

Supplementary Order Paper

HOUSE OF REPRESENTATIVES

Wednesday, the 15th Day of September 1971

LAND AND INCOME TAX AMENDMENT BILL

Proposed Amendments

Hon. Mr MULDOON, in Committee, to move the following amendments:

Clause 12: To insert, after subclause (3), the following subclause:

(3A) Section 85 of the principal Act (as so substituted) is hereby further amended by adding to subsection (2) the following proviso:

“Provided that where any such policy has been assigned or mortgaged for the purpose of providing security for, or for any other purpose relating to, the borrowing of money for investment in or use by any association of any of the kinds referred to in subsection (1) of section 153BB of this Act, the foregoing provisions of this subsection shall not apply to premiums paid in respect of that policy in any income year during the whole or any part of which that policy remained so assigned or mortgaged.”

New clause 14A: To insert, after clause 14, the following clause:

14A. Certain deductions not permitted—(1) Section 112 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (f), the following paragraph:

“(ff) Interest payable under—

“(i) Subsection (5) of section 15 or section 52 of the Estate and Gift Duties Act 1955 or the corresponding provisions of any former Act:

“(ii) Section 52 or section 84 of the Estate and Gift Duties Act 1968 or the corresponding provisions of any former Act:

“(iii) Any enactment of any country or territory outside New Zealand imposing interest on any unpaid duty, being duty which, in the opinion of the Commissioner, is substantially of the same nature as any duty imposed by the Estate and Gift Duties Act 1968 or any corresponding former Act.”

(2) Section 112 of the principal Act is hereby further amended by inserting in paragraph (g) of subsection (1), after the word "Interest", the words "(not being interest of any of the kinds referred to in paragraph (ff) of this subsection)".

(3) This section shall apply with respect to the tax for any year of assessment, whether before or after the commencement of this Act:

Provided that any assessment made on any taxpayer on or before the 15th day of September 1971 in respect of income derived by him in any income year that commenced on or before the 1st day of April 1970 shall, so far as it allows a deduction in respect of any interest of any of the kinds referred to in paragraph (ff) of subsection (1) of section 112 of the principal Act, be deemed to have been validly and lawfully made.

Clause 19: To omit from subclause (1) the proposed new subsection (3) of section 137 of the principal Act, and substitute the following subsection:

"(3) Notwithstanding anything in any other provision of this section, if any taxpayer, being a company having the liability of its members limited by its memorandum of association to the amount, if any, unpaid on the shares respectively held by them, claims to carry forward to any income year any loss incurred by it in any former income year, the claim shall not be allowed unless the Commissioner is satisfied that—

"(a) At the end of each of those income years not less than 40 percent in nominal value of the allotted shares in the company was held by or on behalf of the same persons; and

"(b) Where the company has paid-up capital at the end of each of those income years, not less than 40 percent of the paid-up capital at the end of each of those income years was held by or on behalf of the same persons."

Clause 20: To insert, after subclause (1), the following subclauses:

(1A) Section 141 of the principal Act (as so substituted) is hereby further amended by repealing subsection (6) (as amended by section 19 (4) of the Land and Income Tax Amendment Act (No. 2) 1969), and substituting the following subsections:

"(6) The provisions of subsection (6A) of this section shall apply in any case where, in relation to a group of companies (such group being referred to in this subsection and in the said subsection (6A) as a specified group), whether or not the specified group is part of another group of companies, and to any income year,—

"(a) The same persons held at the end of that income year the whole of the paid-up capital in the same proportions in every company included in the specified group; or

“(b) In any case where one or more of the companies included in the specified group did not have paid-up capital at the end of that income year, the same persons held at the end of that income year the whole of the allotted shares in the same proportions in every company included in the specified group and also held at the end of that income year all the paid-up capital in those same proportions in such of the companies included in the specified group as had paid-up capital at the end of that income year.

“(6A) Where the provisions of subsection (6) of this section apply to any specified group and to any income year,—

“(a) Any loss carried forward pursuant to section 137 of this Act by any company included in the specified group, so far as that loss has not been deducted from or set off against the assessable income derived by that company for that income year pursuant to that section; and

“(b) Any loss (which would, apart from the provisions of this section, be carried forward pursuant to the provisions of section 137 of this Act) incurred by any company included in the specified group in that income year,—

shall be deducted from the assessable income derived in that income year by each of the other companies included in the specified group, so far as the balance of that assessable income (after the deduction by each of those other companies of any loss which it is entitled to deduct under section 137 of this Act) extends, in the proportion that that balance bears to the balance of the assessable income of all those companies (after the deduction as aforesaid), and the amount of the loss of any company so deducted from the assessable income derived by any other company shall not be carried forward in accordance with section 137 of this Act.”

(1B) Section 141 of the principal Act (as so substituted) is hereby further amended by repealing subsection (7), and substituting the following subsection:

“(7) For the purposes of subsections (6) and (6A) of this section—

“(a) Where the capital of a company included in a group of companies is not divided into shares—

“(i) The interest of a person in the capital of the company shall be deemed to be shares in the company allotted to that person; and

“(ii) The amount of that interest shall be deemed to be the nominal value of those shares; and

“(iii) The amount paid up in respect of that interest shall be deemed to be paid-up capital held by that person in the company:

“(b) Where in relation to an income year—

“(i) A company held at the end of that income year the whole of the allotted shares in another company; and

“(ii) Where that other company had paid-up capital at the end of that income year, that first-mentioned company held the whole of that paid-up capital; and

“(iii) Those companies are not companies included in a group of companies— those companies shall be deemed to be companies included in a group of companies:

“(c) The Commissioner shall be entitled, in his discretion, to disregard a small amount of paid-up capital or of a nominal value of shares held by a person in any company included in a group of companies.”

(1c) Section 19 of the Land and Income Tax Amendment Act (No. 2) 1969 is hereby consequentially amended by repealing subsection (4).

To omit from subclause (2) the words “This section”, and substitute the words “Subsection (1) of this section”.

New clause 22A: To insert, after clause 22, the following clause:

22A. Associations engaged in the exploitation of real property—(1) The principal Act is hereby further amended by inserting, after section 153B (as inserted by section 20 (1) of the Land and Income Tax Amendment Act 1960), the following section:

“153BB. (1) Subject to the provisions of this section, where the Commissioner is satisfied that any unincorporated association of persons has been formed, whether as a partnership or otherwise, solely or principally for the purpose of, or is engaged, whether as a partnership or otherwise, solely or principally in, the acquisition of any real property with a view to the exploitation of that property either, in whole or in part, as an income-producing investment or by way of the sale or other disposal of the whole or part of that property (whether or not after the use thereof by that association as an income-producing investment) and that the members of that association are at any time during any income year not less than 11 in number, the following provisions shall apply in relation to that association (such an association being referred to in this section as a syndicate) and to that income year:

“(a) That syndicate shall be deemed to be a company and the term ‘company’ where used in this Act shall be deemed to be extended accordingly; and

“(b) The interests of the members of that syndicate shall be deemed to be shares in the company; and

“(c) Those members shall be deemed to be shareholders in the company; and

“(d) There shall be deemed to be paid up in respect of the shares of which any such member is deemed to be the holder an amount equal to—

“(i) The nominal amount of the interest of that member in that syndicate; or

“(ii) In any case where that interest is not paid to the trustee or person or persons managing that syndicate in full, or there is no nominal amount, the amount received by the trustee or person or persons managing that syndicate in respect of that interest (not being in respect of the resale of that interest).

“(2) For the purposes of this section—

“(a) Every reference in this section to real property shall be deemed to include a reference to an estate or interest in real property or in land:

“(b) Every reference in this section to acquiring real property shall be deemed to include a reference to entering into a binding contract to acquire real property:

“(c) A syndicate shall be deemed to have been formed when all the members of the syndicate have entered into a binding contract to form the syndicate, whether or not any real property has been acquired by or on behalf of the syndicate at that time.

“(3) Where, in relation to an income year, the members of an association include a company, that company shall, for the purpose of determining under subsection (1) of this section whether the members of the association are not less than 11 in number (but for no other purposes of that subsection), be deemed to be members equal in number to—

“(a) The shareholders in that company at the end of that income year; or

“(b) Where at the end of that income year that company is being or has been wound up, the shareholders in that company at the commencement of the winding up.

“(4) Where, in relation to an income year, the members of an association include any member who is not beneficially entitled to the whole of the interest held by him in the association, then for the purposes of determining under subsection (1) of this section whether the members of the association are not less than 11 in number (but for no other purposes of that subsection) and for the purposes of subsection (3) of this section—

“(a) The persons on whose behalf the interest or any part thereof is held by that member shall be deemed to be members of the association; and

“(b) Where that member is not beneficially entitled to any of the interest held by him, that member shall be deemed not to be a member of the association:

“Provided that this subsection shall not apply to the extent that any interest in any association is held on behalf of the persons comprising any association of persons referred to in any of the paragraphs (a), (b), and (c) of subsection (6) of this section, or any other association or any

association of a specified kind that is declared by the Governor-General, by Order in Council, not to be an association to which this section applies pursuant to paragraph (d) of that subsection.

“(5) This section shall not apply, in relation to any income year and to any syndicate, where that syndicate was formed before the 3rd day of September 1971 and did not, in the period commencing with the 3rd day of September 1971 and ending with the end of that income year, acquire any real property, other than real property—

“(a) Which that syndicate was formed to acquire; and

“(b) Which was specifically named as such in the deed or other document under which that syndicate was formed; and

“(c) Which was acquired by that syndicate before the 1st day of April 1972.

“(6) This section shall not apply to—

“(a) Any group of Maoris associated as legal or equitable beneficial holders of any estate or interest in any Maori customary or Maori freehold land as defined in the Maori Affairs Act 1953; or

“(b) Any group or association of persons whose interest in or acquisition of real property is derived directly from a testamentary disposition or under an intestacy, whether in either case by way of a trust or otherwise; or

“(c) Any trust, fund, or society referred to in any of the paragraphs (a) to (f) of the definition of the expression ‘unit trust’ in subsection (1) of section 153B of this Act; or

“(d) Any other association or any association of any specified kind that is declared by the Governor-General, by Order in Council, not to be an association to which this section applies.”

(2) Section 4 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (i) (as inserted by section 20 (2) of the Land and Income Tax Amendment Act 1960), the following paragraph:

“(j) All income of an association to which section 153BB of this Act applies distributed to any person who is a member of that association, and all other payments to and transactions with any such person in relation to his interest in that association which, if made to or with a shareholder in relation to shares in a company, would be dividends under any provision of this Act;—”.

(3) Section 153B of the principal Act (as so inserted) is hereby amended by adding to the definition of the expression “unit trust” in subsection (1) the following paragraph:

“(h) Any association to which section 153BB of this Act applies.”

(4) Section 172c of the principal Act (as inserted by section 15 of the Land and Income Tax Amendment Act (No. 2) 1958) is hereby amended by adding the following paragraph:

“(m) Any association to which section 153BB of this Act applies.”

EXPLANATORY NOTE

Clause 12: The effect of this amendment is that the special exemption for life insurance premiums does not apply to any premiums paid in respect of any policy which has been assigned or mortgaged as security for money borrowed and invested in, or loaned to, any association of the kinds referred to in section 153BB of the principal Act (as inserted by clause 22A).

Clause 14A amends section 112 of the principal Act which specifies that certain deductions are not permitted in calculating assessable income. This amendment adds any interest on estate or gift duty payable under any New Zealand enactment or that of any country or territory outside New Zealand to the deductions specified in that section.

Clause 19: The proposed new subsection (3) of section 137 is generally to the same effect as subsection (3) in the Bill. The only change in substance makes it clear that a company which has no paid-up capital may offset losses incurred against subsequent income provided that 40 percent in the nominal value of allotted shares is held by the same persons on the last day of the income year in which the loss was incurred and on the last day of the income year to which the loss is to be carried forward.

Clause 20 amends the provisions of section 141 of the principal Act relating to the offsetting of losses by companies included in the same group of companies. At present losses may only be offset where the same persons hold the whole of the paid-up capital in the companies in the same proportions. The amendment extends the provisions to provide for the offsetting of losses in cases where some or all of the companies in the group do not have paid-up capital or do not have share capital, but are wholly owned by the same persons in the same proportions.

Clause 22A inserts a new section 153BB in the principal Act to make special provision with respect to income tax payable by unincorporated associations of not less than 11 persons formed for the sole or principal purpose of holding real property for investment or sale. The new section applies to all such associations except—

- (a) Those formed on or before 3 September 1971 and which had acquired the property for which they were formed to acquire by that date; and
- (b) Those formed on or before 3 September 1971 and which had not acquired all the property for which they were formed to acquire by that date provided such property is acquired before 1 April 1972; and
- (c) Those specifically exempted under subsection (6) of the new section, the principal ones being Maori authorities, Group Investment Funds under the Trustee Companies Act 1967, friendly societies, approved superannuation funds, and associations of persons who acquired real property under a will or an intestacy.

The main effect of the new section is that any association to which it applies will be treated for tax purposes as a company assessable at ordinary company rates and distributions to its members will be treated as dividends.
