

House of Representatives

Supplementary Order Paper

Thursday, 31 August 2023

Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill

Proposed amendments

Hon Barbara Edmonds, in Committee, to move the following amendments:

Clause 2

In *clause 2(5)*, replace “**9**” (page 6, line 11) with “**9(1) and (2)**”.

Replace *clause 2(12)* (page 7, line 6) with:

(12) **Sections 18, 18B, 22, 26, 27, 29, 30, and 59(12B)** come into force on 1 April 2022.

(12B) **Sections 9B, 9C, 20B, 21B, and 59(10B), (13B), (13C), (13D), (15B), (15C), and (15D)** come into force on 1 July 2022.

In *clause 2(13)*, replace “**11**” (page 7, line 7) with “**9(1B) and (1C), 11**”.

Clause 9

After *clause 9(1)* (page 9, after line 7), insert:

(1B) Replace section CB 16A(1C), other than the heading, with:

(1C) **Exempt main home period limit** means—

(a) 365 days:

(b) a reasonable period in the case of a period during which person A—

(i) constructs a dwelling used as a main home for 1 or more main home persons:

(ii) remediates a dwelling affected by a North Island flooding event and that dwelling is used as a main home for 1 or more main home persons.

- (1C) In section CB 16A, list of defined terms, insert “North Island flooding events”.

New clauses 9B and 9C

After *clause 9* (page 9, after line 10), insert:

9B Section CD 2 amended (Distribution excluded from being dividend)

In section CD 2, after “section CD 34B”, insert “or **CZ 41** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years)”.

9C Section CD 34B amended (Distributions to members of co-operative companies)

After section CD 34B(1), insert:

Exclusion

- (1B) Despite subsection (1), this section does not apply to a distribution to which **section CZ 41** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) applies.

New clause 18B

After *clause 18* (page 13, after line 13), insert:

18B New section CZ 26B inserted (Land and buildings affected by North Island adverse weather event—sections CB 6A, CB 9 to CB 11, and CZ 39 overridden for local authority and Crown purchases)

- (1) After section CZ 26, insert:

CZ 26B Land and buildings affected by North Island adverse weather event—sections CB 6A, CB 9 to CB 11, and CZ 39 overridden for local authority and Crown purchases

Sections CB 6A, CB 9 to CB 11, and CZ 39 do not apply to a person and land or buildings, or both, purchased by the Crown or a local authority from the person if the land or buildings, or both, were damaged by a North Island adverse weather event.

Defined in this Act: land, local authority, North Island adverse weather event

- (2) **Subsection (1)** applies for the 2022–23 and later income years.

New clause 20B

After *clause 20* (page 13, after line 34), insert:

20B New section CZ 41 inserted (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years)

After section CZ 40, insert:

CZ 41 Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years

What this section applies to

- (1) This section applies to a distribution by Fonterra to a supplying shareholder if the distribution is made for Fonterra’s 2022–23, 2023–24, or 2024–25 income year.

Treatment of distribution

- (2) The distribution is not a dividend to the extent to which the distribution is for the supplying shareholder’s—
- (a) transaction shares:
 - (b) projected transactions shareholding:
 - (c) qualifying non-transaction shares:
 - (d) projected qualifying non-transaction shareholding.

Companies Act 1993

- (3) The 20-working-day rule for fixing a date in section 125(2) of the Companies Act 1993 does not apply to shareholders’ entitlements to receive distributions from Fonterra if, for the purposes of subsection (1) of that section, the board of Fonterra has fixed a date in relation to shareholders’ entitlements to receive distributions before the entitlements arise, and that date is within the year or period to which the distributions relate.

Some definitions

- (4) In this section,—

Fonterra means Fonterra Co-operative Group Limited

projected qualifying non-transaction shareholding means the number of qualifying non-transaction shares in Fonterra that the supplying shareholder would have held if the trading transactions actually had occurred that the supplying shareholder had projected, using reasonable assumptions, would occur in the period to which the distribution relates

projected transactions shareholding means the number of shares in Fonterra that the supplying shareholder would have had to hold if the trading transactions actually had occurred that the supplying shareholder had projected, using reasonable assumptions, would occur in the period to which the distribution relates. The number of shares must determine the value of the trading transactions

qualifying non-transaction shares means the number of shares in Fonterra that the supplying shareholder holds—

- (a) that are not transaction shares and are not their projected transactions shareholding; but
- (b) not including any shares in Fonterra that the supplying shareholder holds described in **paragraph (a)** in excess of the nearest whole number to the number calculated by multiplying the supplying shareholder’s transaction shares on the date of entitlement for the distribution under section 125 of the Companies Act 1993 by 2.0303

supplying shareholder means a supplying shareholder, within the meaning of that term in section 34 of the Co-operative Companies Act 1996, in relation to Fonterra

trading transactions means transactions between the supplying shareholder and Fonterra that are—

- (a) the disposal and acquisition of trading stock of the vendor that is not intangible property; and
- (b) not subject to section CB 2 (Amounts received on disposal of business assets that include trading stock)

transaction shares means the number of shares in Fonterra that the supplying shareholder holds for trading transactions that occurred in the period to which the distribution relates. The number of shares must determine the value of the trading transactions.

Defined in this Act: dividend, Fonterra, income year, projected qualifying non-transaction shareholding, projected transactions shareholding, qualifying non-transaction shares, share, shareholder, supplying shareholder, trading stock, trading transactions, transaction shares

New clause 21B

After *clause 21* (page 14, after line 4), insert:

21B Section DV 11 amended (Distribution to member of co-operative company, excluded from being dividend)

- (1) In section DV 11(1), replace “(Distributions to members of co-operative companies)” with “or **CZ 41** (which relate to distributions to members of co-operative companies)”.
- (2) In section DV 11(2), after “section CD 34B”, insert “or **CZ 41**, as applicable,”.

Clause 59

After *clause 59(10)* (page 38, after line 37), insert:

- (10B) Insert, in appropriate alphabetical order:

Fonterra is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

After *clause 59(12)* (page 39, after line 14), insert:

(12B) Insert, in appropriate alphabetical order:

North Island adverse weather event means any of the following weather events:

- (a) heavy rainfall commencing on 26 January 2023 and ending on 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions:
- (b) Cyclone Gabrielle, which crossed the North Island of New Zealand during the period commencing on 12 February 2023 and ending on 16 February 2023

After *clause 59(13)* (page 39, after line 29), insert:

(13B) Insert, in appropriate alphabetical order:

projected qualifying non-transaction shareholding is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

(13C) Replace the definition of **projected transactions shareholding** with:

projected transactions shareholding—

- (a) is defined in section CD 34B(7) (Distributions to members of co-operative companies) for the purposes of that section:
- (b) is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

(13D) Insert, in appropriate alphabetical order:

qualifying non-transaction shares is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

After *clause 59(15)* (page 39, after line 36), insert:

(15B) Insert, in appropriate alphabetical order:

supplying shareholder is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

(15C) Replace the definition of **trading transactions** with:

trading transactions—

- (a) is defined in section CD 34B(8) (Distributions to members of co-operative companies) for the purposes of that section:
- (b) is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

(15D) Replace the definition of **transaction shares** with:

transaction shares—

- (a) is defined in section CD 34B(5) (Distributions to members of co-operative companies) for the purposes of that section:
- (b) is defined in **section CZ 41(4)** (Distributions to supplying shareholders of Fonterra: 2022–23 to 2024–25 income years) for the purposes of that section

Explanatory note

This Supplementary Order Paper (SOP) amends the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (the **Bill**).

Deductibility of co-operative company distributions

New clause 20B inserts *new section CZ 41* into the Income Tax Act 2007 (the **ITA**) to temporarily extend Fonterra’s existing ability to deduct certain distributions to its shareholders.

The existing deductibility provision, which applies to certain co-operative companies that choose to use it, provides deductibility for distributions on shares that shareholders are required to hold for trading transactions (transaction shares) or as a buffer for variable supply (limited non-transaction shares and projected transactions shareholding).

The proposed new provision retains Fonterra’s existing deductions for distributions and extends deductibility to 2 additional classes of shares that support supply but that suppliers are not required to hold. This is necessary as a result of Fonterra changing its constitution so that distributions on shares that were previously 1 of the 3 groups of shares in the existing deductibility provision will no longer qualify. This results in distributions that were previously deductible becoming non-deductible dividends.

In the absence of this proposal, given the interaction of rules under the ITA and the Companies Act 1993, Fonterra would pay non-deductible distributions that could not have imputation credits attached. This would result in the income derived by Fonterra and then distributed to its shareholders being effectively overtaxed.

New section CZ 41 applies only to distributions for the 2022–23 to 2024–25 income years to provide time for officials to work with Fonterra and other stakeholders to develop a permanent solution.

New clauses 9B, 9C, and 21B make consequential amendments to sections CD 2, CD 34B, and DV 11 of the ITA, respectively.

New clause 59(10B), (13B), (13C), (13D), (15B), (15C), and (15D) makes consequential amendments to section YA 1 of the ITA.

North Island flood-affected property

Property buy-outs

As part of its work to support the Future of Severely Affected Locations, the Government has announced its willingness to enter into a funding arrangement with councils in regions severely affected by the January 2023 Auckland flood events and Cyclone Gabrielle. Central government support is likely to include contributions towards property acquisitions (**buy-outs**).

In some cases, a buy-out may trigger the bright-line test or one of the other timing tests for land sales in the ITA. For example, if there is a buy-out of a residential rental property that has been owned for less than 10 years, one of these tests may apply. If so, any gain over the purchase price as a result of the owner accepting the buy-out offer would be taxable. Under normal circumstances, the owner could have held on to the property for more than the minimum period. However, because of the weather events, the owner has, in effect, little option other than to sell to the local authority (or potentially, in some outlier cases, the Crown).

New clause 18B inserts *new section CZ 26B* into the ITA to ensure that the bright-line test and other time-related tests in the ITA that tax disposals of land do not apply when there is a Government or local authority buy-out of a property affected by a North Island adverse weather event.

New clause 59(12B) inserts a new definition of **North Island adverse weather event** as part of providing an exemption from the bright-line test and other time-related tests in relation to those events.

Main home exclusion from the bright-line test

The main home is generally excluded from the bright-line test. Under current rules for the 10-year bright-line test, this exclusion can still apply even when the property owner has been away from their home for part of the period, provided they are away for no more than 12 months. This 12-month period can also be extended to any reasonable period of time when a person is constructing a dwelling used as a main home. This would cover cases where a property has been so irreparably damaged by a flood or cyclone that it needs to be rebuilt. However, the 12-month period cannot currently be extended when a person has been displaced from their home as a result of a flood or cyclone and they are repairing their home rather than rebuilding it.

New clause 9(1B) replaces section CB 16A(1C) of the ITA to extend the 12-month period to any reasonable period of time that the person has been displaced from their home because it needs to be remediated as a result of a North Island flooding event.

A new definition of **North Island flooding events** is already included in *clause 59(13)* of the Bill. The following 3 events from early 2023 qualify:

- Cyclone Hale;
- the heavy rainfall of late January (which was particularly associated with the Auckland floods); and
- Cyclone Gabrielle.

As this definition includes Cyclone Hale, it is wider than the definition of **North Island adverse weather event**, which is used for the proposed buy-out provisions.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2023&no=423&>

Regulatory impact statement

The Inland Revenue Department produced a regulatory impact statement on 8 August 2023 to help inform the new policy decisions taken by the Government relating to the changes to the deductibility of co-operative company distributions made by the contents of this SOP.

A copy of this regulatory impact statement can be found at—

- <https://taxpolicy.ird.govt.nz/publications>
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>