

# House of Representatives

## Supplementary Order Paper

Thursday, 9 June 2005

### Taxation (Base Maintenance and Miscellaneous Provisions) Bill

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#### *Proposed amendments*

Hon Dr Michael Cullen, in Committee, to move the following:

#### *Clause 2*

To replace in subclause (4) (page 6, line 11) “**Sections 65, 78BB, and 79B** are” with “**Section 80B** is”.

To omit from subclause (10) (page 7, line 1) “**48BA,**”.

To insert in subclause (12) (page 7, line 12) “**48BA,**” after “**45 to 48A,**”.

To omit from subclause (12) (page 7, line 13) “**(12),**”.

To replace in subclause (12) (page 7, line 14) “**62 and**” with “**60B, 62,**”.

#### *Clause 9*

To omit clause 9 (page 13, lines 5 to 13).

#### *Clause 12B*

To insert before subclause (1) (page 14, line 10) the following:

(1A) In section DB 26(5), “for a tax year” is replaced by “in an income year”.

#### *Clause 20*

To replace (page 21, line 15) “**section EE 27B or EE 27C**” with “**sections EE 27B to EE 27D**”.

To replace (page 21, lines 16 to 17) “**section EE 27D**” with “**section EE 27E**”.

#### *Clause 21*

To replace clause 21 (page 21, line 18 to page 27, line 25) with the following:

21 New sections EE 27B to EE 27E inserted

After section EE 27, the following is inserted:

“EE 27B Annual rate for patents: applications lodged with complete specifications before 1 April 2005

*“When this section applies*

“(1) This section applies if—

- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
- “(b) the application is lodged with the complete specification before 1 April 2005; and
- “(c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

*“Income years for which usual rate applies*

“(2) The rate given by **subsection (3)** applies for the patent for an income year that begins—

- “(a) after the date on which the patent is granted; and
- “(b) before the date that is 240 months after the patent application date.

*“Usual rate*

“(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

*“Rate for first income year of use*

“(4) For the patent and the income year that includes the date on which the patent is granted, the rate is found by adding together the following rates:

“(a) the rate calculated using the formula—

$$\frac{\text{months before grant}}{\text{depreciation months}}:$$

“(b) the rate calculated for the income year under **subsection (3)**.

*“Effect of change in ownership of patent application*

“(5) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rates calculated under **subsections (3) and (4)** for the person depend on the period between the date on which the person acquires the application and the date on which the patent is granted.

*“Definition of items in formulas in subsections (3) and (4)*

- “(6) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (7) to (9)**.

*“Months*

- “(7) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—
- “(a) in which the patent is used or is available for use; and
  - “(b) that include or begin after the date on which the patent is granted; and
  - “(c) that end before the date that is 240 months after the patent application date.

*“Depreciation months*

- “(8) **Depreciation months** is—
- “(a) if **subsection (5)** does not apply, 240;
  - “(b) if **subsection (5)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
    - “(i) include or begin after the patent application date; and
    - “(ii) end before the date on which the person acquires the application.

*“Months before grant*

- “(9) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
- “(a) if **subsection (5)** does not apply—
    - “(i) include or begin after the patent application date; and
    - “(ii) end before the date on which the patent is granted;
  - “(b) if **subsection (5)** applies—
    - “(i) include or begin after the date on which the person acquires the application; and
    - “(ii) end before the date on which the patent is granted.

“Defined in this Act: amount, income year, patent application date

**“EE 27C Annual rate for patent applications lodged with complete specifications on or after 1 April 2005**

*“When this section applies*

- “(1) This section applies if—
- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
  - “(b) the application is lodged with the complete specification on or after 1 April 2005.

*“Income years for which rate applies*

- “(2) The rate given by **subsection (3)** applies for a patent application for an income year that—
- “(a) includes or begins after the patent application date; and
  - “(b) begins before the date on which—
    - “(i) the patent is granted; or
    - “(ii) the patent application is refused or withdrawn.

*“Rate*

- “(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}$$

*“Months*

- “(4) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—
- “(a) include or begin after the patent application date; and
  - “(b) end before the date on which—
    - “(i) the patent is granted; or
    - “(ii) the patent application is refused or withdrawn.

*“Depreciation months*

- “(5) **Depreciation months** is—
- “(a) if **subsection (6)** does not apply, 240;
  - “(b) if **subsection (6)** applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
    - “(i) include or begin after the patent application date; and
    - “(ii) end before the date on which the person acquires the application.

*“Effect of change in ownership of patent application*

- “(6) If the person who owns the patent application when the patent is granted, or when the patent application is refused or withdrawn, is not the person who lodges the application for the

patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between the patent application date and the date on which the person acquires the application.

“Defined in this Act: amount, income year, patent application date

“EE 27D **Annual rate for patents: applications lodged with complete specifications on or after 1 April 2005**

“*When this section applies*

“(1) This section applies if—

- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
- “(b) the application is lodged with the complete specification on or after 1 April 2005; and
- “(c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

“*Income years for which rate applies*

“(2) The rate given by **subsection (3)** applies for a patent for an income year that—

- “(a) includes or begins after the date on which the patent is granted; and
- “(b) begins before the date that is 240 months after the patent application date.

“*Rate*

“(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months.}}$$

“*Months*

“(4) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—

- “(a) include or begin after the date on which the patent is granted; and
- “(b) end before the date that is 240 months after the patent application date.

“*Depreciation months*

“(5) **Depreciation months** is—

- “(a) if **subsection (6)** does not apply, 240;
- “(b) if **subsection (6)** applies, 240 reduced by the number of months, beginning on or a whole number of months

after the beginning of an income year of the person, that—

- “(i) include or begin after the patent application date; and
- “(ii) end before the date on which the person acquires the application.

*“Effect of change in ownership of patent application*

- “(6) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between the patent application date and the date on which the person acquires the application.

“Defined in this Act: amount, income year, patent application date

**“EE 27E Annual rate for plant variety rights**

*“When this section applies*

- “(1) This section applies if—
  - “(a) a plant variety right is given provisional protection; and
  - “(b) the plant variety right is granted to a person in an income year that corresponds to the 2005–06 or a later tax year.

*“Income years for which usual rate applies*

- “(2) The rate given by **subsection (3)** applies for the plant variety right for an income year that begins—
  - “(a) after the date on which the plant variety right is granted; and
  - “(b) before the date on which the plant variety right expires.

*“Usual rate*

- “(3) The rate is calculated using the formula—
$$\frac{\text{months}}{\text{depreciation months}}.$$

*“Rate for first income year of use*

- “(4) For the plant variety right and the income year that includes the date on which the plant variety right is granted, the rate is found by adding together the following rates:
  - “(a) the rate calculated using the formula—
$$\frac{\text{months before grant}}{\text{depreciation months}};$$
  - “(b) the rate calculated for the income year under **subsection (3)**.

*“Definition of items in formulas in subsections (3) and (4)*

- “(5) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (6) to (8)**.

*“Months*

- “(6) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—
- “(a) in which the plant variety right is used or available for use; and
  - “(b) that end before the date on which the plant variety right expires.

*“Depreciation months*

- “(7) **Depreciation months** is—
- “(a) if **subsection (9)** does not apply, the number of months in the period for which the plant variety right is granted plus the number of months, beginning on or a whole number of months after the beginning of an income year of the person,—
    - “(i) in which the plant variety right has provisional protection; and
    - “(ii) ending before the date on which the plant variety right is granted:
  - “(b) if **subsection (9)** applies, the number of months referred to in **paragraph (a)** reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
    - “(i) include or begin after the date on which the plant variety right is given provisional protection; and
    - “(ii) end before the date on which the person acquires the application.

*“Months before grant*

- “(8) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
- “(a) if **subsection (9)** does not apply—
    - “(i) include or begin after the date on which the plant variety right is given provisional protection; and
    - “(ii) end before the date on which the plant variety right is granted:
  - “(b) if **subsection (9)** applies—
    - “(i) include or begin after the date on which the person acquires the application; and
    - “(ii) end before the date on which the plant variety right is granted.

*“Effect of change in ownership of application for plant variety right*

- “(9) If the plant variety right is granted to a person who does not lodge the application for the plant variety right, the rates calculated under **subsections (3) and (4)** for the person depend on the period between the date on which the person acquires the application and the date on which the plant variety right is granted.

“Defined in this Act: amount, income year, plant variety right”.

*Clause 22C*

To replace (page 29, line 4) “*section FI 6*” with “*subpart FI*”.

*Clause 22D*

To replace (page 29, line 11) “**sections FI 4 and FI 5**” with “**sections FI 5 and FI 6**”.

*Clause 25*

To replace subsections (4C) and (4D) (page 30, lines 16 to 24) with the following:

*Patent applications: lodged with complete specification on or after 1 April 2005*

- (4C) The rate is the rate set by **section EE 27C** if the item is a patent application and **section EE 27C** applies to the item and the person.

*Patents: application lodged with complete specification on or after 1 April 2005*

- (4D) The rate is the rate set by **section EE 27D** if the item is a patent and **section EE 27D** applies to the item and the person.

*Plant variety rights*

- (4E) The rate is the rate set by **section EE 27E** if the item is a plant variety right and **section EE 27E** applies to the item and the person.

*Clause 26*

To replace (page 30, line 27) “**section FI 3**” with “**section FI 4**”.

*Clause 27*

To replace (page 31, line 3) “**section FI 3**” with “**section FI 4**”.

*Clause 28*

To replace (page 31, line 12) “**section FI 3**” with “**section FI 4**”.

*Clause 29*

To replace (page 31, line 16) “**section FI 3**” with “**section FI 4**”.

*Clause 37*

To replace (page 52, line 2) “**sections FI 4 to FI 6**” with “**sections FI 5 to FI 7**”.

*Clause 41*

To add, after subclause (2) (after page 54, line 31), the following:



- (3) In section FG 4(14D), before paragraph (a), the following is inserted:

“(aa) none of the taxpayer and the other companies is a member of a New Zealand banking group; and”.

*Clause 43*

To replace, in section FG 8B(4), paragraph (b) of the definition of item I (page 56, lines 38 to 41) with the following:

- (b) is an interest expense under generally accepted accounting practice, incurred other than in relation to a share that contributes to **item SFI**, or is a deduction referred to in paragraph (a) of the definition of **item FID** in **subclause (3)**

To replace, in section FG 8C(8)(b), subparagraph (i) (page 59, lines 13 and 14) with the following:

- (i) is resident in New Zealand; and

To insert, after section FG 8C(8)(b) (after page 59, line 21), the following:

- (bb) a fixed establishment of a non-resident, if—
- (i) the non-resident has a voting interest of 100% in a person who is excluded by an election under **paragraph (a)**; and
  - (ii) the fixed establishment has a main activity of financing the person who is excluded by the election under **paragraph (a)**; and
  - (iii) the fixed establishment does not have a main activity that is banking, financing or leasing, other than the activity referred to in **subparagraph (ii)**; and
  - (iv) the fixed establishment does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:

To replace, in section FG 8G(1), paragraph (c) of the definition of item TXB (page 64, lines 20 and 21) with the following:

- (c) timing or temporary differences to the extent that the items giving rise to the timing or temporary differences would contribute to a net loss for the tax year if the items were deductible in the tax year

To replace, in section FG 8G(1), the definition of item EOI (page 65, lines 1 to 21) with the following:

- EOI is the amount that would, if the New Zealand banking group included the potential members of the New Zealand banking group and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that—
- (a) are held by—
    - (i) a member or potential member of the New Zealand banking group;
    - (ii) a company resident in New Zealand in which a member or potential member of the New Zealand banking group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a conduit tax relief credit is attached; and
  - (b) are not interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method; and
  - (c) are not shares in a grey list company that—
    - (i) are listed on the official list of a recognised exchange; and
    - (ii) are revenue account property; and
    - (iii) would not be a sufficient interest in the offshore company if the class of the shares were the only class of share issued by the offshore company

*Clause 45*

To replace in section FI 5(a) (page 73, line 19) “entitled to the” with “entitled to”.

To replace in section FI 5(b)(iii) (page 73, line 27) “holder” with “person”.

To insert after section FI 6(1)(b)(ii) (page 74, line 26) the following:

- (iib) a financial arrangement other than a financial arrangement in respect of which the deceased person or a trustee of the deceased person was a cash basis person:

To replace in section FI 6(2)(c) (page 75, line 11) “practicable” with “allowable under the terms of the will or intestacy and that is consistent with the legal obligations of the trustee”.

To replace in the heading to section FI 8 (page 76, line 19) “**section FI 3**” with “**section FI 2(2)**”.

To insert in section FI 8(3) (page 76, line 33) “or beneficiary” after “executor”.

To insert in section FI 8(3) (page 77, line 3) “or beneficiary” after “executor”.

To insert in section FI 8(3) (page 77, line 6) “or beneficiary” after “executor”.

To replace section FI 9 other than the heading (page 77, lines 8 and 9) with the following:

If property subject to section EA 3 is disposed of in a transaction to which **section FI 1(3)(d) or (e)** refers and would be valued under **section FI 2** in the absence of this section, the property must be valued under section EA 3(4) to (7), as the circumstances require, as if the date of valuation is the end of an income year.

To replace in section FI 12(1)(a) (page 78, line 16) “**16 November 2004**” with “**1 October 2005**”.

To replace section FI 13 other than the heading (page 80, lines 8 to 26) with the following:

If property is disposed of in a transaction to which **section FI 1(3)(d) or (e)** refers and the trustee of the deceased person’s estate is a cash basis person under section EW 60(1), the property must be valued at cost and not under **section FI 2**.

*Clause 56*

To insert in section ME 9B(3)(a)(ii) (page 87, line 29) “to pay income tax or provisional tax” after “leaving company”.

To replace in section ME 9C(9) (page 92, lines 18 and 19) “**subsection (6)**” with “**subsection (3) or (5)**”.

*Clause 57BB*

To omit clause 57BB (page 94, lines 13 to 20).

*Clause 58B*

To omit clause 58B (page 97, lines 11 to 18).

*Clause 60*

To omit clause 60(12) (page 102, lines 1 to 4).

*New clause 61B*

To insert before clause 62 (before page 106, line 11), the following:

**61B Determination of residence of company**

(1) In section OE 2(1), in the words before paragraph (a), “that is not referred to in **subsection (1B)**” is inserted after “A company”.

(2) After section OE 2(1), the following is inserted:

“(1B) For the purposes of this Act, a company acting as trustee of the Cook Islands National Superannuation Fund, as established by the Cook Islands National Superannuation Trust Deed under the Cook Islands National Superannuation Act 2000 (Cook Islands), is not resident in New Zealand.”

*Clause 65*

To omit clause 65 (page 108, lines 5 to 12).

*Clause 71*

To add, after subclause (2) (after page 112, line 11), the following:

- (3) In section FG 4(14D), before paragraph (a), the following is inserted:

“(aa) none of the taxpayer and the other companies is a member of a New Zealand banking group; and”.

*Clause 73*

To replace, in section FG 8B(3), in paragraph (a)(i) of the definition of item FID (page 113, line 25), “DB 6 to DB 8” with “DD 1(1)(b), DD 1(2) to (4), and DD 3”

To replace, in section FG 8B(4), paragraph (b) of the definition of item I (page 114, lines 18 to 21) with the following:

- (b) is an interest expense under generally accepted accounting practice, incurred other than in relation to a share that contributes to **item SFI**, or is a deduction referred to in paragraph (a) of the definition of **item FID** in **subclause (3)**

To replace, in section FG 8C(8)(b), subparagraph (i) (page 116, lines 28 and 29) with the following:

- (i) is resident in New Zealand; and

To insert, after section FG 8C(8)(b) (after page 116, line 36), the following:

- (bb) a fixed establishment of a non-resident, if—
- (i) the non-resident has a voting interest of 100% in a person who is excluded by an election under **paragraph (a)**; and
  - (ii) the fixed establishment has a main activity of financing the person who is excluded by the election under **paragraph (a)**; and
  - (iii) the fixed establishment does not have a main activity that is banking, financing or leasing, other than the activity referred to in **subparagraph (ii)**; and
  - (iv) the fixed establishment does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing;

To replace, in section FG 8G(1), paragraph (c) of the definition of item TXB (page 122, lines 1 to 5) with the following:

- (c) timing or temporary differences to the extent that the items giving rise to the timing or temporary differences would contribute to a net loss for the tax year if the items were deductible in the tax year

To replace, in section FG 8G(1), the definition of item EOI (page 122, line 24 to page 123, line 4) with the following:

- EOI is the amount that would, if the New Zealand banking group included the potential members of the New Zealand banking group and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that—
- (a) are held by—
    - (i) a member or potential member of the New Zealand banking group;
    - (ii) a company resident in New Zealand in which a member or potential member of the New Zealand banking group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a conduit tax relief credit is attached; and
  - (b) are not interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method; and
  - (c) are not shares in a grey list company that—
    - (i) are listed on the official list of a recognised exchange; and
    - (ii) are revenue account property; and
    - (iii) would not be a sufficient interest in the offshore company if the class of the shares were the only class of share issued by the offshore company

*Clause 77*

To replace in subclause (3) (page 129, line 19) “credit” with “debit”.

*Clause 78*

To insert in section ME 9B(5) (page 132, line 2) “that exceeds the amount of any payment under **subsection (4B)**” after “**subsection (2(b) or (4)(b))**”.

To replace in section ME 9C(1)(b) (page 133, line 30) “new group.” with “new group; and” and add the following:

- “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.”

To insert in section ME 9C(4)(a)(ii) (page 134, line 28) “to pay income tax and provisional tax” after “joining company”.

To insert after section ME 9C(5) (after page 134, line 40) the following:

- “(5B) A joining company or a new group may satisfy a liability to pay additional income tax under **subsection (3) or (5)** by treating an excess tax payment of the joining company or the new group as a payment towards the satisfaction of the liability.”

To insert in section ME 9C(6) (page 135, line 2) “that exceeds the amount of any payment under **subsection (5B)**” after “**subsection (3) or (5)**”.

To omit section ME 9C(8) (page 135, lines 9 to 12).

To insert after section ME 9C (after page 136, line 3) the following:

- (2) **Subsection (1)** applies for a company that leaves a wholly-owned group on or after 16 November 2004.

*Clause 78BB*

To omit clause 78BB (page 136, lines 22 to 29).

*Clause 79B*

To omit clause 79B (page 139, lines 21 to 28).

*New clause 80B*

To insert after clause 80 (after page 144, line 11) the following:

**80B Determination of residence of company**

- (1) In section OE 2(1), in the words before paragraph (a), “that is not referred to in **subsection (1B)**” is inserted after “A company”.
- (2) After section OE 2(1), the following is inserted:

“(1B) For the purposes of this Act, a company acting as trustee of the Cook Islands National Superannuation Fund, as established by the Cook Islands National Superannuation Trust Deed under the Cook Islands National Superannuation Act 2000 (Cook Islands), is not resident in New Zealand.”

*Clause 84*

To replace (page 145, line 11) “**section 20E or 20F**” with “**section 20E, 20F, or 20G**”.

To insert (page 146, line 13) “is created” before “for purposes”.

To replace (page 148, line 17) “**sections 20C to 20F**” with “**sections 20C to 20G**”.

To replace (page 149, line 31) “must be” with “must”.

To replace section 20F(4) and (4B) (page 151, line 34 to page 152, line 6) with the following:

- “(4) A disclosure by a person or tax advisor of tax contextual information from a tax advice document for the person must be in a statutory declaration that—
  - “(a) is made by a tax advisor who has not been barred under **subsection (5)** from making statutory declarations under this subsection; and
  - “(b) states that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20G**; and
  - “(c) is in the prescribed form.”

*Clause 87C*

To replace (page 155, line 6) “referred to in **section NF 2(1B)**” with “that is resident withholding income under **section NF 2(1A)(b)**”.

*Clause 109B*

To insert after subclause (1) (after page 166, line 5) the following:

- (1B) In section 45(1)(b), “expired” is replaced by “ended”.

To replace in subclause (4) (page 166, line 10) “made” with “made has not expired”, and “amended” with “amended has not ended”.

To replace subclause (5) (page 166, lines 11 and 12) with the following:

(5) In section 45(3), paragraph (a) and the words before paragraph (a) are replaced by the following:

“(3) Despite section 20(5), the Commissioner must refund an amount to a person if—”.

To insert after subclause (6) (after page 166, line 16) the following:

(6B) In section 45(3)(d), “expired” is replaced by “ended”.

To replace in subclause (7) (page 166, line 17) “(6)” with “(6B)”.

*Schedule 2*

To omit schedule 2 (page 170, lines 1 to 10).

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### Explanatory note

This Supplementary Order Paper amends the Taxation (Base Maintenance and Miscellaneous Provisions) Bill to better reflect the recommendations of the select committee. Four main groups of amendments are proposed, together with other, incidental, amendments.

The first main group consists of proposed amendments to *clauses 9, 57BB, 58B, 61B, 65, 78BB, 79B, and 80B* which relate to the tax status of the Cook Islands National Superannuation Fund. The proposal is that a company acting as trustee for the fund be treated as a non-resident. The tax result for the fund is similar to that of the amendments replaced but the affected income of the fund is not restricted to interest and may be subject to the deduction of the approved issuer levy.

The second main group consists of proposed amendments to *clauses 20, 21, and 25* which relate to deductions for expenditure on a patent and on an application for a patent. Proposed new *sections EE 27B to EE 27E* inserted by *clause 21* produce the same effect in principle as the amendments replaced but are easier to apply in practice because the depreciation of expenditure on a patent application is not dependent on the grant of the application. The drafting is also revised.

The third main group consists of proposed amendments to *clauses 26, 27, 28, 29, 37, 45, and 60(12)* which relate to the new *subpart FI* inserted in the *Income Tax Act 2004* by the bill. The amendments mostly correct cross-references and make some minor drafting corrections. Amendments to *clause 45* revise the drafting of proposed *sections FI 9 and FI 13*.

The fourth main group consists of proposed amendments to *clauses 41, 43, 71, and 73* and to *schedule 2*, which relate to the thin-capitalisation rules for banks. The amendments to *clauses 41 and 71* are intended to prevent a non-resident company from taking advantage of an election that would remove the company from a New Zealand banking group. The amendments to *clauses 43 and 73*

revise the drafting of some of the select committee's recommended changes to the thin-capitalisation rules for banks.

The proposed amendments to *clause 2* relate to the dates on which clauses affected by this Supplementary Order Paper come into force.

The proposed amendment to *clause 9* omits the clause.

The proposed amendment to *clause 12B* corrects a further reference to *tax year* in *section DB 26* of the *Income Tax Act 2004*.

The proposed amendment to *clause 20* corrects cross-references, consequential to the proposed amendment to *clause 21*.

The proposed amendment to *clause 21* replaces the clause with a revised version. The replacement section relating to the depreciation of expenditure on a patent application does not require that the application be granted, and so should be easier to apply in practice.

The proposed amendment to *clause 22C* corrects a cross-reference.

The proposed amendment to *clause 22D* corrects a cross-reference.

The proposed amendment to *clause 25* corrects cross-references.

The proposed amendment to *clause 26* corrects a cross-reference.

The proposed amendment to *clause 27* corrects a cross-reference.

The proposed amendment to *clause 28* corrects a cross-reference.

The proposed amendment to *clause 29* corrects a cross-reference.

The proposed amendment to *clause 37* corrects a cross-reference.

The proposed amendment to *clause 41* inserts a new *paragraph (aa)* into *section FG 4(14D)* of the *Income Tax Act 2004*, preventing a non-resident company from being affected by an election that would otherwise remove the company from a New Zealand banking group.

The proposed amendments to *clause 43* revise the drafting of some changes to the thin-capitalisation rules for banks that the select committee recommended for the *Income Tax Act 2004*.

The proposed amendment to *clause 45* makes various corrections to new *subpart FI* inserted in the *Income Tax Act 2004* by the bill. New versions of *sections FI 9 and FI 13* are proposed, drafting is revised, and cross-references are corrected.

The proposed amendment to *clause 56* aligns the clause with the corresponding clause (*clause 78*) that amends the *Income Tax Act 1994*.

The proposed amendment to *clause 57BB* omits the clause.

The proposed amendment to *clause 58B* omits the clause.

The proposed amendment to *clause 60* omits *subclause (12)*.

Proposed new *clause 61B* inserts in the *Income Tax Act 2004* new *section OE 2(1B)* which provides that a company acting as trustee of the Cook Islands Superannuation Trust is treated as a non-resident for the purposes of the Act.

The proposed amendment to *clause 65* omits the clause.



The proposed amendment to *clause 71* inserts a new *paragraph (aa)* into *section FG 4(14D)* of the *Income Tax Act 1994*, preventing a non-resident company from being affected by an election that would otherwise remove the company from a New Zealand banking group.

The proposed amendments to *clause 73* revise the drafting of some changes to the thin-capitalisation rules for banks that the select committee recommended for the *Income Tax Act 1994*.

The proposed amendment to *clause 77* aligns the clause with the corresponding clause (*clause 55*) that amends the *Income Tax Act 2004*.

The proposed amendment to *clause 78* aligns the clause with the corresponding clause (*clause 56*) that amends the *Income Tax Act 2004*.

The proposed amendment to *clause 78BB* omits the clause.

The proposed amendment to *clause 79B* omits the clause.

Proposed new *clause 80B* inserts in the *Income Tax Act 1994* new *section OE 2(1B)* which provides that a company acting as trustee of the Cook Islands Superannuation Trust is treated as a non-resident for the purposes of the Act.

The proposed amendment to *clause 84* corrects some cross-references and minor drafting errors.

The proposed amendment to *clause 87C* corrects a cross-reference.

The proposed amendments to *clause 109B* better align the drafting of *section 45* of the *Goods and Services Tax Act 1985*, which provides for refunds by the Commissioner, with the corresponding provision (*section MD 1*) of the *Income Tax Act 2004*.

The proposed amendment to *schedule 2* omits the schedule, which was part of an option considered and rejected by the select committee in relation to the thin-capitalisation rules for banks.

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