

House of Representatives

Supplementary Order Paper

Tuesday, 24 August 2010

Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill

Proposed amendments

Hon Peter Dunne, in Committee, to move the following amendments:

Clause 2

Subclause (6): To insert, after “**28D**,” (line 2 on page 9), “**28E**,”.

New subclause (9C): To insert, after *subclause (9B)* (after line 26 on page 9), the following:

(9C) **Sections 28F and 28G** are treated as coming into force on
1 March 2010.

Subclause (10): To insert, after “**33E**,” (line 31 on page 9), “**33F**,”.

Subclause (11): To replace “**and 80(4)** come into force” (line 1 on page 10) with
“**80(4), and 81AB** are treated as coming into force”.

New clauses 28E to 28G

To insert, after *clause 28D* (after line 16 on page 44), the following:

28E Imputation additional tax on leaving wholly-owned group

(1) After section OB 71(1), the following is inserted:

“Sources of liability

“(1B) Company A is liable for imputation additional tax under—

“(a) subsection (2), if the company has a debit balance in the imputation credit account when the ultimate owner of the company changes:

“(b) **subsection (4)**, if the company has an amount of excess entitlement under subsection (5) when the ultimate owner of the company changes.”

(2) The heading to section OB 71(2) is replaced by the following:
“Liability arising from debit balance”.

(3) Section OB 71(4) is replaced by the following:

“Liability arising from excess entitlement

- “(4) Company A is liable for an amount of imputation additional tax equal to the amount of the excess entitlement described in subsection (5) reduced, to no less than zero, by the amount of any payment that Company A—
- “(a) made as provisional tax or income tax; and
 - “(b) chooses to treat as having been paid by company B.”
- (4) In section OB 71(6), “subsection (2)” is replaced by “subsections (2) and **(4)**”.

28F Imputation additional tax on joining wholly-owned group

- (1) In section OB 72(1)(a), “; or” is replaced by “:”.
- (2) Section OB 72(5), other than the heading, is replaced by the following:
- “(5) The company is liable for an amount of imputation additional tax, equal to the excess entitlement determined under subsection (6), if a group of people hold common voting interests in the new group that exceed by 67% or more the common voting interests in the former group that are held by the same people immediately before the company joins the new group.

“Possible liability under section OB 72B

- “(5B) The company is liable for an amount of imputation additional tax given by **section OB 72B(8)** if the requirements of that provision are met.”.
- (3) Section OB 72(6)(a) to (c) are replaced by the following:
- “(a) zero, if the credit balance of the company’s imputation credit account at the time is equal to or more than the amount (the **total refundable amount**) that is the total of the following:
 - “(i) the amount in the tax pooling account provided by or for the benefit of the company that is more than the company’s liability to pay income tax or provisional tax at the time:
 - “(ii) the amount of the refund to which the company is entitled under sections RM 2 and RM 4 to RM 6 (which relate to refunds of excess tax), other than an amount affected by a restriction under **section OB 72B(5)**; or
 - “(b) the total refundable amount, if there is no credit balance in the company’s imputation credit account at the time; or
 - “(c) the excess of the total refundable amount over the credit balance in the company’s imputation credit account at the time, if **paragraph (b)** does not apply.”

28G New section OB 72B inserted

After section OB 72, the following is inserted:

“OB 72B Limit on using entitlement to refund after joining wholly-owned group

“When this section applies

“(1) This section applies when—

- “(a) an ICA company joins a wholly-owned group of companies (the **new group**) from another wholly-owned group of companies (the **former group**); and
- “(b) the ICA company is not liable for imputation additional tax under **section OB 72(5)**.

“Restricted refund amount for company and new group

“(2) **Subsections (3) to (8)** apply to an amount (the **restricted refund amount**) for the ICA company and the new group that is greater than zero and calculated using the formula—

$$\text{refund amount} - \text{ICA credit balance.}$$

“Definition of items in formula

“(3) In the formula—

“(a) **refund amount** is the total of the following amounts, determined immediately before the ICA company joins the new group:

“(i) the amount in the tax pooling account provided by or for the benefit of the ICA company that is more than the company’s liability to pay income tax or provisional tax at the time:

“(ii) the amount of the refund to which the ICA company is entitled under sections RM 2 and RM 4 to RM 6 (which relate to refunds of excess tax) other than an amount affected by a restriction under **subsection (5)** for the company and another group:

“(b) **ICA credit balance** is the credit balance of the ICA company’s imputation credit account immediately before the company joins the new group.

“Payment to Commissioner

“(4) If the restricted refund amount is greater than the amount referred to in **subsection (3)(a)(ii)**, the ICA company must pay to the Commissioner an amount equal to the excess and the Commissioner must hold the amount with the balance of the restricted refund amount as if the excess were a refund to which the company were entitled under section RM 2 (Refunds for overpaid tax).

“Use of restricted refund amount

- “(5) The Commissioner must hold the restricted refund amount for the ICA company and the new group subject to the restriction that the amount—
- “(a) may be refunded for an imputation credit only if the ICA company satisfies the Commissioner that the credit—
 - “(i) arises from taxation paid by the ICA company or by a company that is in the same wholly-owned group as the ICA company and was in the former group immediately before the ICA company joined the new group:
 - “(ii) is attached to a dividend received in relation to a shareholding by the ICA company or by a company that is in the same wholly-owned group as the ICA company and was in the former group immediately before the ICA company joined the new group and had the shareholding then; and
 - “(b) may be used to satisfy a tax liability of—
 - “(i) the ICA company:
 - “(ii) a company that is in the same wholly-owned group as the ICA company (the **member**), if the ICA company satisfies the Commissioner that the member was in the former group immediately before the ICA company joined the new group.

“Restriction additional to other requirements

- “(6) The restriction imposed by **subsection (5)** on the use of a restricted refund amount is in addition to the requirements under other provisions of the Act for a refund or the satisfaction of a tax liability from an amount to which the ICA company is entitled under sections RM 2 and RM 4 to RM 6.

“Reducing restricted refund amount

- “(7) The restricted refund amount for the ICA company and a group is reduced by the amount of—
- “(a) a refund permitted under **subsection (5)(a)** relating to the restricted refund amount:
 - “(b) a satisfaction of a tax liability permitted by **subsection (5)(b)** relating to the restricted refund amount:
 - “(c) a payment of imputation additional tax under **subsection (8)** relating to the restricted refund amount:
 - “(d) a payment of imputation additional tax under section OB 71(4) relating to the restricted refund amount.

“Liability for imputation additional tax

- “(8) The ICA company is liable for an amount of imputation additional tax equal to the restricted refund amount for the com-

pany and a wholly-owned group of companies (the **old group**) determined immediately after a change in the holding of voting interests in the ICA company if, immediately after the change, a group of people hold common voting interests in the ICA company that exceed, by 67% or more, the common voting interests—

“(a) in the wholly-owned group of companies to which the company belonged immediately before the company joined the old group; and

“(b) that were held by the same people immediately before the company joined the old group.

“Defined in this Act: Commissioner, common voting interest, company, dividend, ICA company, imputation additional tax, imputation credit, income tax, provisional tax, tax pooling account, wholly-owned group of companies”.

New clause 33F

To insert, after *clause 33E* (after line 34 on page 58), the following:

33F Schedule 29—Portfolio investment entities: listed investors

- (1) After schedule 29, part A, item 8, the following is added:
“9 A community trust.”
- (2) Schedule 29, part B, item 4 is repealed.
- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years.

Clause 35

To replace “**70**” (line 10 on page 59) with “**70C**”.

New clause 70C

To insert before *Part 4* (before line 30 on page 70), the following:

70C Remission for GST transitional taxable periods

In section 183AA(4)(b), “31 December 2010.” is replaced by “31 December 2010:” and the following is added:

- “(c) a GST taxable period for which the taxpayer is required to make a return that includes an adjustment under section 78B of the Goods and Services Tax Act 1985 because of the change in the rate of goods and services tax on 1 October 2010.”

New clauses 81A and 81AB

To insert, before *clause 81* (after line 7 on page 78), the following:

81A Goods and Services Tax Act 1985

Sections 81AB to 81C amend the Goods and Services Tax Act 1985.

81AB Zero-rating of services

- (1) Section 11A(1)(s) is replaced by the following:
- “(s) the services are an emissions unit and the supply is the transfer of the emissions unit, other than a transfer by the Crown under—
 - “(i) an agreement relating to a project to reduce emissions:
 - “(ii) a negotiated greenhouse agreement, to a person because the person exceeds the milestone targets under the agreement.”
- (2) Section 11A(1)(v) is repealed.

Clause 81(1)

To omit from the words before the paragraphs (line 10 on page 78) “the Goods and Services Tax Act 1985, in”.

New clauses 81B and 81C

To insert after *clause 81* (after line 16 on page 78), the following:

81B New section 78AA inserted

After section 78, the following is inserted:

“78AA Exceptions to effect of increase of tax

- “(1) For the purposes of this section,—
- “(a) **rate change day** is the day on which an increase in the rate of tax imposed by section 8 comes into force:
 - “(b) **original rate** is the rate of tax imposed by section 8 immediately before the rate change day.
- “(2) Despite section 8(1), **subsection (3)** applies to an insurer who is deemed under section 5(13B) to receive a recovered amount as consideration for a supply—
- “(a) to the extent that the insurer, before the rate change day, accepts the claim to which the recovery relates and—
 - “(i) pays the claim:
 - “(ii) agrees the recovered amount unconditionally; and
 - “(b) if the amount recovered is received by the insurer on or after the rate change day; and
 - “(c) if the insurer elects that **subsection (3)** apply to the recovery by treating the recovery in that way in a return provided to the Commissioner.
- “(3) The deemed supply by the insurer is charged with tax at the original rate.
- “(4) Despite section 8(1), **subsection (5)** applies to a supply of goods that are personal property by a registered person under an agreement if—
- “(a) section 9(3)(a) applies to the supply; and

- “(b) the recipient of the supply makes periodic payments to the registered person during the term of the agreement; and
 - “(c) part of the amount payable to the registered person under the agreement is consideration for a supply that is the provision of credit under a credit contract; and
 - “(d) if the agreement were to end early, the amount of tax imposed by section 8 on the supply of the goods would be calculated on the basis that a periodic payment included an amount of payment for the supply referred to in **paragraph (c)** that decreased for each successive periodic payment; and
 - “(e) the term of the agreement—
 - “(i) begins before the rate change day; and
 - “(ii) ends on or after the rate change day; and
 - “(iii) is less than or equal to 5 years; and
 - “(f) the registered person elects that **subsection (5)** apply to supplies made under the agreement by treating each supply in that way in a return provided to the Commissioner; and
 - “(g) within 30 days after the rate change day, the registered person gives notice to the recipient of the supplies, if the recipient is a registered person, that payments by the recipient made after the rate change day include goods and services tax charged at the original rate.
- “(5) Each successive supply under the agreement that is deemed to take place after the rate change day is charged with tax at the original rate.
- “(6) Despite section 5(5), **subsection (7)** applies to a supply of goods under an agreement that is a layby sale to which the Layby Sales Act 1971 applies if—
- “(a) the agreement is made before the day on which the increase in the rate of tax is announced; and
 - “(b) after the rate change day, the goods are delivered to the buyer and the property in the goods is transferred to the buyer; and
 - “(c) the registered person elects that **subsection (7)** apply to supplies made under the agreement by treating each supply in that way in a return provided to the Commissioner.
- “(7) Goods and services tax is charged on the supply of the goods under the agreement (the **agreed supply**) as if there were 2 supplies consisting of—
- “(a) a supply on the day before the rate change day, for which the consideration is the payment for the agreed

- supply that the registered person receives before the rate change day; and
- “(b) a supply on the day that the agreed supply would have occurred in the absence of this subsection, for which the consideration is the payment for the agreed supply that the registered person receives on or after the rate change day.
- “(8) **Subsection (9)** applies to a supply of goods or services if—
- “(a) the invoice for the supply is dated before the rate change day; and
- “(b) the invoice is issued—
- “(i) on or before the second Monday after the rate change day; and
- “(ii) consistently with the registered person’s practice of issuing invoices for such supplies; and
- “(c) payment for the supply is due on or before the day that is 60 days after the date of the invoice; and
- “(d) the registered person elects that **subsection (9)** apply to the supply by treating the supply in that way in a return provided to the Commissioner.
- “(9) The supply is treated as being made on the day of the date of the invoice, despite section 9(3)(a) if that provision would otherwise apply.
- “(10) Despite section 9(1), (2)(a), and (3), **subsection (11)** applies to a supply by a registered person under an agreement if—
- “(a) section 9(3)(a) would apply to the supply in the absence of this subsection; and
- “(b) the term of the agreement begins before the rate change day and ends after the rate change day; and
- “(c) under the agreement, the consideration for a supply is set or reviewed for periods of 396 days or less during the term of the agreement; and
- “(d) the registered person elects that **subsection (11)** apply to supplies made under the agreement during a period in which the day before the rate change day occurs (the **rate change period**) by including on that basis each supply in a return provided to the Commissioner; and
- “(e) within 30 days after the rate change day, the registered person gives notice to the recipient of the supplies, if the recipient is a registered person, that payments made after the rate change day by the recipient for supplies made in the rate change period include goods and services tax charged at the original rate.
- “(11) If this subsection applies to a supply for a rate change period and, in the absence of this subsection, the supply would be made on or after the rate change day,—

- “(a) the supply is treated as being made on the day before the rate change day; and
 - “(b) the registered person is treated as issuing a tax invoice as required by section 24 for the supply on the day before the rate change day.
- “(12) Despite sections 25(3) and (3C) and 143A(1)(f), **subsection (13)** applies to a supply by a registered person who has provided a tax invoice in relation to the supply if—
- “(a) the rate change day occurs after the registered person provides the tax invoice for the supply; and
 - “(b) in the absence of this subsection and **subsection (13)**, the registered person would be required to provide after the rate change day a credit note or debit note for the supply; and
 - “(c) the registered person elects that **subsection (13)** apply to the supply by including on that basis the supply in a return provided to the Commissioner.
- “(13) If, in the absence of this subsection, the registered person would be required to provide a—
- “(a) credit note for a supply,—
 - “(i) the registered person may provide a replacement tax invoice for the supply; and
 - “(ii) goods and services tax is charged on the supply under that invoice at the original rate;
 - “(b) debit note for a supply, the registered person may provide a replacement tax invoice for the supply.
- “(14) Despite section 5(13)(a), a supply of services under section 5(13) by a registered person who receives a payment under a contract of insurance on or after the rate change day is treated as being made on the day before the rate change day if—
- “(a) the payment is made before the rate change day; and
 - “(b) the registered person receives the payment on or before the second Monday after the rate change day.”

81C Adjustments to tax payable for persons furnishing returns on payments basis following change in rate of tax

- (1) In the heading to section 78B, “**on payments basis**” is omitted.
- (2) Before section 78B(2A)(aa)(i), the following is inserted:
 - “(ia) any supply that is made by the registered person as a private training establishment granted registration by the Qualifications Authority under section 236 of the Education Act 1989 and for which consideration is held in trust on the day before that date, if the registered person includes such

supplies in the form referred to in subsection (2);
or”.

- (3) Section 78B(2A)(b) is replaced by the following:
- “(b) in relation to a person who, as at the date on which the new rate of tax comes into force, is required to account for tax payable on an invoice basis,—
- “(i) any supply made by the registered person as a private training establishment granted registration by the Qualifications Authority under section 236 of the Education Act 1989 and for which consideration is held in trust on the day before that date, if the registered person includes such supplies in the form referred to in subsection (2);
or
- “(ii) any supply made to the registered person that is a supply of secondhand goods to which section 3A(1)(c) applies,—”.
- (4) Section 78B(2A)(e) is replaced by the following:
- “(e) the supply is not charged with tax at—
- “(i) the rate of zero percent; or
- “(ii) a rate that is unaffected by the change to section 8; and”.
- (5) After section 78B(2A), the following is inserted:
- “(2B) For the purposes of this section, a taxable supply made by a registered person on or after the date on which the new rate of tax comes into force is treated as being made before that date if—
- “(a) the registered person makes the supply as a private training establishment granted registration by the Qualifications Authority under section 236 of the Education Act 1989; and
- “(b) the consideration for the supply is held in trust on the day before that date; and
- “(c) the registered person includes such supplies in the form referred to in subsection (2).”

Explanatory note

This Supplementary Order Paper amends the *Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill*.

New clauses 28E to 28G amend the treatment under the *Income Tax Act 2007* of imputation credit account companies that leave wholly-owned groups of companies.

New clause 28E amends *section OB 71* to correct unintended differences between that section and the corresponding provisions of the *Income Tax Act 2004*. The changes make it clear that there are 2 possible ways in which a company leaving a wholly-owned group of companies may be liable for imputation additional tax. The first liability is imposed when the company has a debit in its imputation credit account. The second liability is imposed when the credit balance in the company's imputation credit account is exceeded by the total of the company's uncommitted credit in a tax pooling account and the company's rights to refunds from the Commissioner. The amendments are treated as coming into effect on *1 April 2008*.

New clause 28F amends *section OB 72* to change the way in which a company leaving a wholly-owned group of companies and joining another wholly-owned group of companies is liable for imputation additional tax. Under the changes, the second liability for imputation additional tax, which arises in the same way as under *section OB 71*, is payable immediately only if there is an immediate change of 67% or more in the company's ownership when the company joins the new group. The amendments are treated as coming into effect on *1 March 2010*.

New clause 28G inserts *new section OB 72B*. The new section provides for the imposition of the second liability for imputation additional tax on a company leaving a wholly-owned group of companies and joining another wholly-owned group of companies if the change in ownership of the company is less than 67%. For such a company, the second liability is not imposed immediately. A corresponding amount is held by the Commissioner and may give rise to a refund or a credit against tax, reducing the liability, as long as the change in ownership of the company does not later reach 67%. The amendments are treated as coming into effect on *1 March 2010*.

New clause 33F amends *schedule 29* to correct the placement in that schedule of the entry for a community trust. The entry should be in part A, rather than part B. The amendment comes into effect on *1 April 2010*.

Clause 35 is amended to correct the description of the clauses amending the *Tax Administration Act 1994*.

New clause 70C amends *section 183AA*, which remits late filing penalties, late payment penalties, and interest relating to GST returns for certain periods to the extent that the penalties or interest would arise because of a registered person's errors relating to the change in the rate of goods and services tax. The amendment extends the remission to a GST return that includes an adjustment under *section 78B of the Goods and Services Tax Act 1985*.

New clause 81A inserts a description of the clauses amending the *Goods and Services Tax Act 1985*.

New clause 81AB amends *section 11A(1)* to provide that all supplies of emissions units are charged at a rate of 0% except for a transfer by the Crown under a project to reduce emissions or under a negotiated greenhouse agreement. The change replaces *paragraph (s)* and repeals *paragraph (v)*. Both paragraphs cur-

rently refer to types of supply that are charged at a rate of 0%. The change is treated as coming into force on *1 July 2010*.

Clause 81 is consequentially amended to remove an unnecessary reference to the statute.

New clauses 81B and 81C change the transitional provisions applying to the change in the rate of goods and services tax on *1 October 2010*.

New clause 81B inserts *new section 78AA*, which provides for exceptions to the usual effects on a supply of goods and services of a change from the *original rate* of goods and services tax occurring on the *rate change day*. *Subsections (2) and (3)* relate to an insurer who, before the rate change day, accepts a claim and pays it or agrees unconditionally with a third party on the recovery of an amount relating to the claim. If, after the rate change day, the insurer recovers from a third party an amount relating to the claim, the insurer may choose that the deemed supply be charged with tax at the original rate. *Subsections (4) and (5)* relate to a supply of personal property under an agreement that is entered before the rate change day and that requires periodic payments for the supply, with each payment being treated as including an amount for the provision of credit and that amount decreasing for each successive payment. Under the Act, each payment is treated as being for a separate supply but the registered person may choose to rely on *subsection (5)*, which provides that the supplies corresponding to payments made after the rate change day are charged with tax at the original rate. *Subsections (6) and (7)* relate to a layby sales agreement entered before the day on which the change from the original rate is announced, which was 20 May 2010 for the increase announced in the 2010 Budget. Usually, such an agreement results in a single supply occurring when payment under the agreement is complete. The registered person may choose to rely on *subsection (7)*, which provides that payments made before the rate change day are for a supply occurring on the day before the rate change day and thus subject to the original rate. Later payments are for a second supply occurring when payment is complete and thus subject to the new rate. *Subsections (8) and (9)* relate to supplies for which the invoice is dated before the rate change day but issued after that day and on or before the second Monday after the rate change day. The registered person may choose to rely on *subsection (9)*, which treats the supply as being made on the date of the invoice, even if the supply would otherwise be treated as being made when payment under the invoice was received. *Subsections (10) and (11)* relate to supplies that are made under an agreement that is entered before the rate change day and requires periodic payments for the supply, reviewed at intervals of not more than 396 days, with each payment being treated under the Act as payment for a separate supply that occurs when the payment is due or received. The registered person may choose to include in the return for a period that includes the day before the rate change day the supplies made before the rate change day for which payments are received after the rate change day. Under *subsection (11)*, the payments are treated as being for supplies occurring on the day before the rate change day and thus subject to the original rate. *Subsections (12) and (13)* relate to registered persons who would be required after the rate change day to issue a debit note or credit note relating to an invoice pro-

vided before the rate change day. Under *subsection (13)*, a registered person may choose to provide a replacement tax invoice for the supply. The original rate will apply to a supply for which a credit note would otherwise have been required. *Subsection (14)* applies if an insurer makes an insurance payment before the rate change day and a registered person receives the payment after the rate change day and on or before the second Monday after the rate change day. A supply of services under *section 5(13) of the Goods and Services Tax Act 1985* by the registered person is treated as being made on the day before the rate change day. *New clause 81C* amends *section 78B*. That section requires a registered person to make an adjustment relating to certain supplies that are made before the rate change day, and so are subject to the original rate, but for which payment is made on or after the rate change day. Under the Act, supplies made by private training establishments registered by the Qualifications Authority are made when payment is received. The amendments provide that a private training establishment may choose to have such supplies for which payment is due on or after the rate change day, which would otherwise be subject to the new rate, included in the adjustment if consideration for the supplies is held in trust on the day before the rate change day.
