials propose an amendment to enable the repayment amounts and repayment thresholds that apply to overseas-based borrowers to be changed by way of regulation.

Recommendation

That the submission be accepted.

Issue: Reflecting the excess repayment bonus and administration fee in overseas-based borrower’s repayment obligations

Clauses 102(5) and 203(2)(a)

Submission

An overseas-based borrower’s repayment obligation for a year is based on the loan balance at the previous 31st of March. However the legislation is unclear on whether the loan balance at 31 March is adjusted for any excess repayment bonus credited or any administration fee charged.

To ensure the loan balance reflects the imposition of any administration fee charged or the crediting of any excess repayment bonus, officials recommend that the provisions in the bill that deal with an overseas-based borrower repayment obligation be amended to take account of these two transactions.

Recommendation

That the submission be accepted.

Issue: Commissioner refraining from collecting small amounts of remaining repayments

Clause 136

Submission

The Student Loan Scheme Act 1992 enables Inland Revenue to refrain from collecting small amounts of repayment obligations, including terminal repayments (now referred to as “remaining repayments” in the bill). This provision has been retained in the bill but an oversight has resulted in the reference to remaining repayments being omitted from the list of repayment obligations which Inland Revenue can refrain from collecting.

Officials propose that clause 136 be amended so Inland Revenue does not have to collect total remaining repayments for a tax year that are less than \$20.

Clause 136 also provides a threshold below which small amounts are not collected. This threshold is meant to refer to amounts less than \$20, which is consistent with other provisions in the bill. However, the current wording incorrectly refers to small amounts of \$20 or less to be written off. Officials propose that clause 136(1) be amended to correctly refer to amounts of less than \$20.

Recommendation

That the submission be accepted.

Issue: Commissioner may grant relief

Clause 138(3)

Submission

If a borrower is unable to pay any late payment interest charged, they can apply to have the interest cancelled. When the interest is cancelled, any action that occurred as a result of imposing the interest is reversed.

However, as a result of cancelling the interest charged, if the borrower has excess repayments over and above their liability, the bill incorrectly provides for the amount to be refunded. This is not in keeping with the rest of the bill, which requires the excess to be first offset against late payment interest and then any unpaid amount. Any remaining amount is either credited to overseas-based interest and the loan balance, or refunded.

Officials therefore propose that clause 138(3) should be amended to provide for any relief from late payment interest granted to be used to reduce late payment interest, then against any unpaid amount. Any excess should be either applied to overseas-based interest, then the loan balance or be refunded.

Recommendation

That the submission be accepted.

Issue: 30-day grace period to pay outstanding amounts

Clause 190

Submission

Under the Student Loan Scheme Act 1992, interest is calculated and charged daily on the amount outstanding. To provide some certainty to borrowers when making a payment, borrowers have 30 days from when a notice is issued to pay the amount outstanding in full, and any daily interest that has accrued between the date of notification and the date of final payment will be written-off.

The bill changes the way that interest is charged. In future, interest will be calculated daily, charged monthly (at the end of the month) and compounded annually. This change provides certainty to borrowers of the amount owed and how long they have to pay the outstanding amount before interest is charged. For example, if interest is charged on the 30th of the month, on the 20th the borrower will have 10 days to pay before the next interest is charged. Once interest is charged on the 30th, the borrower will have another month before the next interest is charged.

A legislative oversight has meant that the 30-day grace period provided in the Student Loan Scheme Act 1992 has been retained in the bill. If the provision is retained in addition to the changes made to charge interest monthly, the grace period would be up to 60 days from the date of the notice being issued. This was not the intended outcome.

Officials therefore propose that clause 190, which provides the 30-day grace period, should be removed.

Recommendation

That the submission be accepted.

Issue: Provisions of the Tax Administration Act and Income Tax Act that apply to this bill

Clause 196

Submission

Four amendments should be made to clause 196, which deals with provisions in the Tax Acts that apply to the Student Loan Scheme Bill. The first is to remove the reference to “Returns and assessments” from the title of the clause. This clause refers to a number of provisions in the Income Tax Act and the Tax Administration Act, not just to returns and assessment provisions, so these words should be removed from the clause title.

The second amendment proposed by officials is to insert a new paragraph to ensure that the return provisions of the Income Tax Act and Tax Administration Acts apply to a declaration of pre-taxed income or a notification of worldwide income under the bill. This link was overlooked in drafting the bill.

The third proposed change relates to paragraph (a) of clause 196. The Income Tax Act provisions that apply to the bill refer to both “taxpayer” and a “person”. However, this clause only refers to a “taxpayer” when cross-referencing the Income Tax Act. Officials propose this clause be amended to refer to both “taxpayers” and “persons”.

Finally, three cross-references to the Income Tax Act should be included in the bill. The Student Loan Scheme Act 1992 Act limits the period when a borrower can apply for a refund. Currently, borrowers have up to eight years to have a repayment obligation reassessed if it will result in a refund. This provision was inadvertently omitted from the bill. Officials therefore propose that clause 196 be amended to refer to the relevant refund limitation provisions of the Income Tax Act.

Recommendation

That the submission be accepted.

Issue: Electronic communication*Clauses 204 and 205***Submission**

Clauses 204 and 205 of the bill provide for the borrower and Inland Revenue to communicate with each other by electronic means, and also to override the requirements in the Electronic Transactions Act 2002 to seek the borrower's consent before communicating with them electronically.

There are two section references to the Electronic Transactions Act that have been omitted from clauses 204 and 205 of the bill. The references are to section 6 of the Tax Administration Act 1994, which refers to the responsibility of Ministers and officials to protect the integrity of the tax system, and section 20 of the same Act which deals with seeking a person's consent before communicating with them electronically.

Recommendation

Officials recommend that clauses 204 and 205 be amended accordingly.

Issue: Requirement to receive a personal tax summary*Schedule 8***Submission**

With student loan deductions being finalised on a pay-period basis and the removal of the end-of-year square-up, the requirement in the Tax Administration Act for borrowers to receive a personal tax summary is no longer required. Accordingly, it is therefore proposed that section 33A(1)(g) of the Tax Administration Act be repealed.

Recommendation

That the submission be accepted.

Issue: Extension of time to make a declaration of pre-taxed income

Clause 68

Submission

The bill enables a borrower to apply to the Commissioner for an extension of time to file a pre-taxed income declaration. The due date for the declaration is the extended timeframe to file.

However, the bill does not provide a due date for an extension of time to file a declaration without the borrower having applied for one. Officials propose that when an extension of time to file a pre-taxed declaration is provided by the Commissioner without the borrower applying for it, the due date should be the extended timeframe for the declaration.

Recommendation

That the submission be accepted.

Issue: Rounding of payments when instalments are not divisible into equal amounts

Submission

The provisions in the bill that calculate remaining repayments for a borrower's pre-tax repayment obligation or other income repayment obligation and instalments of overseas-based repayment obligations do not provide for when these payments cannot be divided into equal amounts.

When this situation occurs for provisional tax, the final payment carries the difference. Officials propose that a similar provision be included in the bill and apply to interim payments, remaining repayments, and instalments of overseas-based repayment obligations that are not divisible into equal instalments.

Recommendation

That the submission be accepted.

Issue: Charging the administration fee

Clause 181 and schedule 7

Submission

The policy intent is that the administration fee is to be imposed on the closing balance of the account on 31 March, to enable payments and any interest charged to be taken into account. However, the administrative impact of this is that the administration fee will be imposed based on the loan balance at the close of the business day on 31 March and charged with an effective date of 1 April. The administration fee will be shown in Inland Revenue statements and the website as having been imposed on 1 April. The bill will need to be amended to reflect this administrative process.

Recommendation

That the submission be accepted.

Issue: Provisions which restrict refunds of voluntary payments made before 2006

Submission

Sections 57A and 57D of the Student Loan Scheme Act 1992 have been inadvertently omitted from the bill. These provisions prevented borrowers from receiving interest write-offs on refunds for the 2005 and 2006 tax years as a result of the removal of interest on New Zealand-based borrowers.

Officials propose that this policy is not carried forward into the bill as it would be difficult to implement for what would only be a two-year application period and affect a minimal number of borrowers. Instead, officials propose that a change be made to the Student Loan Scheme Act 1992 and to the bill to restrict the refunding of repayments made during the 2005 and 2006 years to prevent future refunds that will be subject to the current policy. This provision will only be required for the 2012 and 2013 tax years as the statute bar will apply after this period to reassessments.

Recommendation

That the submission be accepted.

Issue: Small amounts of unpaid and uncollected repayment obligations

Schedule 6, clause 6

Submission

Under the Student Loan Scheme Act, amounts under \$334 for each tax year which were not paid, were treated as unpaid debts but no late payment penalties were imposed. To transition these amounts into the structure of the current bill, these amounts should be added back to the loan balance, rather than treating them as unpaid amounts (with no interest imposed). If the borrower is New Zealand-based, no interest should be imposed on these amounts. If a borrower is overseas-based, the amounts added back to the loan balance should be subject to interest.

This treatment will reduce Inland Revenue’s administration costs and be easier for borrowers to understand.

Recommendation

That the submission be accepted.

Issue: Care and management

Clause 215 and schedule 8

Submission

When introduced, the care and management provisions in the Tax Administration Act were meant to have a wide application to the Student Loan Scheme Act 1992.

However, the current application of the care and management provisions to the Student Loan Scheme Bill relies on finely balanced arguments around what is considered to be a “repayment obligation”. This creates an unintended risk that the Commissioner’s decisions may be challenged in the future.

To address this, officials propose that a consequential amendment be made to the Tax Administration Act to clarify what is meant by repayment obligations for student loan purposes.

Recommendation

That the submission be accepted.

Issue: Cross-references and other minor issues

Submission

A number of cross-references in the bill either need updating or have been omitted, and minor wording changes are needed to ensure consistency throughout the bill and to give effect to the original intent. These changes will not change the policy intent and officials propose that these changes be made.

Recommendation

That the submission be accepted.