

Taxation (Canterbury Earthquake Measures) Bill

Government Bill

Explanatory note

General policy statement

This bill proposes measures to deal with taxation issues arising from the earthquakes that occurred on 4 September 2010 and 22 February 2011 and affected the Canterbury region. The bill refers to both earthquakes as “Canterbury earthquakes”, relying on the definition of that term in the Canterbury Earthquake Recovery Act 2011, which refers to any earthquake in Canterbury on or after 4 September 2010 and includes any aftershock.

Welfare contributions by employers to employees

Employers of people affected by a Canterbury earthquake have been providing them with gifts of various kinds, including cash, goods, and accommodation, intended to relieve welfare needs. Under the Income Tax Act 2007, such gifts can be assessable income or fringe benefits for an employee, with corresponding tax consequences.

The bill proposes that income provided by an employer to an employee in the first 8 weeks after a Canterbury earthquake of 4 September 2010 or 22 February 2011, and that would otherwise be assessable income of the employee, may be exempt income for the employee if other requirements are met. The other requirements include that the

income not replace pay and that similar income is available to other employees. A limit of \$3,200, equivalent to \$400 per week, applies to income that would otherwise be assessable income and does not consist of accommodation.

In addition, benefits provided in the 8-week period that would otherwise be fringe benefits under the Income Tax Act 2007 are excluded from being so. The exclusion is subject to a limit for benefits for which the employer can estimate the value for the individual employee as the recipient. The value of those benefits is limited to the amount by which \$3,200 exceeds the amount of exempt income received by the employee from the employer for the same period.

Effect of contributions on family scheme income

People affected by a Canterbury earthquake have been receiving contributions intended to help them meet everyday living expenses. Under the Income Tax Act 2007, such contributions are included in the recipient's family scheme income. The amount of family scheme income affects the recipient's entitlements to various benefits, including Working for Families tax credits. The bill proposes 2 amendments. One authorises the Commissioner to make a determination declaring an event such as an earthquake to be an emergency event for the purposes of the provision relating to family scheme income and specifying a period of up to 12 months from the date of the event. The other amendment excludes from a person's family scheme income any amounts that are intended to relieve the adverse effects on the person of the emergency event and are received within the specified period.

Redundancy payment tax credit

Measures in the Taxation (Budget Measures) Act 2010 and the Taxation (GST and Remedial Matters) Act 2010 removed the availability of tax credits for people receiving redundancy payments on or after 1 April 2011. The bill proposes to further delay the removal. As a consequence, tax credits will be available to people made redundant as a result of Canterbury earthquakes. The availability of the tax credits is extended until 1 October 2011. The repeal of the legislation providing for the tax credits is delayed until 1 April 2013. The

superseded provisions in the Taxation (Budget Measures) Act 2010 are repealed.

Donated trading stock

Businesses have been contributing trading stock to be used in helping people affected by a Canterbury earthquake. Under the Income Tax Act 2007, a person disposing of trading stock for consideration less than the market value of the trading stock is treated as having disposed of the trading stock for market value. The bill proposes an amendment under which that treatment is not applied if the disposal is not to an associated person and is for the purpose of alleviating the effects of a Canterbury earthquake. An exemption under the Estate and Gift Duties Act 1968 is also proposed for such gifts.

Regulatory impact statements

The Inland Revenue Department produced 2 regulatory impact statements on 17 March 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact statements can be found at—

- <http://taxpolicy.ird.govt.nz/publications/2011-ris-cem-bill/overview>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the dates on which the clauses come into effect.

Part 1

Amendments to Income Tax Act 2007

Clause 3 provides that the clauses in *Part 1* amend the *Income Tax Act 2007*.

Clause 4 inserts *new sections CZ 23 and CZ 24*. Under *section CZ 23*, income of an employee from a benefit provided by an employer is exempt income if the income is provided for relief from the adverse effects of a Canterbury earthquake of 4 September 2010 or 22 February 2011. If the employee is associated with the employer, the income

must also be available to a full-time employee not associated with the employer. The income must be derived in the 8 weeks following the relevant Canterbury earthquake. The exemption is limited to \$3,200 for income that is not accommodation. Under *section CZ 24*, a benefit provided to an employee by an employer for the relief from the adverse effects of a Canterbury earthquake of 4 September 2010 or 22 February 2011 is not a fringe benefit if the requirements relating to the availability of the benefit are met. Benefits with a value to the employee that the employer can estimate under the fringe benefit rules are affected only to the extent that they do not exceed \$3,200 when combined with the amount of exempt income under *section CZ 23* derived from the employer for the same period. The amendment comes into force on *4 September 2010*.

Clause 5 inserts new *section GZ 3*, which provides that *section GC 1* does not apply to a disposal by a person of trading stock at less than market value if the disposal is not to an associated person and is for the purpose of alleviating the effects of a Canterbury earthquake. The disposal must be made in the period from 4 September 2010 to 31 March 2012. The amendment comes into force on *4 September 2010*.

Clause 6 repeals *section MA 1(c)*, coming into force on *1 April 2013*, when tax credits for redundancy payments are abolished.

Clause 7 amends *section MB 13*, which affects the amount of a person's *family scheme income*. The amendments exclude from a person's family scheme income any amounts that are intended to relieve the adverse effects of an event declared to be an emergency event by the Commissioner in a determination under proposed *section 91AAS* of the Tax Administration Act 1994. The amendment comes into force on *1 April 2011*.

Clause 8 amends *section ML 1* as part of the extension until *1 October 2011* of the availability of tax credits for redundancy payments. The amendment comes into force on *1 April 2011*.

Clause 9 amends *section ML 2* as part of the extension until *1 October 2011* of the availability of tax credits for redundancy payments. The amendment comes into force on *1 April 2011*.

Clause 10 repeals *subpart ML*, coming into force on *1 April 2013*, when tax credits for redundancy payments are abolished.

Clause 11 amends *section YA 1*. *Subclause (2)* amends the definition of *PAYE income payment*, coming into force on *4 September 2010*,

so that it is generally applicable. *Subclause (3)* repeals the definition of *redundancy payment*, coming into force on *1 April 2013*, as part of the abolition of tax credits for redundancy payments.

Part 2 Amendments to other Acts

Tax Administration Act 1994

Clause 12 inserts *new section 91AAS* of the *Tax Administration Act 1994*, which gives the Commissioner power to issue a determination declaring an event to be an *emergency event* for the purposes of *section MB 13(2)(r)* of the *Income Tax Act 2007*. The amendment comes into force on *1 April 2011*.

Estate and Gift Duties Act 1968

Clause 13 inserts *new section 73B* of the *Estate and Gift Duties Act 1968*, which gives an exemption from gift duty for a gift of trading stock with the purpose of relieving the adverse effects of a Canterbury earthquake. The amendment comes into force on *4 September 2010*.

Taxation (Budget Measures) Act 2010

Clause 14 repeals *section 95* of the *Taxation (Budget Measures) Act 2010* as part of the extension until *1 October 2011* of the availability of tax credits for redundancy payments.

Clause 15 repeals *section 96(6)* of the *Taxation (Budget Measures) Act 2010* as part of the extension until *1 October 2011* of the availability of tax credits for redundancy payments.

Hon Peter Dunne

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the **Taxation (Canterbury Earthquake Measures) Act 2011**.
- 2 Commencement**
- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section. 5
- (2) **Sections 4, 5, 11(2), and 13** are treated as coming into force on 4 September 2010.
- (3) **Sections 7, 8, 9, and 12** are treated as coming into force on 1 April 2011. 10
- (4) **Sections 6, 10, and 11(3)** come into force on 1 April 2013.

**Part 1
Amendments to Income Tax Act 2007**

- 3 Income Tax Act 2007**
This Part amends the Income Tax Act 2007. 15
- 4 New sections CZ 23 and CZ 24**
After section CZ 22, the following is inserted:

“CZ23 Employee benefits for Canterbury earthquake relief: exempt income

“Exempt income

- “(1) Income derived by an employee from an employer is exempt income to the extent given by **subsection (2)** if the income— 5
- “(a) would be assessable income in the absence of this section; and
 - “(b) is provided by the employer for the purpose of relief of employees from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011, of 4 September 2010 or 22 February 2011; and 10
 - “(c) is derived in the period of 8 weeks beginning on the day of that Canterbury earthquake; and
 - “(d) does not replace a PAYE income payment; and 15
 - “(e) does not depend on the seniority of the employee; and
 - “(f) is available to another employee, who is not an associated person of the employer and is or was immediately before a Canterbury earthquake in full-time employment with the employer, if the employee is an associated person of the employer; and 20
 - “(g) is treated by the employer as being exempt income for the employee.

“Extent of exemption

- “(2) Income satisfying **subsection (1)** is exempt income to the extent that the income is— 25
- “(a) accommodation as defined in section CE 1(2) (Amounts derived in connection with employment):
 - “(b) less than or equal to \$3,200 in total, if the income is in a form other than accommodation. 30

“Defined in this Act: assessable income, employee, employer, exempt income, fringe benefit, income

“CZ24 Employee benefits for Canterbury earthquake relief: not fringe benefits

“When this section applies 35

- “(1) This section applies when an employee receives from an employer a benefit that—

- “(a) would be a fringe benefit in the absence of this section;
and
- “(b) is for the purpose of the relief of employees from the
adverse effects of a Canterbury earthquake, as defined
in section 4 of the Canterbury Earthquake Recovery Act 2011, of 4 September 2010 or 22 February 2011;
and 5
- “(c) is received in the period of 8 weeks beginning on the
day of that Canterbury earthquake; and
- “(d) does not replace a PAYE income payment; and 10
- “(e) does not depend on the seniority of the employee; and
- “(f) is available to another employee, who is not an asso-
ciated person of the employer and is or was immedi-
ately before a Canterbury earthquake in full-time em-
ployment with the employer, if the employee is an asso- 15
ciated person of the employer; and
- “(g) is treated by the employer as not being a fringe benefit.
- “Benefits with known value for employee*
- “(2) Benefits satisfying **subsection (1)** that would, in the absence
of this section, be fringe benefits having a value for the em- 20
ployee that the employer could estimate, are not fringe bene-
fits to the extent that their total value as fringe benefits for the
period would be less than or equal to the amount by which
\$3,200 exceeds the income that is—
- “(a) exempt income under **section CZ 23(2)(b)**; and 25
- “(b) derived by the employee from the employer in the same
period.
- “Benefits with unknown value for employee*
- “(3) Benefits satisfying **subsection (1)** that would, in the absence
of this section, be fringe benefits having a value for the em- 30
ployee that the employer could not estimate, are not fringe
benefits.
- “Defined in this Act: associated person, employee, employer, exempt income,
fringe benefit, income, PAYE income payment”.
- 5 New section GZ 3 35**
After section GZ 2, the following is inserted:

“GZ3 Donations of trading stock for relief of Canterbury earthquakes

Section GC 1 (Disposals of trading stock at below market value) does not apply to the disposal of trading stock by a person to a person who is not an associated person—

5

“(a) for the purpose of relief from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and

“(b) in the period beginning on 4 September 2010 and ending on 31 March 2012.

10

“Defined in this Act: associated person, trading stock”.

6 What this part does

Section MA 1(c) is repealed.

7 Family scheme income from other payments

In section MB 13(2)(q), “another section.” is replaced by “another section:” and the following is added:

15

“(r) a payment—

“(i) to relieve the adverse effects of an event declared to be an emergency event by the Commissioner in a determination under **section 91AAS** of the Tax Administration Act 1994; and

20

“(ii) in the period set by the Commissioner in the determination as relating to the event.”

8 What this subpart does

In section ML 1(1), “1 October 2010” is replaced by “1 October 2011”.

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9 Tax credit for redundancy payments

In section ML 2(1), “1 April 2011” is replaced by “1 October 2011” in each place where it appears.

10 Subpart ML repealed

Subpart ML is repealed.

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11 Definitions

- (1) This section amends section YA 1.
- (2) In the definition of **PAYE income payment**, “for the purposes of the PAYE rules” is omitted.
- (3) The definition of **redundancy payment** is repealed. 5

Part 2**Amendments to other Acts***Tax Administration Act 1994***12 New heading and section 91AAS**

After section 91AAR of the Tax Administration Act 1994, the following is inserted: 10

*“Determinations relating to family scheme
income*

**“91AAS Declaration of emergency event for purposes of family
scheme income** 15

- “(1) The Commissioner may determine that an event is an emergency event, for the purposes of **section MB 13(2)(r)(i)** of the Income Tax Act 2007, if the event meets the requirements of paragraphs (a) and (b) of the definition of **emergency** in section 4 of the Civil Defence Emergency Management Act 2002. 20
- “(2) The determination must set a period relating to the event, for the purposes of **section MB 13(2)(r)(ii)** of the Income Tax Act 2007, equal to or less than 12 months and beginning on the day of the event.
- “(3) The determination may provide for the extension, limitation, variation, cancellation, or repeal of an earlier determination, except that the total period relating to an event may not exceed 12 months. 25
- “(4) As soon as possible after issuing or changing a determination under this section, the Commissioner must publish the new or changed determination in a publication chosen by the Commissioner.” 30

Estate and Gift Duties Act 1968

13 New section 73B

After section 73 of the Estate and Gift Duties Act 1968, the following is inserted:

“73B Exemption for certain gifts of trading stock 5

A gift by a person to a person who is not an associated person under the Income Tax Act 2007 shall not constitute a dutiable gift if the gift is—

“(a) of trading stock as defined in section EB 2 of the Income Tax Act 2007; and 10

“(b) made for the purpose of relief from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and

“(c) made within the period beginning on 4 September 2010 and ending on 31 March 2012.” 15

Taxation (Budget Measures) Act 2010

14 Section 95 repealed

Section 95 of the Taxation (Budget Measures) Act 2010 is repealed.

15 Definitions 20

Section 96(6) of the Taxation (Budget Measures) Act 2010 is repealed.