Taxation (Business Tax Measures) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Business Tax Measures) Bill and recommends that it be passed with the amendments shown.

Introduction

The Taxation (Business Tax Measures) Bill aims to improve the business environment for small and medium-sized enterprises by easing the pressure of taxes on businesses' cash flows and reducing business tax compliance costs. To achieve this aim, a number of measures are proposed in this bill. For example, various thresholds for PAYE, fringe benefit tax, and GST will be raised, the provisional tax uplift rate reduced, and the rules for deducting legal expenditure simplified. It is acknowledged that a number of the initiatives in this bill reflect proposed changes in previous legislation, or in Inland Revenue work streams and discussion documents, including the Taxation (International Taxation, Life Insurance, and Remedial Matters)

Bill; use-of-money interest rates; uplift thresholds; and instalment regimes.

Technical amendments

We recommend a number of technical amendments to rectify minor drafting problems. The rest of this commentary addresses the major issues that we considered, which did not result in any recommended amendment.

Use-of-money interest deductibility

We strongly encourage the Minister of Revenue and the Government to continue to examine the issue of use-of-money interest to reflect changing interest rates, and to consider a tax policy programme that proposes the urgent progressing of this work.

We are concerned that the existing legislation is not clear about the circumstances in which use-of-money interest is deductible. This uncertainty may cause some taxpayers to incur penalties for mistakenly claiming a deduction for use-of-money interest where it is in fact non-deductible. In addition, we consider that the current economic climate heightens the urgency of this issue as it makes taxpayers more likely to have difficulty meeting their tax obligations (particularly provisional tax). However, we acknowledge that analysis of the circumstances in which use-of-money interest deductibility should apply may be necessary before such a change is legislated. We understand this has been suggested for inclusion in the Government's tax policy programme.

Reduction in underpayment and overpayment rates for use-of-money interest

We support the principle of rebalancing the underpayment and overpayment rates for use-of-money interests to reflect market conditions. We note that the rates are now more reflective of the 90-day bank bill rate rather than the official cash rate.

In the light of the latest reduction in the official cash rate, we discussed the possibility of further reducing the underpayment rate for use-of-money interest, for example, to potentially align it with the overpayment rate, which is currently 4.23 percent per annum.

Some of us concluded, however, that reducing the underpayment rate would pose serious risks to the Government's fiscal position. Others were of the opinion that the spread between the under- and overpayment rates could be narrowed. Excessive reduction of the spread might create a significant incentive for provisional taxpayers to reduce their provisional tax payments below the correct level, effectively borrowing funds from the Inland Revenue Department. Also, some tax revenue could be lost permanently because taxpayers might give lower priority to paying off debt owed to Inland Revenue when the underpayment rate for use-of-money interest fell below the interest rates on their other debts.

We are pleased to note that the spread is under ongoing review, as we consider it vital to mitigate businesses bearing an inappropriate cost during this time.

Instalment arrangements

In view of the difficult economic times, we considered whether it should be made easier for taxpayers to enter into instalment arrangements with the Inland Revenue Department regarding tax payments.

We sought assurance from the Inland Revenue Department that this issue is being addressed. We were advised that new initiatives are being implemented to clarify for taxpayers the possibility of instalment arrangements. The Inland Revenue Department is also investigating the benefits and administrative implications of operational changes to streamline the process of entering into instalment arrangements. We consider this work vital in the current economic climate, and encourage the Inland Revenue Department to progress it swiftly.

Tax deductibility of patent costs

A submitter commented that the tax deductibility of patent costs in New Zealand does not compare favourably with those in many other jurisdictions. For example, the amortisation period for patents is 20 years in New Zealand, but only 15 years in the United States.

Given that the purpose of the bill is to enhance the business environment for these enterprises, we consider the issue of tax deductibility of patent costs to be outside the ambit of this bill. We note that New Zealand's 20-year period is comparatively high, and we support further work being undertaken on this issue.

Further reducing provisional tax payable under the uplift basis

We considered whether provisional tax payable under the uplift basis could be further reduced to ease the burden on business without creating undesirable effects. A submitter proposed that the provisional tax payable should be reduced to 80 percent of a taxpayer's prior year residual income, rather than the proposed decrease to 100 percent (from 105 percent). However, we were advised that no single uplift level is likely to suit the needs of all taxpayers, and we acknowledge that further reducing the uplift factor from 100 percent to 80 percent might not result in better estimates for provisional tax liabilities.

Some of us consider that further assessment of uplift thresholds is desirable. However, we were advised that any further reduction could have significant implications for tax revenue over the next three years.

Appendix

Committee process

The Taxation (Business Tax Measures) Bill was referred to the committee on 10 February 2009. We invited oral submissions from particular bodies representative of those likely to be most affected by the bill. We received and considered six submissions from interested groups and individuals. We heard five submissions on 18 February 2009.

We received advice from the Inland Revenue Department, the Treasury, and an independent specialist adviser, Therese Turner (Chartered Accountant).

Committee membership

Craig Foss (Chairperson)

Chris Tremain (Deputy Chairperson)

Amy Adams

David Bennett

John Boscawen

Brendon Burns

Hon David Cunliffe

Raymond Huo

Rahui Katene

Peseta Sam Lotu-Iiga

Stuart Nash

Dr Russel Norman

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

Taxation (Business Tax Measures) Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Business Tax Measures) Act 2009**.

2 Commencement

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) In **Part 1**, the sections , other than **sections 3 and 24**, come into force on 1 April 2009.

(3) In **Part 2**,—

(a) **section 32** is treated as coming into force on 19 December 2007:

(b) **sections 29(1), 30(1), and 31(1)** come into force on 1 April 2009:

(c) **sections 29(2), 30(2), and 31(2)** come into force on 1 April 2010.

Part 1
Business tax measures

Amendments to Income Tax Act 2007

3 Income Tax Act 2007

Sections 4 to 22 amend the Income Tax Act 2007.

4 New heading and new section DB 62

(1) After section DB 61, the following is added:

"***Legal expenses***

"**DB 62 Deduction for legal expenses**

"*When this section applies*

"(1) This section applies to a person when their total legal expenses for an income year is equal to or less than $10,000.

"*Deduction*

"(2) The person is allowed a deduction for the legal expenses.

"*Definition*

"(3) For the purposes of this section, **legal expenses** means fees for **legal services** (as defined in the Lawyers and Conveyancers Act 2006) provided by a person who holds a practising certificate issued by the New Zealand Law Society or an Australian equivalent.

"*Link with subpart DA*

"(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

"Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income year, legal expenses".

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

5 Valuing closing stock under $5,000

(1) In the heading to section EB 23, "**$5,000**" is replaced by "**$10,000**".

(2) In section EB 23(1)(b), "$5,000" is replaced by "$10,000".

(3) **Subsections (1) and (2)** apply for the 2009–10 income year and later income years.

6 When use of spreading method not required

(1) Section EW 13(2), other than the heading, is replaced by the following:

"(2) A trustee who holds a financial arrangement in trust to manage compensation paid for personal injury under the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1988, any of the former Acts as defined in section 13 of the Accident Insurance Act 1998, the Workers' Compensation Act 1956, or a court order does not use any of the spreading methods for the financial arrangement if the trustee is a cash basis person."

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

7 Straight-line method

(1) In section EW 17(1)(a), "$1,500,000" is replaced by "$1,850,000".

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

8 Consistency of use of straight-line method and market valuation method

(1) In the heading to section EW 25(3), "*$1,500,000*" is replaced by "*$1,850,000*".

(2) In section EW 25(3), "$1,500,000" is replaced by "$1,850,000".

(3) **Subsections (1) and (2)** apply for the 2009–10 income year and later income years.

9 Section EW 54 replaced

(1) Section EW 54 is replaced by the following:

"**EW 54 Meaning of cash basis person**

"*Who is cash basis person*

"(1) A person is a **cash basis person** for an income year if—

"(a) 1 of the following applies in the person's case for the income year:

"(i) section EW 57(1); or

"(ii) section EW 57(2); and

"(b) section EW 57(3) applies in the person's case for the income year.

"*Persons excluded by Commissioner*

"(2) A person may be excluded under section EW 59 from being a cash basis person for a class of financial arrangements.

"Defined in this Act: cash basis person, financial arrangement, income year".

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

10 Section EW 56 repealed

(1) Section EW 56 is repealed.

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

11 Thresholds

(1) In section EW 57(1), "section EW 56(1)(a)(i)" is replaced by section "EW 54(1)(a)(i)".

(2) In section EW 57(2), "section EW 56(1)(a)(ii)" is replaced by "section EW 54(1)(a)(ii)".

(3) In section EW 57(3), "section EW 56(1)(b)" is replaced by "section EW 54(1)(b)".

(4) After section EW 57(9), the following is added:

"*Increase in specified sums*

"(10) The Governor-General may make an Order in Council increasing a sum specified in any of subsections (1) to (3)."

(5) **Subsections (1) to (3)** apply for the 2009–10 income year and later income years.

12 Financial arrangements, income, and expenditure relevant to criteria

(1) In section EW 58(1), "the natural person" is replaced by "the person".

(2) In section EW 58(3),—

(a) the subsection heading is replaced by "*Beneficiary of bare trust*":

(b) "A natural person" is replaced by "A person".

(3) In section EW 58(4),—

(a) the subsection heading is replaced by "*Beneficiary of trust other than bare trust*":

(b) "a natural person" is replaced by "a person".

(4) In section EW 58(5),—

(a) the subsection heading is replaced by "*Trustee*":

(b) "a natural person" is replaced by "a person".

(5) **Subsections (1) to (4)** apply for the 2009–10 income year and later income years.

13 Section EW 59 replaced

(1) Section EW 59 is replaced by the following:

"EW 59 Exclusion by Commissioner

The Commissioner may treat a person who would otherwise be a cash basis person for a class of financial arrangements as not being a cash basis person for the class if—

"(a) the person, or any other person, has structured and promoted the class to defer an income tax liability:

"(b) the parties to a financial arrangement are associated, and the person's calculation of income and expenditure under the financial arrangement differs from that used by the associated person.

"Defined in this Act: associated person, cash basis person, Commissioner, financial arrangement, income, income tax liability".

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

14 Trustee of deceased's estate

(1) In section EW 60(2) and (3), "section EW 56(1)(a) and (b)" is replaced by "section EW 54(1)(a) and (b)".

(2) In section EW 60(4), "to EW 56" ~~are~~ is replaced by "and EW 55".

(3) **Subsections (1) and (2)** apply for the 2009–10 income year and later income years.

15 PAYE income payment forms for amounts of tax paid to Commissioner

~~In section RD 22(3) and (4), "$100,000" is replaced by "$500,000" in all places where it appears.~~

In section RD 22,—

(a) in the heading to section RD 22(3), "*$100,000*" is replaced by "*$500,000*":

(b) in subsection (3), "$100,000" is replaced by "$500,000":

(c) in subsection (4), "$100,000" is replaced by "$500,000".

16 Unclassified benefits

In section RD 45,—

(a) in subsection (2)(a), "$200" is replaced by "$300":

(b) in subsection (2)(b), "$15,000" is replaced by "$22,500":

(c) in subsection (3)(a), "$800" is replaced by "$1,200":

(d) in subsection (3)(b), "$15,000" is replaced by "$22,500":
(e) in subsection (4)(a), "$800" is replaced by "$1,200":
(f) in subsection (4)(b), "$15,000" is replaced by "$22,500".

17 Adjustments for unclassified benefits on amalgamation

In section RD 46,—
(a) in subsection (2), "$15,000" is replaced by "$22,500" in both places in which it appears:
(b) in subsection (3), "$15,000" is replaced by "$22,500" in both places in which it appears:
(c) in subsection (4), "$15,000" is replaced by "$22,500" in both places in which it appears:
(d) in subsection (5), "$15,000" is replaced by "$22,500" in both places in which it appears.

18 Close company option

(1) Section RD 60(1), other than the heading, is replaced by the following:

"(1) This section applies in an income year when an employer that is a close company provides a fringe benefit to a shareholder-employee if, in the preceding income year,—
"(a) the gross amounts of tax for both PAYE income payments and employer's superannuation contributions for the corresponding tax year were no more than $500,000; or
"(b) the only benefit provided by the employer was a fringe benefit—
"(i) arising under section CX 6(1) (Private use of motor vehicle); and
"(ii) limited to making available to shareholder-employees 1 vehicle or 2 vehicles for their private use; or
"(c) the employer did not employ any employees."

(2) In section RD 60(2)(b), "subsection (1)(b)" is replaced by "subsection (1)(c)".

19 Small business option

In section RD 61(1)(a), "$100,000" is replaced by "$500,000".

20 Section RZ 3 replaced

Section RZ 3 is replaced by the following:

"**RZ 3 Standard method: 2008–09 and 2009–10 income years**

"*When this section applies*

"(1) This section applies to the calculation of a person's provisional tax liability for ~~the 2008–09 and 2009–10 income years, for instalments payable on or after 1 April 2009~~ any instalments payable on or after 1 April 2009 for the 2008–09 income year, and for all instalments for the 2009–10 income year, when section RC 5 (Methods for calculating provisional tax liability) applies.

"*Standard method modified: for 5% uplift*

"(2) ~~In the application of t~~The standard method under section RC 5(2) is modified so that,—

"(a) ~~the amount of provisional tax payable~~ for the 2008–09 income year, ~~is~~ instead of using 105%, the amount of provisional tax payable is calculated using—

"(i) ~~equal to~~ 100% ~~of the residual income tax for the preceding tax year~~, if the person is not a new tax rate person; or

"(ii) ~~equal to~~ 90% ~~of the residual income tax for the preceding tax year~~, if the person is a new tax rate person:

"(b) ~~the amount of provisional tax payable~~ for the 2009–10 income year, ~~is~~ instead of using 105%, the amount of provisional tax payable is calculated using ~~equal to~~ 100% ~~of the residual income tax for the preceding tax year, if the person is not a new tax rate person~~.

"*Standard method modified: for 10% uplift*

"(3) ~~In the application of t~~The standard method under section RC 5(3) is modified so that, ~~the amount of provisional tax payable~~ for the 2008–09 income year and the 2009–10 income year, ~~is~~ instead of using 110%, the amount of provisional tax payable is calculated using—

"(a) ~~equal to~~ 105% ~~of the residual income tax for the tax year before the preceding tax year~~, if the person is not a new tax rate person; or

"(b) ~~equal to~~ 95% ~~of the residual income tax for the tax year before the preceding tax year~~, if the person is a new tax rate person.

"Defined in this Act: amount, income year, new tax rate person, pay, provisional tax, residual income tax~~, tax year~~".

21 Section RZ 5 replaced

Section RZ 5 is replaced by the following:

"**RZ 5 Calculating amounts under standard method: 2008–09 and 2009–10 income years**

"*When this section applies*

"(1) This section applies to the calculation of a person's provisional tax liability for ~~the 2008–09 and 2009–10 income years, for instalments payable on or after 1 April 2009~~ any instalments payable on or after 1 April 2009 for the 2008–09 income year, and for all instalments for the 2009–10 income year, when section RC 10 (~~Methods for c~~ Calculating amount of instalment under standard and estimation methods) applies.

"*Calculation modified: 2008–09 income year*

"(2) In the calculation of the amount of an instalment ~~under section RC 10(2)~~ for the 2008–09 income year, in section RC 10(3)(a),—

"(a) ~~the item **residual income tax** in the formula,~~ subparagraph (i) is modified so that instead of a 5% uplift,—

"(i) no uplift is applied ~~for the preceding tax year, the amount of residual income tax without any uplift~~, if the person is not a new tax rate person; or

"(ii) a 10% reduction is applied ~~for the preceding tax year, the amount of residual income tax reduced by 10%~~, if the person is a new tax rate person:

"(b) ~~the item **residual income tax** in the formula,~~ subparagraph (ii) is modified so that instead of a 10% uplift,—

"(i) a 5% uplift is applied ~~for the tax year before the preceding tax year, the amount of residual in-~~

~~come tax uplifted by 5%~~, if the person is not a new tax rate person; or

"(ii) a 5% reduction is applied ~~for the tax year before the preceding tax year, the amount of residual income tax reduced by 5%~~, if the person is a new tax rate person.

"*Calculation modified: 2009–10 income year*

"(3) In the calculation of the amount of an instalment ~~under section RC 10(2)~~ for the 2009–10 income year, in section RC 10(3)(a),—

"(a) ~~the item **residual income tax** in the formula,~~ subparagraph (i) is modified so that instead of a 5% uplift, no uplift is applied ~~for the preceeding tax year, the amount of residual income tax without any uplift, if the person is not a new tax rate person~~:

"(b) ~~the item **residual income tax** in the formula,~~ subparagraph (ii) is modified so that instead of a 10% uplift,—

"(i) a 5% uplift is applied ~~for the tax year before the preceding tax year, the amount of residual income tax uplifted by 5%~~, if the person is not a new tax rate person; or

"(ii) a 5% reduction is applied ~~for the tax year before the preceding tax year, the amount of residual income tax reduced by 5%~~, if the person is a new tax rate person.

"Defined in this Act: amount, income year, new tax rate person, pay, provisional tax, residual income tax~~, tax year~~".

22 Definitions

(1) In section YA 1, after the definition of **legal defeasance**, the following is inserted:

"**legal expenses** is defined in **section DB 62** (Deduction for legal expenses) for the purposes of that section".

(2) In section YA 1, in paragraph (b)(ii) of the definition of **initial provisional tax liability**, "$35,000" is replaced by "$50,000".

Amendment to Tax Administration Act 1994

23 Provisional tax and rules on use of money interest

(1) In section 120KE(1)(b) of the Tax Administration Act 1994, "$35,000" is replaced by "$50,000".

(2) **Subsection (1)** applies for the 2009–10 income year and later income years.

Amendments to Goods and Services Tax Act 1985

24 Goods and Services Tax Act 1985

Sections 25 to 27 amend the Goods and Services Tax Act 1985.

25 Taxable periods

In section 15(2)(a), "$250,000" is replaced by "$500,000".

26 Requirements for accounting on payments basis

In section 19A(1)(b)(i), "$1,300,000" is replaced by "$2,000,000".

27 Persons making supplies in course of taxable activity to be registered

In section 51(1)(a), "$40,000" is replaced by "$60,000".

Part 2
Minor remedial matters

Amendments to Income Tax Act 2007

28 Income Tax Act 2007

Sections 29 to 31 amend the Income Tax Act 2007.

29 Employer's liability for attributed benefits

(1) In section RD 50(5), "63.93%" is replaced by "61.29%".

(2) In section RD 50(5), "61.29%" is replaced by "58.73%".

(3) **Subsection (1)** applies for the 2009–10 income year and later income years.

(4) **Subsection (2)** applies for the 2010–11 income year and later income years.

30 Calculation for certain employees when information lacking

(1) In section RD 52(3)(b), "63.93%" is replaced by "61.29%".

(2) In section RD 52(3)(b), "61.29%" is replaced by "58.73%".

(3) **Subsection (1)** applies for the 2009–10 income year and later income years.

(4) **Subsection (2)** applies for the 2010–11 income year and later income years.

31 Pooling non-attributed benefits

(1) In section RD 53(4)(a), "64%" is replaced by "61%".

(2) In section RD 53(4)(a), "61%" is replaced by "59%".

(3) **Subsection (1)** applies for the 2009–10 income year and later income years.

(4) **Subsection (2)** applies for the 2010–11 income year and later income years.

Amendment to Tax Administration Act 1994

32 Interpretation

In section 3(1) of the Tax Administration Act 1994, in paragraph (e)(ii) of the definition of **response period**, "1 year" is replaced by "2 years".

Legislative history

10 February 2009	Introduction (Bill 11–1)
10 February 2009	First reading and referral to Finance and Expenditure Committee

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