

# **Supplementary Order Paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill**

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*Commentary on proposed amendments to:*

- *the administration of unclaimed money*
- *the individual income tax write-off threshold*

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Minister of Revenue

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Supplementary Order Paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill – Commentary on proposed amendments to the administration of unclaimed money and the individual income tax write-off threshold

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# Overview

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## OVERVIEW

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Following the introduction of the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill, two further measures are to be added to the Bill by Supplementary Order Paper.

The proposed changes:

- introduce administrative reforms to the unclaimed money regime; and
- temporarily increase the individual income tax write-off threshold from \$50 to \$200.

The proposed changes would amend the Unclaimed Money Act 1971 and the Tax Administration Act 1994.

### **Unclaimed money**

Unclaimed money usually refers to money (such as a bank deposit) which has become disconnected or detached from its owner. Unclaimed money is passed on from the holder (such as a bank) to Inland Revenue as the custodian of those funds until they can be claimed. Inland Revenue is the agency that administers the rules for unclaimed money.

However, the Unclaimed Money Act 1971 (the Act) which governs unclaimed money has not been reviewed since it was enacted in 1971. As a result, many of the administrative processes in the Act are outdated and do not take advantage of new developments in technology. Currently, the regime is largely administered as a stand-alone product using a paper-based process, making the system difficult for people to use to claim their funds.

The proposals seek to modernise and update the Act to take advantage of new administrative practices. This is intended to reduce compliance costs for holders and owners of unclaimed money as well as reduce administration costs for Inland Revenue. Overall, it is hoped that the proposed initiatives will result in owners being reunited with their money more efficiently.

### **Individual income tax write-off threshold**

The proposed change would temporarily increase the individual income tax write-off threshold for automatically calculated assessments from \$50 to \$200. This is designed to assist taxpayers as part of the Government's response to COVID-19.





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# Unclaimed money

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# **ADMINISTRATIVE REFORMS TO THE UNCLAIMED MONEY ACT 1971**

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*(Clauses 67, 83B and 100B–100L)*

## **Summary of proposed amendments**

The proposed amendments substantially update the administration of the Unclaimed Money Act 1971 (the Act). The intention of the proposed reforms is to make the administration of unclaimed money more efficient by lowering compliance costs for holders of unclaimed money and making it easier for owners of unclaimed money to claim their money.

## **Application date**

The proposed amendments would apply from the date of enactment.

## **Key features**

The Bill proposes reforms to update the administration of unclaimed money. It would define the Act as an Inland Revenue Act and allow Inland Revenue to use existing tax data to more efficiently locate and validate owners of money. However, the Act would not be brought within the disputes, penalties or interest provisions of the Tax Administration Act 1994. The proposals would also clarify that the Act does not apply to unclaimed money covered by the Public Finance Act 1989.

The Bill would widen the definition of unclaimed money to include deposit-like investments in portfolio investment entities. The Bill would also expand the activity which prevents an amount of money from becoming unclaimed money to include online activity.

The Bill proposes that the length of time which is required to pass before money is treated as unclaimed is reduced from the current 6 or 25 years (depending on the product category) to a uniform five years for all money. It is also proposed that holders of unclaimed money be permitted to transfer money to Inland Revenue before it is deemed unclaimed money in limited circumstances.

The proposals would also allow holders of unclaimed money (such as a bank) to transfer it to Inland Revenue immediately upon it being deemed to be unclaimed, provided that the holder had already made reasonable efforts to contact the owner. If the holder had not sought to contact the owner, the holder would have three months to contact the owner and return the money before being required to transfer the funds to Inland Revenue.

The current requirement for owners to provide occupation information when funds are transferred would be removed. Instead, holders would be required to provide Inland Revenue with other identifying information (such as IRD numbers) in electronic format which would assist Inland Revenue in locating the owners.

The Bill would maintain the current unclaimed money threshold at \$100, while allowing holders to transfer lesser amounts if the Commissioner agrees. The proposals would remove the requirement for holders to keep a physical register of unclaimed money, and to make this available for inspection by members of the public.

A 60-year time bar would be introduced on the ability of owners to claim their money, and it is proposed that holders are given a two-year transitional period to implement the proposals.

## **Background**

The proposed amendments substantially update the administration of the Act. The intention of the reforms is to make the administration of unclaimed money more efficient by lowering compliance costs for holders of unclaimed money and making it easier for owners to claim it.

The Act was last substantially revised in the 1970s and its administrative practices now impose a significant compliance burden. One example is the requirement that holders maintain a physical register of money which has accrued in the past year. In addition to keeping a physical register of unclaimed money, holders must make this register available for inspection by the public before transferring the money to Inland Revenue.

These and other outmoded administrative practices present an opportunity to update the unclaimed money regime to take advantage of new technology.

## **Detailed analysis**

### ***Defining the Act as an Inland Revenue Act***

Although the Act is administered by Inland Revenue, it is not specifically listed as an Inland Revenue Act in schedule 1 of the Tax Administration Act 1994 (TAA). This means that Inland Revenue is unable to use the information which it holds in its systems to match owners with their money.

Proposed clause 83B would insert a reference to the Act in schedule 1 of the TAA so that it becomes an Inland Revenue Act.

Clause 67 proposes that the definition of “tax law” in the TAA does not include a provision in the Unclaimed Money Act 1971, so that the Act is not brought within the disputes, penalties and use of money interest provisions of the TAA.

### ***Expanding the definition of unclaimed money***

Clause 100B inserts a new section 4 to the Act which proposes changes to the way in which unclaimed money is defined and clarifies when funds become unclaimed.

Clause 100B proposes to replace the current definition of unclaimed money in section 4 of the Act which is largely focused on “money” (in the traditional sense of the word). The proposed new definition expands the scope of the section to include categories such as term deposit-like investments in portfolio investment entities (“cash-PIEs”).

### ***Account activity***

Currently, before a deposit can be considered to be unclaimed the owner must not have operated the account either by deposit, withdrawal or instruction in writing. This requirement does not include other modes of account interaction such as telephone and internet banking.

The proposed new section 4 is intended to broaden the forms of activity which will prevent an amount qualifying as unclaimed. Proposed section 4(2)(d) refers to providing instructions or requesting information. This will include internet banking, where a customer logs into their accounts online and obtains information about an account balance.

### ***Length of time until money has been deemed unclaimed***

The definition of unclaimed money currently includes money which has been deposited with a holder for a period of six or 25 years depending on the type of deposit. For example, money which has been deposited for a fixed term will be deemed unclaimed following the expiry of six years.

Proposed section 4 removes the distinction between the categories of deposit in favour of a more generic reference to money repayable on demand or after a fixed term and introduces a standard “qualifying” period of five years. It is proposed that all money, whatever its deposit category, will become unclaimed after five years.

### ***Transfer of money to Inland Revenue before becoming unclaimed***

Historically there has been no ability for holders to pay unclaimed money to Inland Revenue before the expiry of the current holding periods. There are limited circumstances in which it is more expedient for holders of money to transfer it to Inland Revenue before it becomes unclaimed rather than waiting for the relevant deeming period to expire.

The proposed amendments revise the definition of unclaimed money to allow money to be transferred to Inland Revenue before the expiry of the qualifying period where this is acceptable to the Commissioner. This mechanism is contained in proposed section 4(2)(c)(i) and (d)(ii).

### ***Monetary threshold***

Currently, the definition of unclaimed money prevents money which falls below the \$100 threshold from being classified as unclaimed whether the holder wishes to pass these funds to Inland Revenue or not.

The proposed amended definition of unclaimed money addresses this issue by providing, in section 4(2)(e), Inland Revenue with the ability to accept amounts below \$100 where the Commissioner agrees to receive them.

### ***Information collection and transfer***

Proposed section 4(7) would require a holder of unclaimed money to provide the Commissioner with information in the holder’s possession or control which relates to the owner of the money and the amount. This would include information relating to the amount, the identity and whereabouts of the owner and the actions taken by the holder in attempting to locate the owner. Such information must be provided to the Commissioner either before or during the transfer to Inland Revenue.

The proposed section 4(7) is not intended to impose new information collection costs or requirements on holders of unclaimed money. Instead, it is aimed at encouraging holders to provide Inland Revenue with information in their possession which may assist the Commissioner in locating the owner of the money. The format in which this information

must be transferred has been left unspecified and will be worked through directly with industry groups.

The proposed amendments would clarify that the Unclaimed Money Act 1971 does not apply to money covered by the Public Finance Act 1989.

Clause 100E proposes some consequential amendments to section 5 of the Act to reflect the new definition of unclaimed money and also clarifies that persons who hold funds in accordance with the Public Finance Act 1989 are not holders for the purposes of the Act.

### ***Maintenance of a register***

Clause 100F would repeal sections 6 and 7 of the Act which currently require a holder to maintain a register of unclaimed money which has accrued over the current term and to make that register available for public inspection.

There are a number of reasons why these requirements are no longer relevant including the electronic retention of records and privacy concerns. While holders will still maintain records to support unclaimed money, they will not have to maintain a publicly available register.

### ***Immediate transfer of money and associated information to the Commissioner***

Proposed clause 100G amends section 8 of the Act to allow unclaimed money to be transferred to Inland Revenue immediately upon being deemed unclaimed, if the holder has made reasonable efforts to contact the owner under section 4(6) before transferring it to the Commissioner.

Currently holders can be required to retain unclaimed money for over 12 months after it has qualified as unclaimed. Many holders considered this time period was unnecessary once funds had become unclaimed.

Where the holder has not made reasonable efforts to locate the owner before the amount becomes unclaimed, the holder has three months to rectify that before the amount must be transferred to Inland Revenue.

The requirement to make reasonable efforts to locate owners of unclaimed money requires holders to use their initiative and take active steps to return money to its owner before transferring it to Inland Revenue.

In practical terms, “reasonable efforts” means that holders of unclaimed money should, at minimum, exhaust the avenues for contacting the owners of the money which they have at their disposal (for example, telephone numbers and email address). Holders should consider whether there are any other means of contacting owners which may also be effective (such as social media).

Proposed clause 100G also includes a transitional period for funds that previously had not met the definition of unclaimed money because the respective time period to become unclaimed money had not been reached but under the proposed time period would be unclaimed. Holders will be allowed a maximum of two years to transfer those amounts to Inland Revenue.

**Example**

Really Big Bank Limited (RBB) has a large number of customer accounts, before the change to the time period for funds to become unclaimed, that vary in age from 5½ years through to 23 years and there has been no interaction with those accounts by the customer for some time despite attempts by RBB to locate those customers.

The proposed change to the definition is enacted which now sets the time period for unclaimed money to five years and now means all those accounts immediately become unclaimed. RBB is allowed a maximum of two years to transition the funds which are now unclaimed money to Inland Revenue so they do not have to incur large compliance costs in immediately transferring those funds, although they can do so if they wish.

***Introduction of a time bar***

Clause 100J proposes to insert a new time bar for claiming money from Inland Revenue of 60 years. Currently, there is no time limit on an owner's ability to claim money held by Inland Revenue. This means that, under the current rules a claimant could make a claim for money which accrued as long ago as the regime's inception in 1908.

However, as the time unclaimed money remains with Inland Revenue increases, the likelihood of it being claimed becomes increasingly remote. This suggests there is a point in time at which deemed unclaimed money becomes practically unclaimable. However, all amounts of unclaimed money are classified as a contingent liability in the Crown's accounts. While placing some parameters around an owner's ability to claim money is desirable from a policy perspective, it is equally important that owners not be deprived of the meaningful opportunity to claim money.

The proposed amendments seek to balance these two aims by introducing a 60-year time bar on the ability of owners to claim money. This is contained within the proposed section 11(7) which provides that no person shall have a right of action against the Commissioner for unclaimed money which has been held for more than 60 years.





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# Individual income tax write-off threshold

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## **INCREASING THE THRESHOLD FOR AUTOMATICALLY CALCULATED INDIVIDUAL INCOME TAX WRITE-OFFS**

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*(Clause 84)*

### **Summary of proposed amendment**

As part of the Government's response to the financial pressures on New Zealanders caused by COVID-19, the proposed amendment seeks to temporarily increase the write-off threshold from \$50 to \$200 for income tax assessments that are automatically calculated for qualifying individuals with reportable income. The proposed amendment is designed to reduce the financial pressure in the economic downturn for approximately 149,000 New Zealanders.

### **Application date**

The proposed amendment to increase the threshold to \$200 would apply for the 2019–20 income year only. The proposal to return the threshold to \$50 would apply for the 2020–21 and later income years.

The increase in the threshold to \$200 under an Order in Council that came into force from 3 June 2020 will remain in place until the proposed changes to the legislation are enacted.

### **Key features**

It is proposed to amend schedule 8, part B, clause 1 of the Tax Administration Act 2004 (TAA) to:

- increase the amount of a tax assessment that may be written off by the Commissioner from \$50 to \$200 for the 2019–20 income year; and
- decrease the amount of a tax assessment that may be written off by the Commissioner from \$200 to \$50 for the 2020–21 and later income years.

### **Background**

Income tax obligations for individuals with only reportable income (income that has had tax withheld at source and is reported to Inland Revenue by the payers, for example, salary, wages and investment income) are automatically calculated by Inland Revenue. Taxpayers are advised of the resulting refund or tax liability. Tax liabilities of \$50 and under are automatically written off under the current rules.

### **Detailed analysis**

This write-off threshold applies if an individual is subject to the rules in subpart 3B of the TAA – commonly referred to as the auto-calculation rules. Under section 22J(1) of the TAA, the Commissioner may write off an amount of tax payable if the requirements of schedule 8, part B are met.

An increase to the write-off amount for automatically calculated income tax assessments was made by Order in Council and applies from 3 June 2020. The proposed amendment to the TAA limits the increase to the 2019–20 income year.

As this threshold increase was only envisaged as a temporary measure to support people through economic hardship, the Bill proposes that the threshold is reduced back to \$50 for the 2020–21 and later income years.