

## **REDUNDANCY PAYMENTS (TAXATION AND BENEFITS) BILL**

---

### EXPLANATORY NOTE

THIS Bill, which comes into force on the date on which it receives the Royal assent, amends the Income Tax Act 1976 and the Social Security Act 1964 to—

- (a) Make the full amount of lump sum redundancy payments made on or after the date on which the Bill comes into force taxable as assessable income of the employee; and
- (b) Remove the redundancy stand-down period for unemployment benefits where redundancy is paid on or after the date on which the Bill comes into force; and
- (c) Count net redundancy payments for the purposes of calculating the high income stand-down period, except to the extent that any such payment is made more than a year after the redundancy.

### PART I

#### INCOME TAX

This Part amends the Income Tax Act 1976 to make the full amount of lump sum redundancy payments made on or after the Bill's commencement date taxable as assessable income of the redundant employee.

Redundancy payments will from that date be treated as extra emoluments, and thus subject to a 28 percent tax deduction on the full amount at time of payment.

Those portions of redundancy payments that are currently treated as fringe benefits subject to fringe benefit tax payable by the employer will cease to be so treated.

This compares with the current treatment of lump sum redundancy payments which is broadly as follows:

- (a) A small proportion only of the lump sum payment is treated as assessable income of the redundant employee.

This amount to be treated as assessable income cannot exceed \$1,000. It will often be less, depending on the actual amount of the redundancy payment and the calculation of the "specified sum" under section 68 of the Act having regard to the employee's length of service and total remuneration received from the employer in the previous 3 years.

This taxable portion of the lump sum payment is subject to a 28 percent tax deduction at time of payment as an extra emolument.

- (b) To the extent that the amount of the lump sum payment exceeds the “specified sum” calculated under section 68 in relation to the employee, that excess is treated as a fringe benefit on which fringe benefit tax is payable by the employer under Part Xb of the Act.

*Specific provisions:*

*Clause 3* amends the definition of the term “extra emolument” in section 2 of the Act to include the whole of a redundancy payment made on or after the Bill’s commencement date.

The whole redundancy payment will thus be subject to a 28 percent tax deduction at time of payment under clause 9 of the Second Schedule to the Act.

*Clause 4* amends section 68 (2A) of the Act, which is the provision that currently limits the amount of a lump sum redundancy payment that is to be treated as assessable income, so that the section applies only to redundancy payments made before the Bill’s commencement date.

Removal of the limitation means that the whole of a redundancy payment made on or after that date will be subject to tax as monetary remuneration.

*Clause 5* amends section 336N of the Act to remove lump sum redundancy payments made on or after the Bill’s commencement date from the definition of the term “fringe benefit”, and thus from the ambit of the fringe benefit tax provisions of the Act.

This is done by limiting the specific inclusion of redundancy payments in paragraph (dd) of the definition to payments made before the Bill’s commencement date. The existing exclusion of monetary remuneration in paragraph (j) (i) (A) of the definition ensures that redundancy payments will not still be treated as fringe benefits by virtue of the catch-all paragraph (e) of the definition.

## PART II

### SOCIAL SECURITY

This Part amends the Social Security Act 1964.

*Clause 7* amends section 60t of the Act, which is the provision relating to the redundancy stand-down period of up to 26 weeks for unemployment and related benefits, so that the stand-down applies only to redundancies where a redundancy payment has been made before the date on which the Bill comes into force.

The stand-down period will not apply to persons made redundant before the Bill’s commencement date if they receive all their redundancy payment after that date.

If a redundancy payment is received in 2 or more sums, with one sum received before the Bill’s commencement date and the other after it,—

- (a) The employee will be subject to the stand-down period under section 60t; but
- (b) The length of the stand-down period will be calculated only in relation to the sum actually received before the Bill’s commencement date.

*Clause 8* repeals section 80b of the Act, which is the provision relating to the high income stand-down period of up to 10 weeks, and substitutes a new section.

Under the present section the length of the stand-down period is determined by measuring a person’s average income over the 26 weeks preceding their loss of employment against the net average wage. The new section requires

redundancy payments received up to a year after the redundancy occurs to be included in a person's "average income" for the purpose of determining the length of the stand-down period.

The new *subsection (1)* is substantially similar to the existing provision, except for minor changes that reflect the inclusion in the term "average income" of redundancy payments received within 52 weeks after termination of the relevant employment.

The new *subsection (2)* makes special provision for the case where an applicant for a benefit who is entitled to a redundancy payment has not yet received the payment or has not received it in full.

Such a person can be granted a benefit on a provisional basis as if their average income did not include the amount not yet received, but if such amounts are received within 52 weeks after redundancy, any excess benefit will be recoverable under section 86 (1A) of the Act.

The new *subsection (3)* contains a new definition of "average income" that includes, in addition to an applicant's average weekly income over the 26 weeks preceding the date on which employment ceased, one twenty-sixth of any redundancy payment (after deduction of tax) made to the applicant in respect of that employment at any time up to 52 weeks after the date the employment ceased.

Specifically excluded from this new part of the definition are redundancy payments made before the Bill's commencement date and redundancy payments that are already included as part of the preceding 26 weeks' income of the applicant.

Also contained in *subsection (3)* is a new definition of the term "redundancy payment" which is substantially in line with the existing definition of that term in section 68 of the Income Tax Act 1976.

The new *subsection (4)* specifies that the net average wage to which a person's average income is to be compared for determining the length of the stand-down period is the net average wage at the time of the person's loss of employment.

---

*Hon. Wyatt Creech*

**REDUNDANCY PAYMENTS (TAXATION AND BENEFITS)**

ANALYSIS

Title		5. Interpretation—fringe benefit tax
1. Short Title		
	<b>PART I</b>	<b>PART II</b>
	<b>INCOME TAX</b>	<b>AMENDMENTS TO SOCIAL SECURITY ACT 1964</b>
2. This Part to be read with Income Tax Act 1976		6. This Part to be read with Social Security Act 1964
3. Interpretation		7. Effect of redundancy payments, etc., on entitlement to benefits
4. Retiring allowances payable to employees		8. Effect of high income on entitlement to benefits

A BILL INTITULED

**An Act to amend the Income Tax Act 1976 and the Social Security Act 1964 in relation to redundancy payments**

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5 **1. Short Title**—This Act may be cited as the Redundancy Payments (Taxation and Benefits) Act 1992.

**PART I**

**INCOME TAX**

- 10 **2. This Part to be read with Income Tax Act 1976**—This Part of this Act shall be read together with and deemed part of the Income Tax Act 1976\* (hereafter in this Part referred to as the principal Act).

\*R.S. Vol. 12, p. 1

Amendments: 1983, No. 4; 1983, No. 139; 1984, No. 10; 1985, No. 59; 1985, No. 125; 1986, No. 3; 1986, No. 7; 1986, No. 41; 1986, No. 117; 1987, No. 66; 1987, No. 104; 1987, No. 190; 1988, No. 6; 1988, No. 14; 1988, No. 133; 1988, No. 225; 1989, No. 7; 1989, No. 13, Part II; 1989, No. 49; 1989, No. 150; 1990, No. 24; 1990, No. 63; 1990, No. 91; 1991, No. 10; 1991, No. 14; 1991, No. 47; 1991, No. 75; 1991, No. 85; 1991, No. 125; 1992, No. 1; 1992, No. 14

**3. Interpretation**—(1) Section 2 of the principal Act is hereby amended by inserting, at the beginning of paragraph (ba) of the definition of the term “extra emolument” (as inserted by section 2 of the Income Tax Amendment Act (No. 3) 1988), the words “Before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**”.

(2) The definition of the term “extra emolument” in the said section 2 is hereby further amended by inserting, after paragraph (ba), the following paragraph:

“(bb) On or after the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992** by way of a redundancy payment as defined in section 68 of this Act:”.

**4. Retiring allowances payable to employees**—Section 68 (2A) of the principal Act (as inserted by section 5 (6) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting, after the words “lump sum redundancy payment”, the words “made before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**”.

**5. Interpretation—fringe benefit tax**—The definition of the term “fringe benefit” in section 336N (1) of the principal Act is hereby amended—

(a) By inserting in paragraph (dd) (as inserted by section 11 (3) of the Income Tax Amendment Act (No. 3) 1988), after the words “redundancy payment”, the words “made before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**”:

(b) By inserting after the words “lump sum redundancy payment as defined in section 68 of this Act” (as inserted by section 11 (4) of the Income Tax Amendment Act (No. 3) 1988), where those words appear between paragraphs (e) and (f), the words “made before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**”:

(c) By inserting in paragraph (j) (ii) (AB) (as inserted by section 11 (6) of the Income Tax Amendment Act (No. 3) 1988), after the words “redundancy payment”, the words “made before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**”:

(d) By inserting in paragraph (k), after the words “as defined in section 68 of this Act” (as inserted by section 11 (4)

(b) of the Income Tax Amendment Act (No. 3) 1988), the words “made before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**”.

5

PART II

AMENDMENTS TO SOCIAL SECURITY ACT 1964

**6. This Part to be read with Social Security Act 1964—**

This Part of this Act shall be read together with and deemed part of the Social Security Act 1964\* (in this Part of this Act referred to as the principal Act).

\*R.S. Vol. 13, p. 403

Amendments: 1983, No. 138; 1984, No. 8; 1984, No. 19; 1985, No. 111; 1985, No. 159; 1986, No. 39; 1987, No. 106; 1988, No. 197; 1989, No. 13 (Part V); 1989, No. 58; 1990, No. 5; 1990, No. 74; 1991, No. 1; 1991, No. 78; 1991, No. 33; 1991, No. 124; 1991, No. 143; 1992, No. 15

**7. Effect of redundancy payments, etc., on entitlement to benefits—**Section 60I(2) of the principal Act (as inserted by section 16 of the Social Security Amendment Act 1991) is hereby amended—

- 15 (a) By inserting in paragraph (b), after the word “Received”, the words “, before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**,”:
- 20 “(b) By omitting the words “the amount of the redundancy payment”, and substituting the words “the amount of that redundancy payment (or payments, if more than one such payment is received before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992** in respect of the redundancy or permanent closure)”.

25 **8. Effect of high income on entitlement to benefits—**The principal Act is hereby amended by repealing section 80B (as inserted by section 21 of the Social Security Amendment Act (No. 2) 1991), and substituting the following section:

“80B. (1) If—

- 30 “(a) An applicant for a widow’s benefit, a domestic purposes benefit, an invalid’s benefit, a sickness benefit, an unemployment benefit, a job search allowance, a training benefit, or an independent youth benefit has lost his or her employment; and
- 35 “(b) The average income of the applicant exceeds the net average wage plus \$50; and

“(c) Section 60H, section 60J, or section 60N of this Act do not apply to the applicant—

the applicant shall not be entitled to a benefit for a period commencing on the date on which the applicant’s employment ceased, that period to be calculated as follows:

“(d) Three weeks, if that average income exceeds the net average wage by \$50 or more but less than \$100:

“(e) Four weeks, if that average income exceeds the net average wage by \$100 or more but less than \$150:

“(f) Six weeks, if that average income exceeds the net average wage by \$150 or more but less than \$200:

“(g) Eight weeks, if that average income exceeds the net average wage by \$200 or more but less than \$250:

“(h) Ten weeks, if that average income exceeds the net average wage by \$250 or more—

but in the case of a training benefit, any such period of non-entitlement shall be reduced by 2 weeks.

“(2) Where an applicant who is entitled to receive a redundancy payment has not received the whole or part of that redundancy payment,—

“(a) The applicant shall be entitled to receive a benefit on a provisional basis as if the applicant’s average income were calculated excluding the whole or part of the redundancy payment not yet received; but

“(b) If the applicant receives the whole or any part of the redundancy payment within 52 weeks after the date the employment to which the redundancy payment relates ceased, any payment of benefit which the applicant has received but to which he or she would not, but for paragraph (a) of this subsection, be entitled shall be recoverable under section 86 (1A) of this Act.

“(3) In this section—

“‘Average income’, in relation to an applicant, means one twenty-sixth of the aggregate of—

“(a) The applicant’s income, after the deduction of income tax, during the 26 weeks immediately preceding the date on which the applicant’s employment ceased; and

“(b) The amount of any redundancy payment, after deduction of tax pursuant to clause 9 of the Second Schedule to the Income Tax Act 1976, made to the applicant in respect of the termination of that employment before or during the period of 52 weeks

immediately following the date on which that employment ceased, not being—

5 “(i) A payment made before the date of commencement of the **Redundancy Payments (Taxation and Benefits) Act 1992**; or

“(ii) A payment included as income of the applicant under **paragraph (a)** of this definition:

10 “ ‘Income’ includes unemployment benefits, domestic purposes benefits, sickness benefits, invalids’ benefits, widows’ benefits, emergency benefits, job search allowances, training benefits, independent youth benefits, and accommodation benefits paid under this Part of this Act:

15 “ ‘Redundancy payment’ means a payment made in relation to termination of employment where—

20 “(a) In the case of an applicant who is an employee and who is not a seasonal worker, the employment is terminated by the employer, the termination being attributable, wholly or mainly, to the fact that the position filled by the applicant is or will become superfluous to the needs of the employer; or

25 “(b) In the case of an applicant who is a seasonal worker, the applicant’s usual seasonal employment is made unavailable by the employer, the unavailability being attributable, wholly or mainly, to the fact that the applicant’s position or usual position is, or will become, superfluous to the needs of the employer;— but does not include—

30 “(c) Any payment relating to a situation solely involving a seasonal lay-off; or

“(d) Any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract; or

35 “(e) Any payment in lieu of notice terminating the employment of the applicant; or

40 “(f) Any payment, including holiday pay, which, if it had not been made upon termination of the employment, would, in the opinion of the Director-General, have been paid so as to constitute monetary remuneration of the employee; or

“(g) Any payment made by a company pursuant to its articles of association to any of its directors; or



*Redundancy Payments (Taxation  
and Benefits)*

“(h) A retiring allowance made on the occasion of the termination of employment.

“(4) References in subsection (1) of this section to the net average wage are references to the net average wage at the time the applicant lost his or her employment.”