

House of Representatives

Supplementary Order Paper

Thursday, 21 May 2015

Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill

Proposed amendments

Hon Todd McClay, in Committee, to move the following amendments:

Clause 2

In *clause 2(2)(b)*, replace “**and 41(2)**” (page 15, line 8) with “**41(2), and 44A to 44D**”.

New clauses 44A, 44B, 44C, and 44D

After *clause 44* (page 33, after line 4), insert:

44A Section 135G amended (Discretionary relief for residual incremental penalty debt)

- (1) Replace section 135G(1)(b) with:
 - (b) the Commissioner is satisfied—
 - (i) that recovery of the incremental penalties would place the liable person in serious hardship; or
 - (ii) that it would be fair and reasonable to grant relief.
- (2) In section 135G(2), replace “(1)(b)” with “**(1)(b)(i)**”.

44B Section 135GA amended (Discretionary relief for residual penalty-only debt)

- (1) Replace section 135GA(1)(b) with:
 - (b) the Commissioner is satisfied—

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- (i) that recovery of those penalties would place the liable person in serious hardship (as defined in section 135G(3)); or
 - (ii) that it would be fair and reasonable to grant relief.
- (2) Replace section 135GA(2)(b) with:
 - (b) the Commissioner is satisfied that those penalties relate to, or arise from, some or all of that written-off benefit component; and
 - (c) the Commissioner is satisfied—
 - (i) that recovery of those penalties would place the liable person in serious hardship (as defined in section 135G(3)); or
 - (ii) that it would be fair and reasonable to grant relief.
- (3) In section 135GA(3), replace “(1)(b) or (2)(b)” with “**(1)(b)(i) or (2)(c)(i)**”.

44C New section 135JA inserted (Relief from incremental penalties unpaid before deduction plan made on or after 1 April 2016)

After section 135J, insert:

135JA Relief from incremental penalties unpaid before deduction plan made on or after 1 April 2016

- (1) For the purposes of this section,—
 - deduction plan** means a plan made on or after 1 April 2016 by the Commissioner in relation to a liable person—
 - (a) that is a plan for the collection, by way of automatic deduction under Part 10 from relevant payments, of—
 - (i) the amount of the initial debt; and
 - (ii) the amount of financial support (if any) that the liable person will become liable to pay during the term of the plan; and
 - (b) that is not made with the agreement of the liable person
 - initial debt**, in relation to a deduction plan, means the amount the liable person owes in respect of financial support and related initial late payment penalties at the time the deduction plan is made
 - relevant deduction notice**, in relation to a deduction plan, means a deduction notice given by the Commissioner under section 154 for the purpose of collecting amounts in accordance with the deduction plan
 - relevant payments** means payments of—

- (a) income specified in paragraph (a) of the definition of withholding income in section 2(1); or
- (b) earnings related compensation (as defined in section 82(9) of the Tax Administration Act 1994); or
- (c) a benefit of the kind referred to in section 131; or
- (d) a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998

review date means—

- (a) the day that is 26 weeks after the date on which the deduction plan is made; and
 - (b) each of the days on which there expire periods of 26 weeks that consecutively succeed the first period of 26 weeks described in **paragraph (a)**; and
 - (c) the day on which the deduction plan expires.
- (2) If a deduction plan has been made and the deduction plan has been complied with up until a particular review date in accordance with **subsection (3)**, the Commissioner must, on that review date,—
- (a) review the incremental penalties in relation to the initial debt of the liable person that were unpaid at the time the deduction plan was made; and
 - (b) write off those penalties proportionally in accordance with **subsection (4)**.
- (3) For the purposes of **subsection (2)**, a deduction plan has been complied with up until a particular review date if all of the deductions and payments required to be made under relevant deduction notices by that date have been made in accordance with those notices.
- (4) For the purposes of **subsection (2)**, the proportion of incremental penalties that must be written off must be calculated in accordance with the following formula:

$$r = [(a \times c) \div b] - d$$

where—

- r is the amount of incremental penalty that is to be written off
- a is the total amount of the initial debt that has been paid since the deduction plan was made
- b is the initial debt
- c is the total amount of incremental penalties related to the initial debt of the liable person that were unpaid at the time the deduction plan was made

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- d is the total amount of incremental penalties related to the initial debt of the liable person that have already been written off in accordance with this section since the deduction plan was made.
- (5) If an incremental penalty that is written off under this section has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the incremental penalty that has been paid.

44D Section 135L amended (Writing-off of incremental penalties if non-compliance with arrangement)

After section 135L(2), insert:

- (2A) **Subsection (2B)** applies if,—
- (a) at the time of a review date in relation to a deduction plan under **section 135JA**, there has been a failure to make any deduction and payment in accordance with a relevant deduction notice (as defined in **section 135JA**); and
- (b) the Commissioner is satisfied, in respect of each failure to make a deduction and payment in accordance with a relevant deduction notice (as defined in **section 135JA**), that the circumstances in relation to the failure would, if they were related to the payment of a debt to which a penalty relates, entitle the Commissioner to grant relief under any of the provisions of sections 135B to 135E.
- (2B) The Commissioner may disregard a failure to make a deduction and payment for the purpose of applying **section 135JA**.

Clause 50

In *clause 50(8)*, new *clause 8J*, replace “**43 to 46**” (page 38, line 17) with “**43, 44, 45, and 46**”.

Clause 55

Replace *clause 55* (page 39, lines 5 to 7) with:

55 Section 43 amended (New section 135FA inserted)

- (1) In section 43, replace new section 135FA(2) with:
- (2) The Commissioner may grant relief to the liable person in the manner prescribed by section 135A in respect of the incremental penalties of the liable person that were unpaid at the time a payment agreement was entered into if the Commissioner is satisfied—
- (a) that recovery of those incremental penalties would place the liable person in serious hardship (as defined in section 135G(3)); or

- (b) that it would be fair and reasonable to grant relief.
- (2) In section 43, new section 135FA(3), replace “(2)(b)” with “**(2)(a)**”.

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill in relation to penalties under the Child Support Act 1991 (the **1991 Act**) as amended by the Child Support Amendment Act 2013 (the **2013 Amendment Act**). The penalties concerned are penalties incurred by a liable person for failure to pay financial support under the 1991 Act as required.

The substantive changes being made are to come into force on 1 April 2016. The commencement provision in *clause 2(2)(b)* is amended for this purpose.

New clause 44A amends section 135G of the 1991 Act. Under section 135G, the Commissioner may grant relief from certain penalties. Currently, the Commissioner may grant relief on the ground that the recovery of the penalties would involve an inefficient use of the Commissioner’s resources (having regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994). *New clause 44A* replaces this ground with a new ground that enables the Commissioner to grant relief where it is fair and reasonable to do so. This is intended to broaden the circumstances in which relief may be given.

New clause 44B amends section 135GA of the 1991 Act as inserted by section 45 of the 2013 Amendment Act and also amended by *clause 57* of this Bill. Section 135GA gives power to the Commissioner to grant relief from certain penalties. The amendment in *new clause 44B* replaces the ground for relief relating to the inefficient use of the Commissioner’s resources with a “fair and reasonable” ground (*see notes above on new clause 44A*).

New clause 44C inserts *new section 135JA* into the 1991 Act. Section 135J of the 1991 Act currently requires the Commissioner to grant relief from certain penalties where the Commissioner has entered into a payment agreement with a liable person in relation to the payment of the liable person’s outstanding liabilities for financial support debt and certain penalties and future liabilities for financial support arising during the term of the agreement. *New section 135JA* essentially extends the scope of section 135J to cover cases where there is no agreement between the Commissioner and the liable person but the Commissioner uses the Commissioner’s powers under the 1991 Act to require the liable person’s liabilities to be paid by way of automatic deduction from certain payments made to the liable person. *New clause 44D* makes a consequential amendment.

An amendment is made to *clause 50(8)* in consequence of *new clauses 44A to 44D*.

Clause 55, which amends new section 135FA of the 1991 Act as inserted by section 43 of the 2013 Amendment Act, is replaced. New section 135FA gives power to the Commissioner to grant relief from certain penalties where the Commissioner has entered into a payment agreement with a liable person in relation to the payment of the

liable person's outstanding liabilities for financial support debt and certain penalties and future liabilities for financial support arising during the term of the agreement. *Clause 55*, as replaced, will do the following things:

- replace the ground for relief relating to inefficient use of the Commissioner's resources with a "fair and reasonable" ground (*see notes above on new clause 44A*):
- provide that the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994 before granting relief on the ground relating to serious hardship.

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=2015&no=77&>.

Regulatory impact statement

The Inland Revenue Department produced a regulatory impact statement on 7 May 2015 to help inform the new policy decisions taken by the Government relating to the contents of this Supplementary Order Paper.

A copy of this regulatory impact statement can be found at <http://www.taxpolicy.ird.govt.nz>