

Taxation (Income-sharing Tax Credit) Bill

Government Bill

Explanatory note

General policy statement

This bill contains amendments to the Income Tax Act 2007 and the Tax Administration Act 1994 to provide for an annual tax credit for couples who are married, or are partners in a de facto relationship or a civil union, and who have responsibility for a dependent child.

Regulatory impact statement

In accordance with Cabinet Office Circular CO (09) 08, this explanatory note does not contain a regulatory impact statement for this bill. A copy of the regulatory impact statement for this bill is available at the following internet sites:

- <http://taxpolicy.ird.govt.nz/publications/2010-ris-istc-bill/overview>:
- <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Income-sharing tax credits

Nature of tax credit

The bill provides for an annual tax credit to be made available to resident couples who are married, or are partners in a de facto relationship or a civil union, and have responsibility for a dependent child aged up to 18 years. The credit is called the income-sharing tax credit and is intended to be available from 1 April 2012.

The amount of the tax credit is the difference between the total tax payable by the couple and the tax they would pay if each partner derived half of the couple's combined income.

The credit is intended to give couples greater freedom to work fewer hours or more flexible hours in order to care for children. For eligible couples whose partners have different marginal tax rates, the credit would provide up to \$9,080 per year.

Eligibility criteria

Under the proposed rules, a couple is eligible for the tax credit if—

- they are spouses, civil union partners, or de facto partners for a full tax year; and
- both are New Zealand tax residents for the entire year; and
- during the year, at least 1 of the partners is a principal caregiver of a dependent child.

If a couple receives the income-sharing tax credit for a tax year, neither partner is eligible to receive an independent earner tax credit for that year.

Calculation of tax credit

The tax credit is paid at the end of a tax year, based on the couple's assessed taxable incomes for that year. A couple must apply for payment of the tax credit, submit a tax return for the year, and confirm their eligibility for the credit. For transitional years, the amount of taxable income and tax payable is annualised.

The amount of the credit is determined by splitting the couple's combined taxable income equally between them, and applying the progressive tax rates to each partner's share. The total tax calculated on this notional basis is compared with the couple's actual combined tax liability. The difference is the unadjusted amount of the credit. When applying for the tax credit, the couple must nominate whether the Commissioner pays the full amount of the credit to 1 partner or divides the credit equally between them.

Dependent child

A child ceases to be a dependent child when they reach the age of 18, or before that age if they marry, enter a de facto or civil union relationship, or become financially independent. In the year in which a child turns 18, they continue to be treated as a dependent child if they are attending school or a tertiary educational establishment and remain financially dependent. The credit is paid pro-rata in a tax year in which a child ceases to be a dependent child.

Shared-care arrangements

Special eligibility rules apply when a child has 2 or more principal caregivers who are living apart. To be eligible for the credit in shared-care situations, a caregiver must have the exclusive care of a dependent child for at least one-third of the relevant tax year, or at least 122 days a year, or 5 days every fortnight. The caregiver must, in addition, be in a relationship with a new partner for a full tax year in order to meet the general eligibility criteria.

As a result, when 2 couples meet the one-third test in relation to the same child, both couples are eligible for the full amount of an income-sharing tax credit.

Treatment of overpayments

Before paying the amount of the credit to the couple, Inland Revenue may recover any overpayment of a Working for Families tax credit that is payable to either partner, or an overpayment of an amount of the income-sharing tax credit for an earlier year. An amount payable to a partner as an income-sharing tax credit may be used in the same way as a WFF tax credit, that is, it may be automatically applied by the Commissioner to satisfy a partner's earlier income tax liability.

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the commencement date for provisions in the Act.

Part 1

Amendments to Income Tax Act 2007

Clause 4 amends *section GB 44* to update cross references.

Clause 5 amends *section HR 8* to update cross references.

Clause 6 amends *section LA 7* to treat the tax credit as a refundable credit.

Clause 7 inserts a new *section LB 4B* to give an eligible person an income-sharing tax credit.

Clause 8 amends *section LC 13* to clarify the relationship between the independent earner tax credit and the income-sharing tax credit.

Clause 9 amends *section MA 1* to include the income-sharing tax credit in the scheme of Part M tax credits.

Clause 10 amends *section MA 5* to update cross references.

Clause 11 amends *section MA 6* to update cross references.

Clause 12 amends *section MA 8* to update cross references.

Clause 13 amends *section MB 1* to ensure an amount of income-sharing tax credit is not included in family scheme income.

Clause 14 amends *section MF 5* to include an overpaid amount of income-sharing tax credit in the recovery provisions.

Clause 15 inserts new *subpart MG* containing the rules for the entitlement to and calculation of the income-sharing tax credit.

Clause 16 amends *section RM 6* to update cross references.

Clause 17 amends *section YA 1*, affecting the definitions of *child*, *dependent child*, *civil union partner*, *income-sharing tax credit*, *principal caregiver*, *refundable tax credit*, and *spouse*.

Part 2

Amendments to Tax Administration Act 1994

Clause 19 inserts new *section 41C* relating to the application a person must make for an income-sharing tax credit.

Clause 20 amends *section 83* to allow certain disclosures to be made in relation to an income-sharing tax credit.

Clause 21 amends *section 85G* to allow certain disclosures to be made in relation to an income-sharing tax credit.

Clause 22 amends *section 92* to update cross references.

Clause 23 amends *section 177C* to allow the Commissioner to write off tax resulting from an overpayment of an income-sharing tax credit.

Hon Peter Dunne

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Part 2

Amendments to Tax Administration Act 1994

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Income-sharing Tax Credit) Act **2010**.

2 Commencement

This Act comes into force on 1 April 2012.

5

Part 1

Amendments to Income Tax Act 2007

3 Income Tax Act 2007

Sections 4 to 17 amend the Income Tax Act 2007.

4 Arrangements involving tax credits for families

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(1) In section GB 44, “subparts MA to MF” is replaced by “subparts MA to **MG**” in each place where it appears.

(2) **Subsection (1)** applies for the 2012–13 and later tax years.

5 Transitional residents

(1) In section HR 8(5), “subparts MA to MF” is replaced by “subparts MA to **MG**”.

15

(2) **Subsection (1)** applies for the 2012–13 and later tax years.

6 Remaining refundable credits: tax credits under social policy schemes

(1) After section LA 7(1)(a), the following is inserted:

(ab) **section LB 4B** (Income-sharing tax credits):

20

- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 7 New section LB 4B inserted**
- (1) After section LB 4, the following is inserted:
- LB 4B Income-sharing tax credits**
- A person has a tax credit for a tax year equal to their proportion of an amount of a tax credit under **subpart MG** (Income-sharing tax credits) for the tax year. 5
 Defined in this Act: amount, income-sharing tax credit, tax credit, tax year
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 8 Tax credits for independent earners**
- (1) After section LC 13(6), the following is added: 10
Relationship with income-sharing tax credits
- (7) A person who has an income-sharing tax credit, or a proportion of the credit, for a tax year is not eligible to receive a tax credit under this section for the tax year.
- (2) In section LC 13, in the defined terms list, “income-sharing tax credit” is inserted. 15
- (3) **Subsections (1) and (2)** apply for the 2012–13 and later tax years.
- 9 What this Part does**
- (1) After section MA 1(a), the following is inserted:
- (ab) under the income-sharing scheme for a tax year, *see* **subpart MG** (Income-sharing tax credits): 20
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 10 Advice from outside agencies**
- (1) In section MA 5, “subparts MB to MF” is replaced by “subparts MB to **MG**”.
- (2) **Subsection (1)** applies for the 2012–13 and later tax years. 25
- 11 Avoidance arrangements**
- (1) In section MA 6, “subparts MB to MF” is replaced by “subparts MB to **MG**”.
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 12 Some definitions for family scheme**
- (1) In section MA 8, “subparts MB to MF” is replaced by “subparts MB to **MG**” in each place where it appears. 30
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.

13 Adjustments for calculation of family scheme income

- (1) After section MB 1(5C), the following is inserted:

Income-sharing tax credit

- (5D) For the purposes of subsection (1), an amount of income-sharing tax credit of a person is not included in family scheme income. 5

- (2) In section MB 1, in the defined terms list, “income-sharing tax credit” is inserted.

- (3) **Subsections (1) and (2)** apply for the 2012–13 and later tax years.

14 Recovery of overpaid tax credit

- (1) Section MF 5(1), other than the heading, is replaced by the following: 10

- (1) This section applies when the Commissioner considers that the amount of a tax credit under section MD 1, ME 1, or **MG 1** (which relate to tax credits for families) set off or refunded to a person for a tax year is more than the maximum amount for the tax credit and the tax year calculated under the relevant subpart.

- (2) **Subsection (1)** applies for the 2012–13 and later tax years. 15

15 New subpart MG inserted

- (1) After section MF 7, the following is inserted:

Subpart MG—Income-sharing tax credits

MG 1 Income-sharing tax credit*What this subpart does* 20

- (1) This subpart provides the rules for determining whether a person and their spouse, civil union partner, or de facto partner are entitled to an income-sharing tax credit for a tax year and for calculating the amount of the credit.

Income-sharing tax credits

- (2) An income-sharing tax credit is the amount of the tax credit arising under this subpart that 2 persons as family partners have when they meet the qualifying criteria set out in **section MG 2**. The amount of the tax credit is calculated under **section MG 3**. 25

Transitional residents

- (3) This subpart does not apply to a transitional resident unless they have chosen under section HR 8(4) (Transitional residents) not to be a transitional resident for the relevant period. 30

Defined in this Act: amount, civil union partner, de facto partner, income-sharing tax credit, spouse, tax credit, tax year, transitional resident

MG 2 Who qualifies for entitlement?*Qualifying criteria*

- (1) A person qualifies for an entitlement under this subpart for a tax year if—
- (a) the person is in a relationship with another person (the **family partner**) as spouses, civil union partners, or de facto partners for the whole of the tax year; and 5
 - (b) both the person and their family partner are, for the whole of the tax year, resident in New Zealand for the purposes of section YD 1 (Residence of natural persons); and
 - (c) during the tax year, the person or their family partner is the principal caregiver for a dependent child. 10

Dependent child

- (2) For the purposes of this subpart, **dependent child**, for a person and a child,—
- (a) means a child aged under 18 years of age— 15
 - (i) whose care is primarily the responsibility of the person; and
 - (ii) who is being maintained as a member of the person's family; and
 - (iii) who is financially dependent on the person; and
 - (b) excludes a child aged under 18 years who is in a marriage, civil union, or de facto relationship.

Treatment of dependent child in year they turn 18

- (3) In the tax year in which a child attains the age of 18 years, they are treated as a dependent child until 31 December of that year if— 20
- (a) they are not financially independent; and
 - (b) they are attending school or a tertiary educational establishment.

Principal caregiver

- (4) For the purposes of **subsection (1)(c)**, the definition of **principal caregiver** in section MC 10(5) (Principal caregiver) applies in this subpart, subject to the modifications set out in **section MG 6**. 25

Defined in this Act: civil union partner, de facto partner, dependent child, financially independent, principal caregiver, resident in New Zealand, spouse, tax year 30

MG 3 Calculation of income-sharing tax credit*Entitlement*

- (1) A person who, with their family partner, meets the requirements of **section MG 2** has an entitlement to a proportion of an income-sharing tax credit for a tax year. The amount of the tax credit is calculated using the formula— 35
- $$(\text{tax payable A} + \text{tax payable B}) - (\text{notional tax A} + \text{notional tax B}).$$

Items in formula

- (2) In the formula in **subsection (1)**,—
- (a) **tax payable A** is the amount of income tax payable by a family partner (**family partner A**) on their taxable income for the tax year:
- (b) **tax payable B** is the amount of income tax payable by the other family partner (**family partner B**) on their taxable income for the tax year: 5
- (c) **notional tax A** is the amount arising from the application of the basic tax rate set out in schedule 1, part A, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) to the notional amount of income allocated to family partner A: 10
- (d) **notional tax B** is the amount arising from the application of the basic tax rate set out in schedule 1, part A, clause 1 to the notional amount of income allocated to family partner B.

Negative income

- (3) For the purposes of a calculation under this section, if a family partner's income for the year is a net loss, the amount is treated as zero. 15

Notional income

- (4) For the purposes of **subsection (2)(c) and (d)**, the notional amount of income allocated to a family partner is found by adding together the total taxable incomes of family partners A and B for the tax year and dividing that amount in half, allocating 1 half to each partner. 20

Annualised amount of taxable income

- (5) If the taxable income of a family partner relates to a period that is shorter or longer than a tax year, the amount of the taxable income is annualised for the purposes of the calculation in **subsection (1)**. The taxable income for the family partner is calculated using the formula— 25

$$\text{person's taxable income} \quad \times \quad \frac{365}{\text{days in tax year for which income derived.}}$$

Annualised amount of tax payable

- (6) If the taxable income of a family partner relates to a period that is shorter or longer than a tax year, the amount of income tax payable on the taxable income is annualised for the purposes of the calculation in **subsection (1)**. The amount of income tax payable is calculated using the formula— 30

$$\text{person's income tax payable} \quad \times \quad \frac{365}{\text{days in tax year for which income tax payable.}}$$

When child ceases to be dependent child

- (7) In a tax year in which a child ceases to be a dependent child, the amount of the tax credit is a reduced amount calculated by reference to the part of the tax year in which the requirements are met, *see* **section MG 5**. 35

Determining taxable income and amount of income tax

- (8) For the purposes of this section, the amounts of taxable income of and income tax payable by a family partner for the tax year are determined without reference to any other entitlement or obligation that the partner may have under the Inland Revenue Acts. 5

Defined in this Act: amount, basic tax rate, dependent child, income, income tax, income-sharing tax credit, Inland Revenue Acts, net loss, pay, tax year, taxable income

MG 4 Payment and proportion of income-sharing tax credit

Family partners who are entitled to a proportion of an income-sharing tax credit for a tax year must together apply under **section 41C** of the Tax Administration Act 1994 to the Commissioner for payment of the tax credit. In the application, they must nominate how the Commissioner is to pay the credit, being either— 10

- (a) a payment to 1 family partner of the full amount of the tax credit; or
 (b) a payment to each family partner of half of the amount of the tax credit. 15

Defined in this Act: amount, Commissioner, income-sharing tax credit, pay, tax year

MG 5 Calculation of credit in part years*When this section applies*

- (1) This section applies for a person who has an entitlement to an income-sharing tax credit for a tax year when a dependent child referred to in **section MG 2(1)(c)** is, in the corresponding income year,— 20
- (a) born or adopted; or
 (b) no longer meets the criteria required of a dependent child.

Adjustment

- (2) The calculation of the amount of the credit under **section MG 3(1)** is adjusted using the formula— 25

$$\text{ISTC amount} \times \frac{\text{number of days when criteria met}}{365}.$$

Definition of items in formula

- (3) In the formula,— 30
- (a) **ISTC amount** is the amount of the tax credit for the tax year calculated under **section MG 3(1)** as if this section did not exist:
 (b) **number of days when criteria met** is the number of days in the corresponding income year in which the dependent child meets the criteria set out in **section MG 2(2) or (3)**.

Defined in this Act: amount, corresponding income year, dependent child, income-sharing tax credit, tax year 35

MG 6 Shared-care arrangements for dependent children*When this section applies*

- (1) This section applies for the purposes of **section MG 2** when—
- (a) family partners (the **former partners**) who have been in a relationship and otherwise meet the criteria for an income-sharing tax credit for a tax year decide to live apart; and 5
 - (b) before separation, the partners were together caring for a dependent child or children; and
 - (c) on separation, the partners have a shared-care arrangement for the child or children. 10

Former partner and new partner qualifying

- (2) While the shared-care arrangement exists, a former partner qualifies for an entitlement under this subpart for a later tax year if—
- (a) the former partner has a new family partner and together they meet the requirements of **section MG 2** for the tax year; and 15
 - (b) the shared-care arrangement continues to apply in relation to the dependent child or children.

When shared-care arrangement exists

- (3) For the purposes of this section, a shared-care arrangement exists when—
- (a) the former partners have agreed to an arrangement to share the care of a dependent child or children; and 20
 - (b) each former partner has the exclusive care of the child or children for at least, as applicable,—
 - (i) 122 days in the tax year;
 - (ii) 5 days in every 14 days. 25

Limitation

- (4) A former partner is entitled to an income-sharing tax credit for a tax year only once.

Defined in this Act: dependent child, income-sharing tax credit, tax year

MG 7 When Commissioner may refrain from paying credit 30*Overpayments, income tax liabilities, and outstanding returns*

- (1) Despite section LA 7(2) (Remaining refundable credits: tax credits under social policy schemes), and **section MG 4**, the Commissioner may refrain from paying some or all of a person's entitlement to a credit under this subpart for a tax year if— 35
- (a) the person has been overpaid an entitlement under the family scheme for the tax year or an earlier tax year:

- (b) the person has been overpaid an entitlement to an income-sharing tax credit for an earlier tax year:
- (c) the person has not satisfied their income tax liability for the tax year or an earlier tax year:
- (d) the person is required to file a return of income for the tax year and the return is outstanding. 5
- Ordering rule*
- (2) The Commissioner may use the amount of the person’s entitlement as follows:
- (a) first, to recover an overpayment of an entitlement under the family scheme for the tax year or an earlier tax year: 10
- (b) second, to recover an overpayment of an entitlement to an income-sharing tax credit for an earlier tax year:
- (c) third, to satisfy the income tax liability of a person eligible to receive a tax credit for a tax year under this subpart for the tax year or an earlier tax year: 15
- (d) fourth, as transferable or refundable as described in section LA 7(2).
- Defined in this Act: amount, Commissioner, family scheme, income tax liability, income-sharing tax credit, pay, return of income, tax year
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 16 Refunds after 4-year period ends** 20
- (1) In section RM 6(3)(b), “subparts MA to MF” is replaced by “subparts MA to **MG**”.
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 17 Definitions**
- (1) Section YA 1 is amended as set out in this section. 25
- (2) In the definition of **child**, “and in the definition of **dependent child**” is replaced by “and in the definition of **dependent child**, other than for the purposes of **subpart MG**”.
- (3) In the definition of **civil union partner**, “subparts MA to MF” is replaced by “subparts MA to **MG**”. 30
- (4) In the definition of **dependent child**, in paragraph (e), “Social Security Act 1964” is replaced by “Social Security Act 1964; and”, and the following is added:
- (f) for the purposes of **subpart MG** (Income-sharing tax credits), who meets the criteria set out in **section MG 2(2) and (3)** 35
- (5) The following is inserted in its appropriate alphabetical order:
- income-sharing tax credit** means a tax credit under **section MG 1(2)** (Income-sharing tax credits)

- (6) The definition of **principal caregiver** is replaced by the following:
- principal caregiver—**
- (a) is defined in section MC 10 (Principal caregiver) for the purposes of the child tax credit, WFF tax credit, in-work tax credit, and parental tax credit: 5
- (b) has a modified meaning for the purposes of **subpart MG** (Income-sharing tax credits)
- (7) In the definition of **refundable tax credit**, in paragraph (e), “foreign tax credits)” is replaced by “foreign tax credits:” and the following is added:
- (f) the proportion of a tax credit that a person has under **subpart MG** (Income-sharing tax credits) 10
- (8) In the definition of **spouse**, “subparts MA to MF” is replaced by “subparts MA to **MG**”.
- (9) **Subsections (1) to (8)** apply for the 2012–13 and later tax years.

Part 2

15

Amendments to Tax Administration Act 1994

18 Tax Administration Act 1994

Sections 19 to 23 amend the Tax Administration Act 1994.

19 New section 41C

- (1) After section 41B, the following is inserted: 20

41C Return by person applying for income-sharing tax credit

- (1) A person eligible to receive a tax credit for a tax year under **subpart MG** of the Income Tax Act 2007 must apply to the Commissioner for payment of the tax credit.
- (2) An application under **subsection (1)** must be made in the manner required by the Commissioner, and be signed by the person and their spouse, civil union partner, or de facto partner, as applicable. 25
- (3) **Subsection (4)** applies if, apart from this section, a person eligible to receive a tax credit for a tax year under **subpart MG** of that Act is not required to file a return for the tax year. 30
- (4) Both the person and their spouse, civil union partner, or de facto partner, as applicable, must provide a return to the Commissioner for the tax year, whether or not they derive income for the tax year. The return must be accompanied by the information the Commissioner requires for the purposes of this section.
- (5) The provisions of this Act, modified as necessary, apply to a return provided or required to be provided under **subsection (4)** as if the return were provided or required to be provided under section 33. 35

- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 20 Disclosure of information for purposes of entitlement card**
- (1) In section 83(2), “WFF tax credit” is replaced by “WFF tax credit or income-sharing tax credit, as applicable,”.
- (2) **Subsection (1)** applies for the 2012–13 and later tax years. 5
- 21 Disclosure of information in relation to Working for Families tax credits**
- (1) In section 85G, the section heading is replaced by “**Disclosure of information in relation to certain credits for families**”.
- (2) After section 85G(1)(b), the following is inserted:
- (bb) contact a person in order to obtain additional information for the purposes of the payment of a tax credit under **subpart MG** of the Income Tax Act 2007: 10
- (3) **Subsections (1) and (2)** apply for the 2012–13 and later tax years.
- 22 Taxpayer assessment of income tax**
- (1) In section 92(5)(a), “subparts MA to MF and MZ” is replaced by “subparts MA to **MG** and MZ”. 15
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.
- 23 Write-off of tax by Commissioner**
- (1) In section 177C(1B)(b), “the result of WFF tax credit overpayment or overcrediting” is replaced by “the result of WFF tax credit or income-sharing tax credit overpayment or overcrediting”. 20
- (2) **Subsection (1)** applies for the 2012–13 and later tax years.