

Student Loan Scheme Amendment Bill (No. 2)

Commentary on the Bill

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First published in August 2012 by the Policy Advice Division of the Inland Revenue Department,
PO Box 2198, Wellington 6140.

Student Loan Scheme Amendment Bill (No. 2); Commentary on the Bill.
ISBN 0-478-39204-4

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Policy changes

OVERVIEW

The student loan scheme is a significant Crown asset and a major financial commitment by Government towards supporting those in tertiary education. The amendments contained in this bill, announced as part of Budget 2012, build on the policy changes introduced through Budgets 2010 and 2011 which focused on improving the value of the student loan scheme and encouraging personal responsibility for loan repayments.

The bill proposes to broaden the definition of “income” for student loan repayment purposes to broadly align with the definition of income used for determining entitlement to Working for Families tax credits. The definition of “income” for student loan repayment purposes is important in terms of meeting the policy objective of ensuring a borrower’s repayment obligation accurately reflects their ability to repay.

Consistent with the Government’s focus on encouraging personal responsibility for loan repayments, the bill also proposes to introduce an information match with the New Zealand Customs Service to locate borrowers who are in serious default when they enter or leave New Zealand. The key impediment to collecting repayments from overseas-based borrowers is a lack of contact details which prevents Inland Revenue engaging with this group. This information match will mean that Inland Revenue can initiate contact with a borrower to discuss their situation and the outstanding arrears.

A number of amendments revisit aspects of the design of the student loan scheme to ensure that the administration of the Act is as efficient as possible.

Finally, the bill contains a number of technical remedial amendments to ensure the Act works as intended.

DEFINITION OF “INCOME” FOR STUDENT LOAN REPAYMENT PURPOSES

(Clauses 63 to 66)

Summary of proposed amendments

The bill makes changes to the definition of “adjusted net income” for student loan repayment purposes to ensure that a borrower’s repayment obligation accurately reflects their ability to repay their loan. Amendments make further adjustments to “net income” to broaden the definition of income to include other types of income not currently captured.

Application date

The amendments will apply from 1 April 2014 for the 2014–15 and later tax years.

Key features

A New Zealand-based borrower’s non-salary and wage income repayment obligation is based on their adjusted net income.

Clause 66 introduces new schedule 3 which makes further adjustments to the definition of “adjusted net income” for the purposes of the repayment obligation.

The following further adjustments will be made to the definition of net income for student loan repayment purposes to cover:

- income from a trust and companies owned by trusts when the borrower is the settlor;
- tax-exempt salary and wages, and certain overseas pensions that are exempt from New Zealand tax;
- distributions from superannuation schemes that relate to contributions made by a person’s employer within the last two years, when the person has not retired (excluding KiwiSaver and locked-in superannuation schemes);
- distributions from a retirement savings scheme when the person has retired early;
- income kept in a closely held company;
- fringe benefits received by shareholder-employees who control the company;
- PIE income that is not “locked in”;
- 50 percent of non-taxable private pensions and annuities;
- main income equalisation scheme deposits; and
- payments from trusts, not being beneficiary income, when the borrower is not the settlor.

Clause 64 incorporates the Income Tax Act 2007 definition of “net income” in the definition of “adjusted net income” in new section 73. There will no longer be any need for the definition to refer to annual gross income minus annual gross deductions because this is what net income is.

Clause 63 therefore repeals the definitions of annual gross income and annual total deductions in section 4. As a consequence of repealing these definitions the requirement to include foreign-sourced income and deductions in the assessment of adjusted net income is now located in clause 3 of new schedule 3 (see clause 66).

Clause 64 replaces section 73 with a new section 73 which provides that “adjusted net income” has the same meaning as net income in section YA 1 of the Income Tax Act 2007 but with the adjustments set out in new schedule 3 of the Act as inserted by clause 66.

Background

The student loan scheme is an income-contingent scheme, meaning that the amount that a borrower has to repay in any year is dependent on their “net income”. The current definition of “income” for student loan repayment purposes captures income that is taxed to the individual rather than to another entity. It includes income such as salary and wages, income-tested benefits, New Zealand superannuation, interest, dividends and IR3 income such as business profits.

For borrowers who derive other types of income, the current definition of income may not reflect their actual earnings or available financial resources which are available to meet their student loan repayment obligation.

Therefore, broadening the definition is important in terms of meeting the policy objective of ensuring a borrower’s repayment obligation accurately reflects their ability to repay. It is inequitable and unfair that borrowers have different repayment obligations depending on whether that income is currently included as income for student loans.

Changes were signalled by the Government in 2010 relating to the way that “income” should be defined for the purposes of Working for Families tax credits and other social policy programmes. Broadening the definition to better align with that used for Working for Families ensures there is better consistency across all social policy initiatives to improve the integrity of the social assistance system.

INFORMATION-MATCHING WITH THE NEW ZEALAND CUSTOMS SERVICE FOR BORROWERS IN SERIOUS DEFAULT

(Clauses 34, 43, 44, 45, 46 and 47)

Summary of proposed amendments

The bill introduces an information match with the New Zealand Customs Service to locate borrowers in serious default when they enter or leave New Zealand.

Application date

The amendments will apply from the date of enactment.

Key features

Clauses 45 and 46 amend sections 280H and 280I of the Customs and Excise Act 1996 to provide for information-matching between the Customs Service and Inland Revenue to allow the Commissioner of Inland Revenue direct access to departure and arrival information. The purpose of the information match is to assist the Commissioner to locate borrowers who are in serious default of their repayments when they enter or leave New Zealand.

Clause 44 defines “serious default” to mean the state of having an unpaid amount due and owing, and satisfying criteria established by the Commissioner.¹

Clause 47 amends section 103(1) the Privacy Act 1993 to ensure that the Commissioner is relieved from the requirement to issue a notice of adverse action. New section 103(1C)(a) provides that the Commissioner can take action to recover unpaid amounts owed by a borrower in serious default identified in information supplied to the Commissioner under section 280H of the Customs and Excise Act 1996.

Background

The key impediment to collecting repayments from overseas-based borrowers is a lack of contact details which prevents Inland Revenue from engaging with this group.

This new information match with the New Zealand Customs Service will enable certain borrowers in serious default to be identified by the Customs’ system immediately upon their arrival or departure. Customs will then be able to quickly transfer to Inland Revenue any contact details obtained from the borrower.

This information will then be used by Inland Revenue to initiate contact with the borrower to discuss the borrower’s situation and the outstanding arrears.

¹ The criteria is likely to include the amount of default, the age of the default and the borrower’s risk profile.

The proposed new information match is based on the existing child support alerts match used by Inland Revenue and the New Zealand Customs Service. Inland Revenue will send Customs the names, date of birth and IRD number of a selected number of borrowers who are in serious default. Customs will then match this list against the names and birthdates of people crossing the border.

Efficiency measures

ALIGNING THE END-OF-YEAR REPAYMENT OBLIGATION THRESHOLDS FOR “PRE-TAXED” AND “OTHER INCOME”

(Clauses 6, 7, 10, 11, 13, 17, 37, 38, 42 and 49)

Summary of proposed amendments

The bill proposes amendments to ensure that the \$1,500 threshold applies to both “pre-taxed income”² and “other income” in addition to salary and wages (if any). This ensures that borrowers will only have an end-of-year repayment obligation if their income from these sources, including salary and wages (if any) is \$1,500 or more over the annual repayment threshold (currently \$19,084).

Application date

The amendments will apply from 1 April 2012 for the 2012–13 and later tax years.

Key features

Clause 13 replaces subparts 2 and 3 with new subpart 2. One set of rules now governs the treatment of all income that is currently dealt with in two separate sets of rules. Currently subpart 2 covers income defined as “pre-taxed income”. Subpart 3 covers income defined as “other income”. New subpart 2 amalgamates these two subparts to ensure that it applies to all New Zealand-based borrowers who derive \$1,500 or more of adjusted net income for a tax year and whose income from adjusted net income and salary or wages is \$1,500 or more over the annual repayment threshold.

Clause 6 amends section 4 to reflect the meaning of terms used in the Act consequential to the amalgamation of existing subparts 2 and 3 of part 2 in new subpart 2 (see paragraph above). The concepts of pre-taxed income and other income are being repealed and replaced with terms appropriate to the concept of “adjusted net income”. (Note that the concept of pre-taxed income will remain in the Act until 1 April 2014 for a limited purpose. See *Losses and pre-taxed income*).

Background

Borrowers who earn salary, wages and “pre-taxed income” will receive an end-of-year square-up on their “net pre-taxed income” if they earn over the repayment threshold and receive more than \$1,500 of “net pre-tax income”.

² Pre-taxed income includes interest, dividends, taxable Māori authority distributions, salary or wages from employment as a casual agricultural employee, and salary or wages from employment as an election day worker.

In contrast, borrowers who earn business income – that is, self-employed borrowers, borrowers with rental income or borrowers required to declare their worldwide income, are required to include every dollar of non-salary and wage earnings over the repayment threshold.

Distinguishing between borrowers based on the type of income they derive is inequitable, and requires two separate systems for Inland Revenue to administer.

Therefore, the \$1,500 threshold should apply to all borrowers, regardless of the type of income they earn.

As a consequence of the proposed changes, the Student Loan Scheme Act 2011 can be simplified, as there is no longer the need to distinguish between “other income” and “pre-tax income” based on the \$1,500 threshold.

RETAINING THE CURRENT PENALTY INTEREST RULES ON UNPAID AMOUNTS

When late payment interest is charged

(Clauses 5, 36, 40 and 48)

Summary of proposed amendments

The proposed amendments repeal the rules that were to come into force on 1 April 2013 which provided the ability for late payment interest to be charged from each instalment date. Instead the current rules will be retained so that borrowers are only charged late payment interest if they fail to make full payment by the final instalment date.

Application date

The amendments will apply from the date of enactment.

Key features

Clause 36 will repeal section 221 which, but for its repeal, has the effect of amending the Student Loan Scheme Act 2011 in accordance with the provisions set out in schedule 7.

Clause 40 repeals schedule 7 consequential on the repeal of section 221. Schedule 7 introduced rules providing the ability for late payment interest to be charged from each instalment date.

Background

Most borrowers meet their repayment obligations through the deductions taken from their salary and wage income. However overseas-based borrowers and borrowers who have more than \$10,000 of income that has not been deducted at source are also required to make instalment payments during the tax year.

Currently, late payment interest is only charged if full payment is not made by the final instalment date. From 1 April 2013, these rules were to change and borrowers were to be liable for late payment interest from each instalment date rather than from only the last instalment date.

When this policy was developed, it was expected that Inland Revenue would be building these rules within a new loan management system. Changing the way late payment interest is calculated in this system was only going to be worthwhile if the new loan system was in place. Since it is not, the cost of implementing the new late payment interest rules outweigh the benefits.

Therefore, late payment interest should continue to be charged from the last instalment date for borrowers who default on either their overseas-based borrower repayment obligations or interim payments. These amendments ensure that borrowers continue to be subject to the current late payment interest rules.

Re-instatement of the underestimation penalty

(Clauses 50, 51, 58 and 59)

Summary of proposed amendments

As a consequence of retaining the current rules for charging late payment interest from the last instalment date for borrowers who default, amendments are required to reinstate the underestimation penalty.

Application date

The amendments will apply from 1 April 2013.

Key features

Clause 50 adds the underestimation penalty as a defined term and adds the underestimation penalty to the definition of “loan balance” in section 4(1).

Clause 51 adds the underestimation penalty to an unpaid amount in section 5.

Clause 58 inserts new section 161A so that a borrower will be liable to pay an underestimation penalty if they have underestimated their end-of-year repayment obligation.

Clause 59 ensures the amendments currently in clauses 7 and 8 of schedule 7 remain. The effect of these changes is to add the underestimation penalty to the payment priority rules.

Background

Borrowers who are required to make interim payments have the option of estimating how much they should pay rather than relying on Inland Revenue’s calculation. Under the Student Loan Scheme Act 1992, a borrower who made an estimate that was later found to be significantly lower than their actual repayment obligation would be liable for an underestimation penalty.

The Student Loan Scheme Act 2011 repealed the underestimation penalty because charging late payment interest from each instalment date provided sufficient incentives for borrowers to make accurate estimates.

As the current late payment interest rules are being retained, then the incentive provided by the ability to charge late payment interest from each instalment date no longer applies. It is therefore appropriate to re-instate the underestimation penalty.

The amount of default late payment interest is charged on

(Clauses 36, 39(1) and 40)

Summary of proposed amendments

The effect of the proposed amendments will be to retain the current rules for only charging late payment interest on amounts in default of \$334 or more.

Application date

The amendments will apply from the date of enactment.

Background

Under the Student Loan Scheme Act 2011, a borrower can have multiple unpaid amounts comprising different kinds of arrears and different periods of assessment. Each unpaid amount is liable for late payment interest if it is \$334 or more.

From 1 April 2013, the meaning of “unpaid amount” was going to change. Borrowers would be charged late payment interest on all amounts in default if their total default is \$500 or more.

As the student loan scheme is no longer being administered via a new loan management system, there is no benefit in moving to the new aggregate treatment of unpaid amounts.

The current rules will therefore be retained so that borrowers are only charged late payment interest if each repayment obligation in default is \$334 or more.

How late payment interest is calculated and charged

(Clauses 36 and 40)

Summary of proposed amendments

The proposed amendments repeal the rules that were to come into force on 1 April 2013 which were to change how late payment interest was to be calculated and charged.

Application date

The amendments will apply from the date of enactment.

Background

Under the Student Loan Scheme Act 1992, borrowers who failed to pay their repayment obligations on time faced a 1.5% monthly penalty. This equated to an annual rate of more than 19.5%.

The new Student Loan Scheme Act 2011 reduced the monthly penalty to 0.843%, an equivalent annual rate of 10.8%. The penalty is now referred to as “late payment interest”.

Under changes included in the Student Loan Scheme Act 2011, the way penalties are applied was to change from being applied monthly charged on the day after the due date, to penalty interest calculated daily, charged and compounded monthly. These changes were to come into effect from 1 April 2013.

However, there is no longer any benefit in implementing the new rules as they primarily reflected the capabilities of a loan management system that is no longer being used. The current rules of charging late payment interest monthly the day after the due date will continue.

Retaining the current rules means that borrowers will still be charged the same penalty rate via a different calculation method.

WHEN END-OF-YEAR REPAYMENT OBLIGATIONS ARE DUE

(Clauses 6, 13 and 58)

Summary of proposed amendments

The bill includes amendments to ensure that the end-of-year repayment obligation is due on the borrower's terminal tax due date.

Application date

Clauses 6 and 13 will apply from 1 April 2012 for the 2012–13 and later tax years. Clause 58 applies from 1 April 2013 for the 2013–14 and later tax years.

Key features

Clause 6 amends section 4 and defines “terminal payment” to mean the amount that a borrower is obliged to pay in relation to an end-of-year repayment obligation.

The Student Loan Scheme Act 2011 currently aligns end-of-year payment obligations (known as “remaining repayments”) with the borrower's interim payment dates from the 2012–13 tax year. The rules are replicated in subparts 2 and 3 respectively.

Clause 13 replaces the remaining repayment and due dates under existing subparts 2 and 3 with a single terminal payment and due date. Under new subpart 2, the terminal payment will be due in full on the borrower's terminal tax date.

Clause 58 updates the payment priority rules that take effect from 1 April 2013 to reflect the single terminal payment date.

Background

Under the Student Loan Scheme Act 1992, borrowers' end-of-year repayment obligations were due on their terminal tax due date – either 7 February or 7 April (for borrowers with a tax agent).

The Student Loan Scheme Act 2011 removed the requirement to pay on the borrower's terminal tax due date and aligned the payments (known as “remaining repayments”) with the borrower's interim payment dates. For most borrowers these are 28 August, 15 January and 7 May to align with provisional tax due dates.

The spreading of end-of-year repayment obligations over three instalments was intended to reduce compliance and administration costs by removing the terminal tax due date for student loans and to make use of the existing interim payment dates.

In hindsight, the potential reduction in compliance and administration costs may not be as great as previously thought. This is because most borrowers will still have to pay income tax on the terminal tax due date, so any compliance savings are reduced. In addition, the new rules are proving complicated to communicate to borrowers.

Therefore, the end-of-year repayment obligation will revert back to being due on the borrower's terminal tax due date.

ALIGNING INTERIM PAYMENT DATES FOR SIX-MONTHLY GST FILERS

(Clause 13)

Summary of proposed amendment

The proposed amendment ensures that borrowers who file GST returns six-monthly continue to make interim payments over three instalments. For these filers the interim payment due dates will not be aligned with their provisional tax due dates.

Application date

The amendment will apply from 1 April 2012 for the 2012–13 and later tax years.

Key features

New subpart 2, introduced by clause 13, does not carry forward the sunset provision in section 97(4), which has the effect of ending the requirement for borrowers who are registered for GST to pay for their interim payments in three instalments. This means borrowers who file GST returns six-monthly will continue to be able to make their three interim payments separately from their two instalments of provisional tax.

Background

Borrowers who have a repayment obligation for a tax year that is more than \$1,000 are required to make interim payments.

Under the Student Loan Scheme Act 2011 most borrowers pay their interim payments on the same dates that their provisional tax is due. Borrowers who filed GST returns every six months were an exception; these borrowers paid their provisional tax in two instalments (usually 30 September and 31 March). They were also required to pay their interim payments over three instalments (usually 28 August, 15 January and 7 May).

From 1 April 2013, the interim payment due dates for a borrower who files their GST returns every six months were to be aligned with their six-monthly provisional tax due dates.

Approximately 650 to 750 borrowers will be both interim payers and six-monthly GST filers. Although there were tangible benefits of aligning these dates for both Inland Revenue and borrowers under the previously proposed loan management system, the cost of building this ability with Inland Revenue's existing FIRST system for a small number of borrowers outweigh the benefits.

OVERSEAS-BASED BORROWERS WITH NEW ZEALAND SALARY AND WAGE INCOME

(Clauses 52 and 53)

Summary of proposed amendments

The proposed amendments will ensure that all salary and wage deductions will be treated as satisfying the borrower's repayment obligation on a pay-period basis regardless of whether the borrower is New Zealand-based or overseas-based.

Application date

The amendments will apply from 1 April 2013 for the 2013–14 and later tax years.

Key features

Clause 52 will repeal section 117 which allowed deductions to be treated as standard payments and offset against overseas-based borrower repayment obligations.

Clause 53 amends the definition of “obligations” so that standard deductions for overseas-based borrowers are included as obligations and therefore do not contribute to excess repayments.

Background

The Student Loan Scheme Act 2011 contains tests to determine whether a borrower is overseas-based or New Zealand-based. These tests are important as they determine whether interest should be charged. Borrowers who leave New Zealand and who do not return for 184 days are considered to be overseas-based. An overseas-based borrower only becomes New Zealand-based if they have been physically present in New Zealand for 183 days. Any change to the borrowers status is backdated to when the borrower left or returned to New Zealand.

Some borrowers earn New Zealand salary and wages while they are considered to be overseas-based. This typically happens if they return to New Zealand for a short period (less than 183 days) and take up casual work or when they return permanently and start to earn salary and wages during the 183-day qualifying period.

Any repayment deductions taken from an overseas-based borrower's New Zealand salary or wages are treated as regular payments towards the borrower's loan and can be used to pay off their overseas-based borrower obligation.

This treatment differs from the way that salary and wages are treated for New Zealand-based borrowers. Repayment deductions taken from New Zealand-based borrowers are considered to satisfy the New Zealand repayment obligation for that income and, barring significant errors, are not offset against other obligations.

The treatment of salary and wages earned by an overseas-based borrower is further complicated when an overseas-based borrower permanently returns to New Zealand and finds paid employment. These deductions are treated as regular payments and offset against the overseas-based borrower obligation, as the borrower is still considered to be overseas-based. However, once the borrower passes the 183-day test and becomes new Zealand-based, their repayment deductions are retrospectively considered to be standard deductions.

The rules governing full and final repayment deductions should apply consistently to all salary and wage income earned in New Zealand, regardless of whether that income is earned by a New Zealand-based or overseas-based borrower.

The effect of simplifying these rules means that overseas-based borrowers who earn New Zealand salary and wages will have their salary and wage deductions treated as full and final.

LATE FILING PENALTIES FOR WORLDWIDE INCOME DECLARATIONS

(Clauses 24 and 25)

Summary of proposed amendments

The proposed amendments will repeal the late filing penalties on declarations of worldwide income.

Application date

The amendments will apply from 1 April 2012 for the 2012–13 and later tax years.

Key features

Clause 24 will amend section 155 to ensure that the late filing penalty no longer applies for borrowers who do not declare their worldwide income by the required date.

Background

From the 2012–13 tax year, borrowers who are overseas but who are treated as being New Zealand-based will need to make a declaration of their worldwide income to Inland Revenue so that their repayment obligations can be assessed.

The Student Loan Scheme Act 2011 introduced late filing penalties for these declarations. The penalty was to act as an incentive for borrowers to comply with their obligation to declare their worldwide income.

There are approximately 400 borrowers who will need to file a declaration of their worldwide income. Implementing a new late filing penalty is not justified given the small number of borrowers involved.

The Student Loan Scheme Amendment Act 2012 included an amendment allowing Inland Revenue to revoke the exemption from being treated as overseas-based if the borrower does not meet their filing requirements. This effectively acts as a deterrent as borrowers would then lose their interest-free status.

LOSSES AND PRE-TAXED INCOME

(Clauses 6 and 13)

Summary of proposed amendments

The Student Loan Scheme Amendment Act 2012 introduced amendments to exclude investment and business losses such as rental losses from the calculation of net income for student loan repayment purposes. The income and expenditure from an activity which results in a net loss should be ignored when calculating the net amount earned from both “other income” (business income) and pre-taxed income (for example, interest and dividends).

The proposed amendments delay the application of measures that ensure borrowers cannot offset a loss from pre-taxed income when calculating their repayment obligation until the 2014–15 tax year.

Application date

The amendments will apply from 1 April 2012 for the 2012–13 and 2013–14 tax years.

Key features

Clause 13 will amalgamate subparts 2 and 3 of part 2 into new subpart 2. New subpart 2 will apply to all New Zealand-based borrowers who derive \$1,500 or more adjusted net income for a tax year and whose income from adjusted net income and salary or wages is \$1,500 or more over the annual repayment threshold. As a consequence there is no longer the need to continue with the concept of “pre-taxed income”.

However, new section 73(5) has the effect that for a two-year period until 1 April 2014, the definition of “pre-taxed income” remains and the adjustments specified in subsections (2) to (4) do not apply to borrowers who derive pre-taxed income or a mixture of pre-taxed income and salary and wages. From 1 April 2014 the amendments contained in part 3 will come into force and the definition of “adjusted net income” will be replaced with the new broadened definition of “income” (see clause 64).

Background

Borrowers who incur losses will no longer be able to offset those losses against another source of income to reduce their income on which the repayment obligation is based. This change was announced as part of Budget 2011 and was enacted in the Student Loan Scheme Amendment Act 2012.

End-of-year repayment obligations are calculated by a number of processes. Borrowers with business or rental income file IR3 tax returns. Borrowers who are salary and wage earners with \$1,500 or more of income from interest or dividends (pre-taxed income) make pre-taxed income declarations.

It is technically possible, although very uncommon, for a borrower who makes a pre-tax income declaration to incur a loss. This could occur, for example, if a borrower borrowed money to buy shares to derive income and the interest expense was larger than the dividend returned for the year, which would result in a loss. Based on 2011 information, approximately six borrowers are in this situation each year.

The definition of “income” for student loans is being broadened with effect from the 2014–15 tax year (see *Definition of “income” for student loan repayment purposes*). To accommodate this change, the IR3 tax return and pre-taxed income declaration require significant modification. Administratively, it is more efficient to delay the application date of the loss exclusion policy for borrowers who incur a loss from pre-taxed income until the 2014–15 tax year.

NOTIFYING BORROWERS OF EXCESS REPAYMENTS

(Clauses 20 and 21)

Summary of proposed amendments

The proposed amendments remove the requirement to notify borrowers of excess repayments if they are predominately salary and wage earners or overseas-based from the 2012–13 tax year.

Application date

The amendments will apply from the date of enactment.

Key features

Clause 20 will amend section 120 to ensure that the Commissioner's obligation to notify a borrower of an excess repayment only applies if the borrower is a New Zealand-based borrower who has income other than, or as well as, salary or wages.

Clause 21 will amend section 132 to ensure that if a borrower has made an excess repayment and has not been notified of it, they retain the option of having the repayment refunded. This is achieved by requiring borrowers to make the choice either six months from the date they are notified or six months after the end of the tax year that the excess payment is for, or six months from the day after the due date of the final instalment of an overseas-based repayment obligation for a tax year, whichever is later.

Background

If a borrower pays more than they are required to pay during the tax year, Inland Revenue is required to notify them in writing that they have made an excess repayment. The borrower can then choose whether they wish to have the excess refunded or leave it on their loan balance (meaning they will pay off their loan sooner).

For borrowers who earn salary and wages, their repayment obligation is met through repayment deductions. Overseas-based borrowers have their repayment obligations set at the beginning of the tax year. Any excess repayment for these borrowers will be the result of a conscious decision to pay more towards their loans. There seems to be little benefit in notifying these borrowers that they have made an excess repayment and offering a refund.

These borrowers can still request a refund provided they contact Inland Revenue within six months from the end of the tax year.

The process where employer errors are detected and borrowers are notified of any significant over-deductions will continue, so that borrowers are protected from inadvertent overpayments. Equally, borrowers making interim payments based on a previous year's obligation, or borrowers subject to an end-of-year square-up will continue to be notified if they have paid more than is necessary.

Consequential matters

MISCELLANEOUS AMENDMENTS

Non-standard due dates for overseas-based borrowers

(Clause 16)

The bill gives the Commissioner a general discretion to set non-standard due dates for overseas-based borrowers, similar to the discretion provided for due dates for New Zealand-based borrowers.

The standard due dates for an overseas-based borrower's repayment are currently 30 September and 31 March. Currently the legislation allows the Commissioner to set non-standard due dates for the payment of an overseas-based borrower's repayment obligation only when the borrower's repayment holiday ends.

However, there are other situations when it is appropriate for the Commissioner to be able to set non-standard due dates – for example, when a borrower may have a part-year repayment obligation because they are going overseas or returning from overseas.

This amendment will apply from 1 April 2012.

Clarifying the challenge procedures for student loans

(Clauses 27, 28, 29 and 30)

When a borrower disagrees with a decision made by the Commissioner under the Student Loan Scheme Act 2011, they can dispute the Commissioner's decision. If, at the end of the disputes process the Commissioner's decision stands, the borrower can challenge that decision. However, it is unclear from the Act whether the challenge process is determined by the relevant Court (in the same way as tax offences are) or by the Commissioner.

For consistency with the tax system and to ensure the process is transparent, clause 28 inserts new section 174A to ensure that challenges under the Act are determined by the relevant Court.

As a consequence, clause 30 repeals section 188 which gave the Commissioner the power to allow or disallow a challenge.

Also as part of Budget 2011, changes were made to the student loan scheme to introduce a requirement for borrowers who go overseas to apply for a repayment holiday before they become overseas-based. However, when this change was made, a legislative oversight meant the challenge provisions were not updated to provide borrowers with the ability to challenge the Commissioner's decision whether to grant a repayment holiday. Clause 29 overcomes this problem by inserting new section 182A to provide the ability to challenge a decision of the Commissioner not to grant the borrower a repayment holiday.

The amendments will apply from the date of enactment.

Reduction or removal of the student loan shortfall penalty

(Clause 26)

When a borrower takes an incorrect tax position relating to their income (which affects their student loan repayment liability) and they have a shortfall penalty imposed for income tax, a shortfall penalty can also be imposed for student loans.

To ensure symmetry between the tax system and student loans, the Student Loan Scheme Act 2011 also removes or reduces the shortfall penalty if the borrower has successfully challenged the imposition of a shortfall penalty for income tax through the relevant Court.

Through the disputes process, a borrower can dispute the imposition of a shortfall penalty for income tax and, if successful, have the penalty reduced or cancelled. However, a legislative oversight has resulted in no similar relief being provided for a student loan shortfall penalty when the borrower has successfully disputed the imposition of a shortfall penalty.

The amendments will apply from the date of enactment.

Transitional rule required for instalment arrangements entered between 1 April 2012 and 31 March 2013

(Clause 39(2))

Currently, borrowers who are in default and cannot repay their loan can apply to the Commissioner to enter into an instalment arrangement for repayment of the debt. Under the arrangement, the borrower is required to repay their debt in instalments, and if the borrower keeps to the arrangement, any late payment interest imposed during the term of the arrangement is written off. If the borrower fails to keep to the terms of the arrangement, they are subject to the penalties regime that applies at that point.

However, with the introduction of the new late payment interest rules from 1 April 2013, two sets of instalment arrangement rules could potentially apply to the instalment arrangement entered into between 1 April 2012 and 31 March 2013. This could cause confusion for borrowers.

To clarify which rules apply to these instalments, a transitional provision is proposed. The provision reflects the current practice whereby borrowers who keep to the terms of the arrangement will have the late payment interest imposed during the instalment arrangement written off. However, if the borrower fails to keep to the terms of the arrangement, the late payment interest rules that apply during the period the instalment remains in default will apply.

The amendment will apply from 1 April 2012.

General requirement to keep contact details up to date with Inland Revenue

(Clauses 9 and 32)

There is a general requirement in the student loan contract for borrowers to keep their contact details up to date with StudyLink and Inland Revenue. There is also a requirement for borrowers to provide contact details when they move overseas. However, there is no specific provision in the Student Loan Scheme Act 2011 requiring the borrower to keep their contact details up to date with Inland Revenue. To enable Inland Revenue to contact borrowers about their loan, the bill includes an amendment to provide this requirement. The recently enacted Student Loan Scheme Amendment Act 2012 has placed an obligation on borrowers to keep the details of an alternate contact up to date. It is also appropriate to require that borrowers keep their own details up to date.

The amendments will apply from the date of enactment.

Overseas-based borrower repayment obligation in the year of return

(Clauses 7, 18 and 19)

The trigger when determining whether a borrower is overseas-based or New Zealand-based is the six-month rule. That is, a borrower is treated as being overseas-based if they are physically absent from New Zealand for a period of 184 consecutive days. A borrower is treated as being New Zealand-based if they are physically in New Zealand for a period of 183 consecutive days.

When an overseas-based borrower returns to New Zealand and contacts Inland Revenue to advise they will be returning for at least 183 days (six months) the legislation requires Inland Revenue to treat the borrower as overseas-based even though Inland Revenue has been notified that the borrower will be New Zealand-based. This creates confusion for the borrower and triggers the collection process for overseas-based instalments that may have to be subsequently re-assessed.

The proposed amendments will ensure that when a borrower who has returned to New Zealand notifies Inland Revenue that they intend to meet the 183-day qualifying period, the borrower's overseas-based repayment obligation and New Zealand-based repayment obligations will be assessed before the end of the qualifying period to become New Zealand-based.

The amendments will apply from the date of enactment.

Overseas-based borrower repayment obligation when repayment holiday ends

(Clauses 14 and 15)

Inland Revenue calculates an overseas-based repayment obligation for the tax year based on the borrower's balance at the time the borrower becomes overseas-based, and annually at the start of each subsequent tax year. When the annual calculation is made, borrowers on a repayment holiday for part of the tax year have their overseas-based repayment obligation calculated based on their balances at the start of the tax year. The obligation is then apportioned to the number of days the borrower will not be on a repayment holiday.

However, the Student Loan Scheme Act 2011 requires that overseas-based borrowers whose repayment holiday ends part-way through a tax year have their overseas-based repayment obligation based on their balance at the time the repayment holiday ends.

The proposed amendment ensures that Inland Revenue can include all borrowers who are overseas-based at the start of the tax year in the annual calculation of borrowers' overseas-based repayment obligations, based on borrowers' balances at the start of the tax year. This will also ensure that administrative practice is applied consistently to all borrowers.

The amendments will apply from the date of enactment.

Notifying borrower of significant over-deductions

(Clause 12)

The Student Loan Scheme Act 2011 states that the Commissioner must notify a borrower *in writing* that a significant over-deduction has been made.

Before confirming that a significant over-deduction has been made, an Inland Revenue staff member will contact the borrower by telephone to discuss the matter.

In the interests of efficiency, an amendment is being made to allow the Commissioner to "notify" the borrower of a significant over-deduction by telephone.

The amendment will apply from the date of enactment.

The amount of late payment interest

(Clauses 55 and 56)

Consequential amendments are being made to link the payment interest rate to the loan interest rate so that it responds to market changes. Clause 55 replaces .843% with “late payment interest rate” and defines “late payment interest rate”. Clause 56 reduces the late payment interest rate for borrowers who are under agreed repayment arrangements.

The amendments apply from 1 April 2013 for the 2013–14 and later tax years.

Pre-emptive instalment arrangements

(Clause 23)

Borrowers can enter into instalment arrangements if they have an unpaid obligation. At present there is no provision to enter into a pre-emptive instalment arrangement if the borrower knows they will be unable to pay an obligation in full and on time.

An amendment is being made to allow borrowers to enter into pre-emptive instalment arrangements before an amount becomes unpaid.

The amendment will apply from the date of enactment.

Right to cancel loan contract

(Clause 8)

Borrowers may cancel their loan contract within seven working days of the date they received their loan entitlement letter. The borrower must then return any loan advances and pay any interest accrued.

The loan advance paid back to StudyLink as part of the cancellation process is effective from the date of the original drawdown. This means the loan is effectively cancelled for Inland Revenue’s purposes on the date of the original transaction and any interest charged is reversed.

There is therefore no need for the provision stating that the borrower must pay any interest accrued.

The amendment will apply from the date of enactment.

Minor technical amendments

Clause 49 ensures that the Student Loan Scheme Act 1992 continues to be included in the schedule of Acts administered by Inland Revenue. The amendment will apply from the date of enactment.

Clause 22 corrects a drafting error to ensure that the Commissioner has the discretion not to collect a repayment obligation if the amount involved is \$20 or more. The amendment will apply from the date of enactment.

Clause 33 amends section 204 to ensure that the ability to recall all or part of a loan balance applies to contracts signed on, as well as those signed before or after, the date that the section came into force. The amendment will apply from the date of enactment.

Clause 31 amends section 191(1) to ensure that the repayment obligations on all salary and wage payments are limited to the loan balance as at the last day of the month that the pay-period falls in. The amendment will apply from the date of enactment.

Clause 35 amends the regulation-making power in section 215 by including reference to new section 16A and section 107A in the list of provisions in paragraph (d) under which regulations may be made specifying requirements for further information to be provided. The amendment will apply from 1 April 2012.

Clauses 54, 57, 60 and 61 carry forward amendments previously located in schedule 7 as this schedule has been repealed (see *Retaining the current penalty interest rules on unpaid amounts*). The amendments apply from 1 April 2013.

Clause 48 repeals section 57 of the Student Loan Scheme Amendment Act 2012. This section included changes to schedule 7, which this bill repeals. The amendment applies from the date of enactment.