

House of Representatives

Supplementary Order Paper

Tuesday, 5 March 2019

Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill

Proposed amendments

Hon Stuart Nash, in Committee, to move the following amendments:

Clause 67

Replace “**68**” (page 50, line 8) with “**67B**”.

New clauses 67B to 67G

After *clause 67* (page 50, after line 8), insert:

67B Section 3 amended (Interpretation)

(1) This section amends section 3(1).

(2) Insert, in appropriate alphabetical order:

integrity of the tax system is defined in **section 6(2)**

(3) Insert, in appropriate alphabetical order:

obvious error is defined in **section 6G** for the purposes of **Part 2, subpart 2B**

67C New subpart heading inserted (Subpart 2A—Commissioner and department)

Before section 5, insert as a subpart heading, “Subpart 2A—Commissioner and department”.

67D New section 5B inserted (Commissioner of Inland Revenue)

After section 5, insert:

5B Commissioner of Inland Revenue

The person appointed as chief executive of the department under the State Sector Act 1988 is designated the Commissioner of Inland Revenue.

67E Sections 6, 6A, and 6B replaced

Replace sections 6, 6A, and 6B with:

Subpart 2B—Care and management of tax system

Responsibilities and duties

6 Responsibility of Ministers and officials to protect integrity of tax system

Best endeavours to protect integrity of tax system

- (1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of tax and for the other functions under the Inland Revenue Acts must at all times use their best endeavours to protect the integrity of the tax system.

Meaning of integrity of tax system

- (2) Without limiting its meaning, the **integrity of the tax system** includes—
- (a) the public perception of that integrity; and
 - (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and
 - (c) the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and
 - (d) the responsibilities of persons to comply with the law; and
 - (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and
 - (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

6A Commissioner’s duty of care and management

Care and management

- (1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

Highest net revenue practicable within the law

- (2) In collecting the taxes committed to the Commissioner’s charge, and despite anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
- (a) the resources available to the Commissioner; and
 - (b) the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
 - (c) the compliance costs incurred by persons.

6B Directions to Commissioner

Order for directions

- (1) The Governor-General may, by Order in Council and with due regard to this subpart and the provisions of the State Sector Act 1988 and the Public Finance Act 1989, issue directions to the Commissioner in relation to the administration of the Inland Revenue Acts.

Limitations

- (2) **Subsection (1)** does not authorise the giving of directions concerning the tax affairs of individual persons or the interpretation of tax law.

Order published

- (3) Every order made under **subsection (1)** must, as soon as practicable after it is made,—
- (a) be published in a publication chosen by the Commissioner; and
 - (b) be laid before the House of Representatives together with any accompanying statement of the reasons for the order and any advice of the Commissioner in relation to it.

Binding after 7 days

- (4) An order made under **subsection (1)** becomes binding on the Commissioner on the 7th day after the date on which it is made.

Remedial powers

6C Powers to modify provisions of Inland Revenue Acts

Nature of remedial powers

- (1) **Sections 6D to 6G** set out remedial powers that provide for modifications to, and exemptions from, provisions of the Inland Revenue

Acts to apply in certain circumstances and for a limited time. The powers are in addition to **sections 6 and 6A**.

Purpose of remedial powers

- (2) The purpose of **sections 6D to 6G** is to provide flexibility to temporarily remedy or mitigate the effect of a provision of the Inland Revenue Acts by making a modification or granting an exemption when it is reasonably necessary—
- (a) due to an obvious error in the provision:
 - (b) to give effect to the intended purpose or object of the provision, to resolve ambiguity, or to reconcile inconsistencies.

General application

- (3) A modification or exemption applies generally unless it is expressly stated that it applies only to a particular class of persons or circumstances.

Optional application

- (4) Despite **subsection (3)**, a person to whom a modification or exemption is available may choose whether or not to apply the modification or exemption by the means set out in the modification or exemption under **section 6D or 6E**, as applicable.

Effect of not applying modification or exemption

- (5) If a person chooses not to apply a modification or exemption, the law applies as if the modification or exemption did not exist in relation to the person.

6D Modifications made by Order in Council

Orders in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Revenue, modify the application of the Inland Revenue Acts by—
- (a) providing that a provision of the Inland Revenue Acts does not apply or applies with conditions:
 - (b) granting an exemption from a provision of the Inland Revenue Acts.

Content of modifications

- (2) A modification made under **subsection (1)**—
- (a) must specify a period for which the modification applies; and
 - (b) must, despite **section 6C(3)**, allow a person to whom the modification is available to choose whether or not to apply the modification by means set out in the modification; and
 - (c) may—

- (i) be subject to terms and conditions:
- (ii) state whether the modification applies generally or is limited to a particular class of persons or circumstances:
- (iii) provide for transitional, savings, and related matters; and
- (d) may be made by—
 - (i) stating an alternative means of complying with the provision:
 - (ii) substituting a discretionary power to be exercised by the Commissioner.

Application periods for modifications

- (3) For the purposes of **subsection (2)(a)**, a period for which a modification applies—
 - (a) must end no later than the end of the second income year after the income year corresponding to the tax year in which the modification comes into force; and
 - (b) may include a period before the date on which the modification comes into force, but any period of retrospective application must not extend back more than 4 income years before the income year corresponding to the tax year in which the exemption comes into force; and
 - (c) subject to **paragraph (b)**, may include a period before the date on which this section comes into force.

Opt-out or opt-in modifications permitted

- (4) For the purposes of **subsection (2)(b)**, a modification may provide that it applies to a person to whom it is available—
 - (a) unless the person chooses not to apply it; or
 - (b) only if the person chooses to apply it.

Minister's recommendations

- (5) Before making a recommendation referred to in **subsection (1)**, the Minister of Revenue must be satisfied that—
 - (a) the modification is reasonably necessary to do 1 or more of the following:
 - (i) to remedy or mitigate the effect of an obvious error in a provision of the Inland Revenue Acts:
 - (ii) to give effect to the intended purpose or object of a provision of the Inland Revenue Acts, or to resolve ambiguity:

- (iii) to reconcile an inconsistency between certain provisions of the Inland Revenue Acts, or between the relevant provision and an administrative practice of the Commissioner; and
- (b) the modification does not materially affect the intended scope or effect of the provisions to which it applies; and
- (c) the modification is not inconsistent with the intended purpose or object of the relevant provision; and
- (d) the modification is the most appropriate way of addressing or resolving the issue at the time; and
- (e) the extent of the modification is not broader than is reasonably necessary to address or resolve the issue that gave rise to it; and
- (f) a person has a reasonable opportunity to choose not to apply the modification, if the modification applies to the person unless they choose not to apply it; and
- (g) a consultative process has been undertaken as described in **section 6F**, unless the Minister has dispensed with the consultative process under **section 6F(3)**.

Publication of modifications

- (6) The Minister's reasons for recommending a modification, and an explanation of the way in which the modification complies with this section, must be published together with the modification.

6E Exemptions granted by Commissioner

Exemptions

- (1) Subject to **subsection (2)**, the Commissioner may grant an exemption from a provision of the Inland Revenue Acts if the Commissioner is satisfied that the exemption is reasonably necessary to do 1 or more of the following:
 - (a) to remedy or mitigate the effect of an obvious error in a provision of the Inland Revenue Acts;
 - (b) to give effect to the intended purpose or object of a provision of the Inland Revenue Acts, or to resolve ambiguity;
 - (c) to reconcile an inconsistency between certain provisions of the Inland Revenue Acts, or between the relevant provision and an administrative practice of the Commissioner.

Limitations

- (2) The Commissioner may grant the exemption only if the Commissioner is satisfied that—
 - (a) the exemption—

- (i) does not materially affect the intended scope or effect of the provisions to which it applies; and
 - (ii) is not inconsistent with the intended purpose or object of the relevant provision; and
 - (iii) has no, or has only negligible, fiscal implications for the Crown; and
 - (iv) is the most appropriate way of addressing or resolving the issue at the time; and
- (b) the extent of the exemption is not broader than is reasonably necessary to address or resolve the issue that gave rise to it; and
- (c) a person has a reasonable opportunity to choose not to apply the exemption, if the exemption applies to the person unless they choose not to apply it; and
- (d) a consultative process has been undertaken as described in **section 6F**, unless the Commissioner has dispensed with the consultative process under **section 6F(3)**.

Content of exemptions

- (3) An exemption made under **subsection (1)**—
- (a) must specify a period for which the exemption applies; and
 - (b) must, despite **section 6C(3)**, allow a person to whom the exemption is available to choose whether or not to apply the exemption by means set out in the exemption; and
 - (c) may—
 - (i) include terms and conditions as the Commissioner thinks fit;
 - (ii) state whether the exemption applies generally or is limited to a particular class of persons or circumstances;
 - (iii) provide for transitional, savings, and related matters.

Application periods for exemptions

- (4) For the purposes of **subsection (3)(a)**, a period for which an exemption applies—
- (a) must end no later than the end of the second income year after the income year corresponding to the tax year in which the exemption comes into force; and
 - (b) may include a period before the date on which the exemption comes into force, but any period of retrospective application must not extend back further than the start of the income year

corresponding to the tax year in which the exemption comes into force; and

- (c) subject to **paragraph (b)**, may include a period before the date on which this section comes into force.

Opt-out or opt-in exemptions permitted

- (5) For the purposes of **subsection (3)(b)**, an exemption may provide that it applies to a person to whom it is available—

- (a) unless the person chooses not to apply it; or
(b) only if the person chooses to apply it.

Publication of exemptions

- (6) The Commissioner's reasons for granting an exemption, and an explanation of the way in which the exemption complies with this section, must be published together with the exemption.

Status of exemptions

- (7) An exemption is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012, and must be presented to the House of Representatives under section 41 of that Act.

6F Consultation on proposed modifications and exemptions

Consultative process

- (1) Before the Minister of Revenue recommends that a modification be made under **section 6D**, or the Commissioner grants an exemption under **section 6E**, a consultative process must be undertaken that includes the distribution, to persons or representatives of persons that it is considered reasonable to consult for the particular purpose, of—

- (a) the proposed modification or exemption, as applicable; and
(b) an explanation of the way in which, as applicable,—
(i) the modification would comply with the requirements of **section 6D(5)**;
(ii) the exemption would comply with the requirements of **section 6E(2)**.

Period of consultation

- (2) The consultative process must provide a period of consultation of at least 6 weeks.

Cases of urgency

- (3) Despite **subsections (1) and (2)**, the Minister or Commissioner, as applicable, may, if satisfied that a case of urgency exists, either reduce the period of consultation or dispense with the consultative process in relation to a modification or an exemption.

6G Meaning of obvious error

For the purposes of this subpart, **obvious error** means an error of a type that arises only if—

- (a) the intended purpose or object of the relevant provision is clear; and
- (b) the intended purpose or object cannot be carried into effect by the relevant provision; and
- (c) the substance of the provision that Parliament would have made, had the error become known or had the circumstances been allowed for, is clear.

67F New subpart heading inserted (Subpart 2C—Functions and powers of Commissioner)

Before section 7, insert as a subpart heading, “Subpart 2C—Functions and powers of Commissioner”.

67G New subpart heading inserted (Subpart 2D—Modes of communication)

Before section 14, insert as a subpart heading, “Subpart 2D—Modes of communication”.

Explanatory note

This Supplementary Order Paper inserts new clauses amending the Tax Administration Act 1994.

New Zealand’s tax system is very complex, and it undergoes significant change regularly. The nature and volume of the tax law changes mean that unforeseen or unintended outcomes (legislative anomalies) arise often. This is likely to continue to be the case into the future given the increasing complexity of tax law and rapidly evolving business practices.

Currently, it takes on average just under 2 years to remedy a legislative anomaly through an amendment to primary legislation once it has been identified as needing legislative change. During that time, taxpayers may be required to file different returns spanning multiple periods.

The proposed amendments will provide more flexibility as to how legislative anomalies are addressed by introducing delegated law-making powers which, in certain circumstances, could be used to temporarily remedy or mitigate the effect of obvious errors or inconsistencies. The proposed remedial powers are—

- a power to modify how tax laws apply by Order in Council on the recommendation of the Minister of Revenue;
- a power for the Commissioner of Inland Revenue to grant exemptions from provisions of the Inland Revenue Acts.

Modifications made by Order in Council could apply retrospectively for a period of up to 4 income years before coming into force. This is closely tied to the time bar for amending tax assessments.

The remedial powers will be subject to a number of safeguards. Public consultation will generally be required before a modification is made or an exemption is granted. In addition, any modifications or exemptions—

- will be time-limited:
- will be optional for taxpayers to apply:
- must not be inconsistent with the intended purpose or object of the relevant provision:
- will be subject to review by the Regulations Review Committee and disallowance by the House of Representatives.

An amendment to *clause 67* consequentially updates which clauses of the Bill amend the Tax Administration Act 1994.

New clause 67B amends section 3 by inserting new definitions of *integrity of the tax system* and *obvious error*.

New clause 67C inserts a new subpart heading.

New clause 67D inserts *new section 5B* as a consequence of the rewriting of the care and management provisions. The section provides for the chief executive of the Inland Revenue Department to be designated the Commissioner of Inland Revenue.

New clause 67E replaces sections 6, 6A, and 6B with the *new subpart 2B* related to the care and management of the tax system. *New section 6* sets out the responsibilities of Ministers and officials to protect the integrity of the tax system. *New section 6A* sets out the Commissioner's duty of care and management of taxes. *New section 6B* provides that directions may be issued to the Commissioner by the Governor-General in relation to the administration of the Inland Revenue Acts. *New section 6C* sets out the nature and purpose of the remedial powers. *New section 6D* gives a power to modify how tax laws apply by Order in Council in limited circumstances. *New section 6E* gives the Commissioner a power to grant exemptions from provisions of the Inland Revenue Acts in limited circumstances. *New section 6F* sets out consultation requirements for proposed modifications and exemptions. *New section 6G* defines *obvious error* for the purposes of *new subpart 2B*.

New clauses 67F and 67G insert new subpart headings.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2019&no=193&>

Regulatory impact assessment

The Inland Revenue Department produced a regulatory impact assessment on 24 January 2019 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact assessment can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments>