

# HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Thursday, 8 December 1988

INCOME TAX AMENDMENT BILL (NO. 6)

*Proposed Amendments*

Hon. T. A. de CLEENE, in Committee, to move the following amendments:

*Clause 11: new section 227:* To omit from line 5 on page 34 the words "that income year", and substitute the words "relation to that distribution".

*New section 228:* To omit from line 10 on page 39 the words "a qualifying trust", and substitute the words "or remains a qualifying trust or is deemed to be a qualifying trust".

*New section 230:* To omit from line 8 on page 44 the words "which was".

To omit from line 14 on page 44 the words "settled on or before", and substitute the words "On which no settlement was made after".

*Clause 13:* To omit subsection (2B) in lines 23 to 38 on page 51 and lines 15 to 28 on page 52.

*Clause 25: New section 245B:* To omit from line 21 on page 68 the words "resident in New Zealand,".

To omit from line 11 on page 70 the words "subsection", and substitute the word "section".

*New section 245K:* To omit from lines 26 and 27 on page 96 the words "or on behalf of (whether by way of withholding tax or otherwise)".

To insert in line 38 on page 96, after the words "tax paid", the words "or payable".

To insert in line 15 on page 99, after the word "paid", the words "or payable".

*New section 245L:* To insert in line 27 on page 101, after the word "paid", the words "or was payable".

*New section 245R:* To omit from line 24 on page 113 the words "to persons".

To omit lines 25 to 28 on page 118 and substitute the following lines:

Commissioner pursuant to section 245s of this Act, or by virtue of the interest ceasing to be an interest in a foreign investment fund pursuant to section 245R (2) of this Act; that person shall be deemed to have disposed of that interest at its market value as at the date of cessation, disposal, or death, or on the date on which that interest ceases to be an interest in a foreign investment fund, as the case may be.

To insert in line 7 on page 119, after the word "Act", the words "or by virtue of any rights in relation to a foreign entity becoming an interest in a foreign investment fund pursuant to subsection (2) of this section".

*Clause 43:* To omit the definition of the term “distributable portion of the dividend income derived by a company in an accounting year” in subclause (A1) on page 165, and substitute the following definition:

“Distributable portion of the dividend income derived by a company in an accounting year’ means the amount by which the total dividend income derived by the company in that accounting year exceeds the amount calculated in accordance with the following formula:

$$\frac{a + b}{c}$$

where—

- a is the amount of all imputation credits and dividend withholding payment credits (as those terms are defined in section 394A of this Act) attached to dividends received by the company during the accounting year; and
- b is the sum of all amounts of dividend withholding payment (as defined in section 394zk of this Act) paid by the company during the accounting year; and
- c is the highest rate specified in Part B of the First Schedule to this Act for the income year to which the company’s accounting year corresponds (being that rate expressed as a percentage):”.

To omit the definition of “total dividend income” in subclause (4) on page 166, and substitute the following definition:

“Total dividend income’, in relation to a company and an accounting year, means the total amount of all dividends derived by the company in that accounting year from New Zealand or elsewhere, being dividends that are exempt from income tax under section 63 of this Act.”

To insert after subclause (4) on page 166 the following subclause:

(4A) Section 246 of the principal Act is hereby further amended by adding the following subsection:

“(2) For the purposes of the definition of the term ‘total dividend income’ in subsection (1) of this section, the amount of any dividend derived by a company shall include the amount of any imputation credit and any dividend withholding payment credit (as those terms are defined in section 394A of this Act) attached to the dividend, but shall not include the amount of any foreign withholding tax (as defined in section 394zk of this Act) paid in respect of the dividend.”

*New clause 44A:* To insert, after clause 44 on page 168, the following clause:

**44A. Dividends paid in excess of distributable portion of income—**(1) Section 253 (1) of the principal Act is hereby amended by omitting the expression “35c”, and substituting the expression “33c”.

(2) This section shall apply in respect of the remission of excess retention tax assessed in respect of any insufficient distribution of income derived in the income year commencing on the 1st day of April 1989 or in any subsequent year.

*Clause 55: section 394D:* To insert in subsection (1), after paragraph (b) on page 181, the following paragraph:

“(ba) The amount of any excess retention tax paid by the company during the imputation year in respect of any insufficient distribution of income derived by the company during the income year commencing on the 1st day of April 1988 or any subsequent income year (but not including the amount of any additional tax or penal tax):

To omit from subsection (2) (a), on page 182, the expression “(a) and (b)”, and substitute the expression “(a), (b), and (ba)”.

*Section 394E:* To insert in subsection (1), after paragraph (b) on page 183, the following paragraph:

“(ba) The amount of any refund of excess retention tax paid to the company during the imputation year, being a refund of tax paid in respect of any insufficient distribution of income derived by the company during the income year commencing on the 1st day of April 1988 or any subsequent income year:

To insert in subsection (2) (b), on page 184, after the expression “paragraph (b)”, the expression “or paragraph (ba)”.

*New clause 59A:* To insert, after clause 59 on page 282, the following clause:

**59A. Rate of excess retention tax for year of assessment commencing on 1 April 1991 and for subsequent years—**

(1) Clause 11 of the First Schedule to the principal Act is hereby amended by omitting the expression ‘35c’, and substituting the expression ‘33c’.

(2) This section shall apply with respect to the year of assessment commencing on the 1st day of April 1991 and every subsequent year.

*New clauses 60A to 60C:* To insert in Part V, before clause 61 on page 282, the following clauses:

**60A. Interpretation—**(1) Section 2 of the principal Act is hereby amended by inserting in the definition of the term “salary or wages”, after paragraph (c), the following paragraph:

“(ca) Any basic grant and any independent circumstances grant, made pursuant to regulations made under section 193 of the Education Act 1964; and”.

(2) Section 336N (1) of the principal Act (as inserted by section 34 of the Income Tax Amendment Act (No. 2) 1985) is hereby consequentially amended—

(a) By inserting in the definition of the term “employee”, after the expression “(c),”, the expression “(ca),”;

(b) By inserting in the definition of the term “employer”, after the expression “(c),”, the expression “(ca),”;

(c) By inserting in the definition of the term “employment”, after the expression “(c),”, the expression “(ca),”.

(3) Section 374A of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby consequentially amended by omitting from the definition of the term “employment” the expression “(ba) and (c)”, and substituting the expression “(ba), (c), and (ca)”.

(4) Section 374E (1) of the principal Act (as so inserted) is hereby consequentially amended by omitting from paragraph (a) of the definition of the term “employment” the expression

“(ba) and (c)”, and substituting the expression “(ba), (c), and (ca)”.

(5) This section shall apply with respect to tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

**60B. Incomes wholly exempt from tax—**(1) Section 61 (37) of the principal Act is hereby amended by inserting, after the words “scholarship or bursary”, the words “other than a basic grant or an independent circumstances grant made pursuant to regulations made under section 193 of the Education Act 1964”.

(2) This section shall apply with respect to tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

**60c. Items included in assessable income—**(1) Section 65 (2) of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) All basic grants and independent circumstances grants made pursuant to regulations made under section 193 of the Education Act 1964:”.

(2) This section shall apply with respect to tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

*New clauses 65A to 65E:* To insert, after clause 65 on page 289, the following clauses:

**65A. Director-General to deliver credit of tax—**

(1) Section 374I of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by inserting, after subsection (3), the following subsections:

“(3A) Notwithstanding subsections (2) and (3) of this section, any person entitled to payment of a credit of tax under subsection (2) or subsection (3) of this section may notify the Director-General of Social Welfare or the Secretary for War Pensions, as the case may be, not to pay the credit of tax to that person, and the Director-General or the Secretary, as the case may be, shall, as soon as practicable, cease to pay the credit of tax accordingly.

“(3B) Any notification given under subsection (3A) of this section by any person may be cancelled by that person at any time, and the Director-General or the Secretary, as the case may be, shall thereupon recommence payment of the credit of tax as soon as practicable.

(2) Section 374G of the principal Act (as so inserted) is hereby consequentially amended by omitting from subsection (8) the expression “section 374I (2) and (3)”, and substituting the expression “section 374I (2), (3), (3A), and (3B)”.

(3) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1989 and in every subsequent year.

**65B. Interpretation—**(1) Section 375 of the principal Act (as substituted by section 17 of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by repealing paragraph (c) of the definition of the term “residual income tax”.

(2) This section shall be deemed to have come into force on the 7th day of November 1988 and shall apply to all provisional tax due and payable on or after that date.

**65c. Estimated provisional tax**—(1) Section 382 of the principal Act (as substituted by section 17 of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by adding the following subsection:

“(6) Where a taxpayer fails to furnish to the Commissioner a statement required pursuant to subsection (2) of this section, the taxpayer shall be deemed to have furnished a statement showing an estimate of the residual income tax to which the taxpayer will be liable in that income year equal to the amount of provisional tax, if any, paid by the taxpayer on or before the day on which the final instalment of provisional tax becomes due and payable.”

(2) This section shall come into force on the 7th day of March 1989 and shall apply to all provisional tax due and payable on or after that date.

**65d. Interest on tax overpaid**—(1) Section 413A (1) of the principal Act (as inserted by section 20 of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting in the definition of the expression “residual income tax”, after the words “Part XA of this Act”, the words “and any amount of credit of tax paid to that person under section 374H, or section 374I, or section 374IA, or applied in relation to that person under section 374J of this Act”.

(2) Section 413A (1) of the principal Act, (as so inserted) is hereby amended by repealing paragraph (c) of the definition of the term “residual income tax”, and substituting the following paragraph:

“(c) The amount of any credit of tax to which the person is entitled, in relation to that income year, under section 374D or section 374E of this Act:”.

(3) Section 413A (5) of the principal Act (as so inserted) is hereby amended by repealing item a, and inserting the following item:

“a is the amount of the balance that remains to be refunded by the Commissioner, at the commencement of the day that is, in relation to the taxpayer and the income year, the due date for payment of the third instalment of provisional tax, after deducting from the amount of the provisional tax paid, in respect of the income derived by the taxpayer in that income year, in accordance with Part XII of this Act, on or before the day that is, in relation to the taxpayer and the income year, the due date for payment of the third instalment of provisional tax, the amount of the income tax of the taxpayer in relation to that income year; and”.

(4) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1988 and in every subsequent year.

**65e. Transitional provisions in relation to provisional tax**—(1) For the purposes of subsection (2) of this section, the term “trustee income” has the same meaning as in section 226 of the principal Act (as substituted by section 11 of this Act).

(2) Subsection (3) of this section shall not apply in respect of any income that is, in relation to any person (being a company) who is a trustee of a trust and to any income year, trustee income.

(3) Notwithstanding section 377 (1) of the principal Act (as substituted by section 17 of the Income Tax Amendment Act (No. 3) 1988), the amount of provisional tax payable by a person (that is a company) in respect of the income derived in the income year ending with the 31st day of March 1989 shall be an amount equal to the residual income tax payable by that person in respect of the income derived in the income year ending with the 31st day of March 1988 multiplied by the following factor:

$$\frac{110}{100} \times \frac{28}{48}.$$

(4) Notwithstanding section 377 (1) of the principal Act (as so substituted), any person (being a natural person) who derived, in the income year that commenced on the 1st day of April 1988, provisional income exceeding the sum of \$100,000, may elect to pay an amount of provisional tax, in respect of the income derived in the income year that commenced on the 1st day of April 1989, equal to the amount of the residual income tax (as defined in section 375 of the principal Act (as so substituted)) payable by that person in respect of the income derived in the income year first mentioned in this subsection.

(5) Notwithstanding anything in the principal Act, in respect of the income derived (by a person that is a company) in the income year ending with the 31st day of March 1989, and the income derived in the income year ending with the 31st day of March 1990, and in respect to any instalment of provisional tax to which section 381 of the principal Act (as so substituted) applies, section 381 (as so substituted) shall apply as if the expression "the amount equal to 120 percent of the residual income tax which the taxpayer is liable to pay in respect of the income derived in the year immediately preceding the preceding income year" in both places where it occurs in the said section 381 were the expression "the amount equal to 120 percent of the residual income tax which the taxpayer was liable to pay in respect of the income derived in the year immediately preceding the preceding income year multiplied by the fraction 28/48".

(6) Notwithstanding anything in the principal Act, where a taxpayer is—

(a) A natural person who derived provisional income exceeding \$100,000 in the income year ending with the 31st day of March 1988; and

(b) A taxpayer to whom section 381 of the principal Act (as so substituted) applies,—

section 381 (as so substituted) shall, in relation to the income year ending with the 31st day of March 1990, apply as if the expression "120 percent" in both places where it occurs in the said section 381 were the expression "110 percent".

(7) The Income Tax Amendment Act (No. 3) 1988 is hereby consequentially amended by repealing sections 22 (1) and 22 (2).

(8) This section shall be deemed to have come into force on the 7th day of November 1988 and shall apply to all provisional tax due and payable on or after that date.

*First Schedule:* To omit from item 3 (c) on page 293 the words "Customs Dock", and substitute the words "Custom House Docks".

#### EXPLANATORY NOTE

*Clause 11* is amended as follows:

- (a) Section 227 (6A) is amended to ensure that distributions of accumulated income from a trust settled by a person before becoming a resident are taxable to a beneficiary if they are from income accumulated before the trustee income of the trust became liable to New Zealand tax. As it is currently drafted, the provision could be interpreted as making this income non-assessable:
- (b) The second proviso to section 228 (4B) (b) is amended to ensure that the exception from liability for income tax on trustee income for a non-resident trustee of a trust settled by a resident before 17 December 1987, or settled by a non-resident before becoming resident, does not apply for the purpose of determining whether a trust remains a qualifying trust or is deemed to be a qualifying trust. That is, a trust in this category will only continue to be a qualifying trust if tax is paid on all of the trustee income of the trust, whether or not the non-resident trustee is excepted from liability for New Zealand tax:
- (c) Section 230 (1A) is amended to ensure that the exclusion from the operation of the ordering rules for distributions from foreign or non-qualifying trusts for distributions from fixed trusts settled on or before 17 December 1987 does not apply where a further settlement has been made on the trust after 17 December 1987. Section 230 (1A) ensures that distributions made from fixed trusts settled before 17 December 1987 can be made in terms of the provisions of the trust.

*Clause 13* is amended by omitting the new subsection (2B) of section 293. The effect of this amendment is to bring the treatment of foreign tax credits in relation to beneficiary income into line with the rules for crediting foreign tax which apply for crediting other foreign income. Also, subsection (2B) denies a credit for foreign tax paid by a beneficiary. This is unintended and by omitting subsection (2B) a credit is given for foreign tax paid by a beneficiary under the general provisions of section 293.

*Clause 25:* The amendments to new sections 245B, 245K, and 245L and the first amendment to new section 245R are drafting amendments only.

The *new section 245R (12) (c)* is amended to make it clear that a disposal of an interest in a foreign investment fund is deemed to have occurred whenever an interest in a foreign investment fund ceases to be an interest in a foreign investment by virtue of *section 245R (2)* of the Act. *Section 245R (12)* as previously drafted deemed a person to have disposed of an interest in a foreign investment fund only when that interest ceased to be an interest in a foreign investment fund by virtue of an amendment to Part B of the Sixteenth Schedule of the Act, or by virtue of a determination issued by the Commissioner under section 245s.

The *new section 245R (14)* is amended to make it clear that a person is deemed to have acquired an interest in a foreign investment fund whenever rights held by that person in relation to a foreign entity become an interest in a foreign investment fund by virtue of *section 245R (2)* of the Act. *Section 245R (14)* as previously drafted deemed a person to have acquired an interest in a foreign investment fund only when rights held by that person in relation to a foreign entity became an interest in a foreign investment fund by virtue of an amendment to Part B of the Sixteenth Schedule of the Act, or by virtue of a determination by the Commissioner issued under *section 245s*.

The first amendment to *clause 43* provides a new method of calculation of the distributable portion of a company's total dividend income for the purposes of excess retention tax. The other 2 amendments provide that, for the purpose of calculating a company's total dividend income, the amount of any dividend is to include any imputation credit or dividend withholding payment credit attached to the dividend, but will not include any foreign withholding tax paid on the dividend.

*New clause 44A* amends section 253 (1) of the principal Act to provide for remissions of excess retention tax assessed at the new rate of 33c in the \$1 (see *new clause 59A*).

The amendments to *clause 55* provide that any excess retention tax paid will be a credit arising to a company's imputation credit account, and any refund of such tax will arise as a debit to the account.

*New clause 59A* alters the rate of excess retention tax from 35c to 33c in the \$1 for the year of assessment commencing on 1 April 1991 (which relates to insufficient distributions of income derived in the 1989-90 income year) and subsequent years.

*New clauses 60A to 60C* provide that any basic grant and any independent circumstances grant made pursuant to regulations made under section 193 of the Education Act 1964 are to be—

- (a) Included in the definition of the term "salary or wages" in section 2 (*clause 60A*);
- (b) Excluded from the tax exemption for payments made in terms of a scholarship or bursary under section 61 (37) (*clause 60B*);
- (c) Included in assessable income under section 65 (2) (*clause 60C*).

These grants will therefore be taxable at source.

*New clause 65A* amends section 374I of the principal Act to enable a person receiving instalments of credits of tax for family support from Social Welfare to elect not to receive the instalments until such time (if any) that the election is cancelled by the person.

*New clause 65B* repeals paragraph (c) of the definition of the term "residual income tax" in section 375 of the principal Act, which relates to tax credits for family support and guaranteed minimum family income.

*Clause 65C*: At present section 382 (2) of the principal Act provides that where a taxpayer derives or expects to derive provisional income in excess of \$1,000,000 in any income year, the taxpayer shall, on or before the date of payment of the final instalment of provisional tax for that year, provide the Commissioner with an estimate of the amount of residual income tax to which the taxpayer will be liable in that year. This clause provides that where no such estimate is provided, the taxpayer shall be deemed to have provided an estimate equal to the amount of provisional tax paid on or before the date on which the final instalment of provisional tax becomes payable.

*New clause 65D: Subclauses (1) and (2)* amend the definition of the term "residual income tax" in section 413A of the principal Act, which relates to interest on tax overpaid, by taking into account tax credits for family support and guaranteed minimum family income.

*Subclause (3)* rewrites item a in the formula for ascertaining the calculation of interest payable on tax overpaid in section 413A (5) to avoid a misinterpretation.

*New clause 65E* sets out new transitional arrangements for the payment of provisional tax.

*Subclauses (1) to (3) and (5)* allow companies to pay provisional tax for the 1988-89 and 1989-90 income years, on a formula allowing for the reduction in the company tax rate from 48 percent to 28 percent.

*Subclause (4)* allows individuals whose provisional income exceeds \$100,000 to pay provisional tax for the 1989-90 year on the basis of the previous income year without the 10 percent uplift.

*Subclause (6)* allows individuals whose provisional tax for the 1989-90 income year is based on the income for the 1987-88 income year to uplift that income by 10 percent instead of 20 percent.

*First Schedule*: This is a drafting amendment.