

# House of Representatives

## Supplementary Order Paper

Tuesday, 13 December 2005

### Taxation (Annual Rates and Urgent Measures) Bill

---

#### *Proposed amendments*

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

#### *Clause 2*

To omit the words “This Act comes into force on the date on which it receives the Royal assent.” (lines 4 and 5 on page 2), and substitute the following subclauses:

- (1) **Parts 1, 2, and 4** come into force on the date on which this Act receives the Royal assent.
- (2) **Part 3** comes into force on the day after the date on which this Act receives the Royal assent.

#### *Clause 4B*

To add to *new section CV 3* (after line 23 on page 2), the following note:

Defined in this Act: amount, Australian wine producer rebate, income, New Zealand resident

To add to *new section CV 4* (after line 34 on page 3), the following note:

Defined in this Act: Australian financial year, Australian wine producer rebate, Inland Revenue Acts, New Zealand resident, wine

#### *Clause 12*

To add to *new section 38AB(1)* (line 15 on page 6) the words “(a **183-day period**)”.

To omit *new section 38AB(2) and (3)* (lines 16 to 26 on page 6), and substitute the following subsections:

- “(2) For the purposes of **subsection (1)**, a borrower is treated as being personally present in New Zealand if—
  - “(a) he or she is personally absent from New Zealand for a period, or periods in the aggregate, of no more than 31

- days during a period of what would otherwise have been a 183-day period; and
- “(b) he or she is personally present in New Zealand for the first day of that 183-day period.
- “(3) A borrower who satisfies the 183-day requirement is entitled to the full interest write-off set out in **section 38AK** for the first day within the 183-day period and, subject to **section 38AC**, for each subsequent day.

To omit *new section 38AC(2) and (3)* (line 34 on page 6 to line 5 on page 7), and substitute the following subsections:

- “(2) For the purposes of **subsection (1)**, a borrower is treated as being personally absent from New Zealand if—
- “(a) he or she is personally present in New Zealand for a period, or periods in the aggregate, of no more than 31 days during a period of what would otherwise have been a 184-day absence; and
- “(b) he or she is personally absent from New Zealand for the first day of that 184-day absence.
- “(2A) However, a borrower must not be treated as being personally absent from New Zealand for any day on which that borrower may be treated as being personally present in New Zealand under **section 38AB(2)**.
- “(3) A borrower who has had a 184-day absence ceases to be entitled to the full interest write-off set out in **section 38AK** for the first day within the 184-day absence and, subject to **section 38AB**, for each subsequent day.

*Clause 15*

To omit *new section 45C* (line 33 on page 13 to line 6 on page 14), and substitute the following section:

- “45C **Effect of amnesty on repayment obligation and interest**
- “(1) If the Commissioner writes off late payment penalties under **section 45A(1)**,—
- “(a) the relevant borrower is not required to make, and the Commissioner is not required to collect, payments in respect of the repayment obligation on which those penalties were written off (the **relevant repayment obligation**); and
- “(b) for the purposes of **paragraph (a)**, the relevant repayment obligation is reduced to zero; and
- “(c) the amount that was to be paid in respect of the relevant repayment obligation is subject to interest from the date that the relevant repayment obligation was originally due at the total interest rate that applied over the period of non-payment of that obligation on the daily amount outstanding.

- “(2) For the avoidance of doubt, the amount that was to be paid in respect of the relevant repayment obligation remains part of the relevant borrower’s loan balance, and that loan balance remains outstanding and due for repayment in accordance with subsequent repayment obligations assessed by the Commissioner.

*New clauses 15A to 15E*

To insert, after *clause 15* (after line 22 on page 14), the following clauses:

**15A New sections 57A to 57D inserted**

The principal Act is amended by inserting, after section 57, the following sections:

**“57A Application of sections 57B to 57D**

**Sections 57B to 57D—**

- “(a) apply despite anything to the contrary in this Act; and  
“(b) only apply to a refund that was elected or requested by a borrower under section 56, or requested by a borrower under section 57, on or after 30 November 2005.

**“57B No refunds for deductions or payments made prior to 1 April 2004**

No refund may be made under section 56 or section 57 of any amount that was deducted or paid in excess (as set out in section 56(1)(a) to (e) or section 57(1)) prior to 1 April 2004.

**“57C Certain refunds not entitled to full interest write-off under section 38AK**

- “(1) This section applies to refunds made under section 56 or section 57 of any amount that was deducted or paid in excess (as set out in section 56(1)(a) to (e) or section 57(1)) during the period from 31 March 2004 to 31 March 2006 (referred to in this section and **section 57D** as a **relevant refund**).
- “(2) The amount of any relevant refund must be excluded from the amount of a borrower’s loan balance for the purposes of **section 38AK(1)**.
- “(3) Until such time as the relevant refund and all interest charged on it are repaid in full to the Commissioner,—
- “(a) all payments in respect of the borrower’s repayment obligation must be off-set only against the portion of that borrower’s loan balance that consists of the relevant refund that remains outstanding and the interest charged on it (the **priority portion**); and
- “(b) any amount deducted or paid in excess of the borrower’s repayment obligation must be off-set only against the priority portion; and
- “(c) section 50 must be applied in order to give effect to **paragraphs (a) and (b)**.

“(4) In their application to a borrower who is entitled to a full interest write-off under **section 38AA** and who has also received a relevant refund, all references in sections 38C, 39, and 40 to ‘IRD loan balance’ and ‘loan balance’ must be treated as being a reference only to that borrower’s priority portion.

**“57D Commissioner’s discretion in cases of significant financial hardship**

“(1) On the application of a borrower, the Commissioner may exempt part or all of a relevant refund made to that borrower from **section 57C**.

“(2) The Commissioner may only exempt a relevant refund if the Commissioner is satisfied that that refund was necessary to alleviate the borrower’s significant financial hardship.

“(3) If the Commissioner grants an exemption under **subsection (1)**, the Commissioner must specify the amount of the relevant refund that is exempt from **section 57C**.

“(4) In this section, **significant financial hardship** includes significant financial difficulties that arise because of—

“(a) a borrower’s inability to meet minimum living expenses; or

“(b) a borrower’s inability to carry out his or her usual occupation because of his or her temporary or permanent illness, injury, or disability; or

“(c) a borrower’s inability to meet mortgage repayments on his or her principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or

“(d) the cost of modifying a residence to meet special needs arising from a disability of a borrower or a borrower’s dependant; or

“(e) the cost of medical treatment for an illness or injury of a borrower or a borrower’s dependant; or

“(f) the cost of palliative care for a borrower or a borrower’s dependant; or

“(g) the cost of a funeral for a borrower’s deceased dependant.”

**15B New section 58A inserted**

The principal Act is amended by inserting, after section 58, the following section:

**“58A Repayment obligation paid in excess may be refunded when assessments reopened**

“(1) This section applies to any case where, upon investigation by the Commissioner of a borrower’s liability for a repayment obligation for the tax year ending on 31 March 2006 or any prior tax year, the Commissioner is satisfied that—

- “(a) the repayment obligation assessed by the Commissioner was incorrect; and
  - “(b) as a result, any repayment obligation has been paid in excess of the amount properly payable by that borrower (a **difference in assessment amounts**).
- “(2) In any case to which this section applies,—
- “(a) the Commissioner must notify the relevant borrower of the amount of the difference in assessment amounts; and
  - “(b) the borrower may request the Commissioner, within 6 months of the date on which the Commissioner issued the notice, to refund the whole or part of the portion of the repayment obligation that is the difference in assessment amounts.
- “(3) A refund that is made under this section must be made in the manner required under section 184A of the Tax Administration Act 1994.
- “(4) If no request for a refund is made by a borrower within the required 6 months, the difference in assessment amounts must be applied in reduction of the relevant borrower’s loan balance.
- “(5) This section applies despite anything to the contrary in this Act.”

**15C New section 65A inserted**

The principal Act is amended by inserting, after section 65, the following section:

- “**65A Objection to decision concerning grant of exemption**  
A borrower may challenge a decision by the Commissioner—
- “(a) not to grant that borrower an exemption to the 183-day requirement under **section 38AE(1) or section 38AJ**, on the ground that that decision is not fair and reasonable:
  - “(b) that the conditions in **section 38AF, 38AG, 38AH, 38AI, or 38AJ(2)** are not satisfied by that borrower, on the ground that that decision is erroneous:
  - “(c) specifying the start and end dates for the period for which that borrower is treated as being personally present in New Zealand under **section 38AE(2)(a) or section 38AJ(3)(a)**, on the ground that those dates are—
    - “(i) not fair and reasonable; or
    - “(ii) erroneous:
  - “(d) specifying the conditions that must apply or be met in order for that borrower to be treated as being personally present in New Zealand under **section 38AE(2)(b) or section 38AJ(3)(b)**, on the ground that those conditions are—
    - “(i) not fair and reasonable; or
    - “(ii) erroneous.”

**15D New sections 66A and 66B inserted**

The principal Act is amended by inserting, after section 66, the following sections:

**“66A Objection to decisions concerning penalty amnesty**

A borrower may challenge a decision by the Commissioner—

- “(a) not to write off that borrower’s late payment penalties under **section 45A**, on the ground that that decision is erroneous:
- “(b) concerning the amount of that borrower’s late payment penalties that the Commissioner writes off under **section 45A**, on the ground that that decision is erroneous:
- “(c) that that borrower has breached the condition in **section 45B(2)**, on the ground that that decision is erroneous:
- “(d) to reinstate some or all of that borrower’s late payment penalties in accordance with **section 45D(1)**, on the ground that that decision is not fair and reasonable.

**“66B Objection to decision concerning significant financial hardship**

A borrower may challenge a decision by the Commissioner under **section 57D** not to exempt part or all of a refund made to that borrower from **section 57C**, on the ground that that decision is not fair and reasonable.”

**15E New section 69 substituted**

The principal Act is amended by repealing section 69, and substituting the following section:

**“69 Objector**

A challenge under any of sections 64 to 68 may be made only by or on behalf of the person to whom the assessment, notice, or decision relates.”

*New clause 16B*

To insert, after *clause 16A* (after line 26 on page 15), the following clause:

**16B Transitional provision concerning section 21 of principal Act**

- (1) This section applies to borrowers who, on or after 30 November 2005,—
  - (a) apply to the Commissioner for the issue of a special repayment deduction rate certificate under section 21(1) of the principal Act; or
  - (b) are deemed to have made such an application under section 21(2) of the principal Act.
- (2) Despite anything to the contrary in the principal Act or in any other Act, the amount or rate of repayment deductions specified in a certificate issued by the Commissioner under section 21 of the principal Act to a borrower to whom this section applies must, for the period from 29 November 2005 to 31

March 2006, not be less than 10 cents in each complete dollar from—

- (a) so much of the primary employment earnings paid to the borrower as exceeds the proportional repayment threshold (as defined in section 20(2) of the principal Act); and
- (b) any secondary employment earnings paid to the borrower; and
- (c) any extra emolument paid to the borrower.

---

### Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates and Urgent Measures) Bill (the **Bill**). Most of the changes proposed by this Supplementary Order Paper concern Part 3 of the Bill, which proposes amendments to the Student Loan Scheme Act 1992 (“the principal Act”). The substantive changes to the Bill proposed by this Supplementary Order Paper are as follows:

- *clause 2*, which relates to the commencement of the Bill, is amended:
- *clause 4B* inserts *new sections CV 3 and CV 4* into the Income Tax Act 2004. Notes setting out words that are used in those new sections and that are defined in the Income Tax Act 2004 are added to those sections:
- *clause 12*, which inserts *new sections 38AA to 38AK* into the principal Act, is amended to omit and substitute *new section 38AB(2) and (3)*, and omit *section 38AC(2) and (3)* and substitute *new section 38AC(2), (2A), and (3)*. These amendments are made in order to clarify how the 31-day aggregate period within a 183-day period or a 184-day absence may be counted:
- *clause 15* is amended to omit and substitute *new section 45C* which concerns the effect of the late payment penalties amnesty on a borrower’s repayment obligation and interest. This amendment is proposed in order to clarify the effect of this provision and avoid potential misunderstandings:
- *new clauses 15A to 15E* insert *new sections 57A to 57D, 58A, 65A, 66A, and 66B* into the principal Act, and repeal and substitute a *new section 69* in the principal Act. *New sections 57A to 57D* are inserted into the principal Act by *new clause 15A* in order to prevent borrowers seeking refunds of overpayments they have made in order to “game” the new full interest write-off provisions set out in the Bill. With the exception of a borrower who elected or requested a refund before 30 November 2005, a borrower will not be entitled to get a refund of any amount that was deducted or paid in excess prior to 1 April 2004, and (except at the Commissioner’s discretion in a case of significant financial hardship) any refund that is made of an amount that was deducted or paid in excess during the period from 31 March 2004 to 31 March 2006 will not be eligible for the full interest write-off under *new section 38AK* of the Bill. However, the refund portion of a borrower’s loan balance will still be eligible for the interest write-off or reductions in sections 38A to 41 of the principal Act:

- *new clause 15B* inserts *new section 58A* into the principal Act. This section provides that if the Commissioner discovers that he or she assessed a borrower's repayment obligation incorrectly, resulting in that borrower paying an amount in excess of his or her actual repayment obligation to the Commissioner, that borrower can request a refund of the difference in assessment amounts:
- *new clauses 15C and 15D* insert *new sections 65A, 66A, and 66B* into the principal Act in order to provide borrowers with a right to challenge a decision made by the Commissioner concerning the grant of an exemption under *new sections 38AE to 38AJ*, or concerning the late payment penalty amnesty under *new sections 45A to 45D*, or concerning the grant of an exemption on the basis of significant financial hardship under *new section 57D*:
- *new clause 15E* repeals and substitutes a *new section 69* in the principal Act. This amendment is a consequential one required because of the insertion of *new sections 65A, 66A, and 66B* into the principal Act:
- *new clause 16B* is a transitional provision that limits the amount or rate of repayment deductions that the Commissioner may specify, for the period from 29 November 2005 to 31 March 2006, in a special repayment deduction rate certificate issued under section 21 of the principal Act.

