

# House of Representatives

# Supplementary Order Paper

Tuesday, 3 March 2020

## Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

### *Proposed amendments*

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

#### *Clause 2*

In *clause 2(6)*, replace “**100**” (page 13, line 15) with “**100, 101C**”.

After *clause 2(15)* (page 14, after line 15), insert:

(15B) **Section 114(1A)** comes into force on 28 May 2018.

In *clause 2(17)*, replace “**81E**” (page 14, line 17) with “**81E, 81EB**”.

In *clause 2(19)*, replace “**147B**” (page 14, line 21) with “**141BB, 147B**”.

In *clause 2(22)*, replace “**32C, 33, 33B, 33C, 34, 35, 36, 37**” (page 14, line 37) with “**32B, 32C, 33, 33B, 33C, 34, 35, 36, 37, 37B, 37C**”.

In *clause 2(22)*, replace “**101,**” (page 15, line 2) with “**101, 101B,**”.

In *clause 2(22)*, replace “**107B**” (page 15, line 3) with “**107B, 107D**”.

In *clause 2(22)*, delete “**111F,**” (page 15, line 4).

In *clause 2(22)*, replace “**116C**” (page 15, line 5) with “**116C, 116CB**”.

#### *Clause 5E*

In *clause 5E(1)*, replace “38(2)(d):” (page 17, line 5) with “38(2)(d) with:”.

#### *Clause 37C*

In *clause 37C, new section 243(a)*, replace “**38, 107D,**” (page 28, line 8) with “**38, 59B, 77B(1) and (3), 98C, 107D,**”.

In *clause 37C, new section 243(c)*, replace “the period of the non-compliance ends” (page 28, line 14) with “comes to an end”.

**Proposed amendments to  
Taxation (KiwiSaver, Student Loans, and Remedial  
Matters) Bill**

SOP No 453

---

*Clause 54E*

Replace *clause 54E* (page 34, line 30 to page 35, line 4) with:

**54E Section 195 amended (Date on which salary or wage deductions and payments treated as being made and credited)**

Replace section 195(3) and (3A) with:

- (3) For the purposes of calculating loan interest and late payment interest, determining whether an annual administration fee is payable, and determining whether a borrower's consolidated loan balance is not more than \$20 for the purposes of section 197,—
- (a) a salary or wage deduction is credited on the day after the date on which the deduction is made; and
- (b) all other payments are credited on the day after the date on which they are received by the Commissioner.

*Clause 78E*

In *clause 78E(2)*, new section *EL 7(5)(a)*, replace “the property” (page 44, line 1) with “property”.

*Clause 78I*

In *clause 78I*, replace “by” (page 44, line 23) with “with”.

*New clause 81EB*

After *clause 81E* (page 48, after line 25), insert:

**81EB Section FH 7 amended (Payments to person outside New Zealand producing deduction without income)**

- (1) In section FH 7(1)(d), after “taxation law of”, insert “New Zealand and of”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2018.

*Clause 94*

Replace *clause 94(2)* (page 54, lines 10 and 11) with:

- (2) In section HC 27, list of defined terms, insert “prescribed rate of interest”.

*Clause 98C*

In *clause 98C(1)*, new section *HM 36B(2)*, replace the formula (page 59, line 25) with:

(amount of PIE income × investor's PIR) – (credits used + amount of tax credit).

In *clause 98C(1)*, after *new section HM 36B(3)(b)* (page 59, after line 32), insert:

- (bb) **credits used** is the amount of any tax credits used by the PIE to satisfy the investor's income tax liability for the amount of attributed PIE income referred to in **paragraph (a)**:

In *clause 98C(1)*, *new section HM 36B(4)*, replace “is added to the terminal tax payable by the person for the tax year” (page 59, line 38) with “is included in the investor's schedular income tax liability for the tax year under **section BC 7(5)**”.

In *clause 98C(1)*, replace *new section HM 36B(5)*, other than the heading (page 60, lines 2 to 4), with:

- (5) If the result of the calculation in **subsection (3)** is negative,—
  - (a) the amount of the adjustment is first applied to reduce the terminal tax payable by the person for the tax year:
  - (b) any amount of adjustment remaining is refundable under sections RB 4, RM 2 to 8, and RM 10 (which relates to refunds and their use), as applicable:
  - (c) the investor's schedular income tax liability for the tax year under **section BC 7(5)** is zero.

In *clause 98C(1)*, *new section HM 36B*, *list of defined terms* (page 60, line 13), insert “residual income tax”.

*New clause 99C*

After *clause 99B* (page 62, after line 9), insert:

**99C New section HZ 11 inserted (Protection from non-compliance: Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019)**

After section HZ 10, insert:

**HZ 11 Protection from non-compliance: Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019**

Non-compliance with an enactment related to securities is ignored if the non-compliance—

- (a) results from the enactment of sections **59B, 77B(1) and (3), and 98C** of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act **2019**; and
- (b) relates to a product disclosure statement, or to information lodged on the relevant disclosure register, under the Financial Markets Conduct Act 2013; and
- (c) concerns a multi-rate PIE that is not a KiwiSaver scheme; and

**Proposed amendments to  
Taxation (KiwiSaver, Student Loans, and Remedial  
Matters) Bill**

SOP No 453

(d) comes to an end before 31 January 2021.

Defined in this Act: KiwiSaver scheme, multi-rate PIE, superannuation scheme

*Clause 101*

In *clause 101(2)*, new section LA 5(5C)(d), replace “year.” (page 63, line 14) with “year:”.

*New clauses 101B and 101C*

After *clause 101* (page 63, after line 24), insert:

**101B Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)**

(1) Replace section LA 6(1)(g) with:

(g) section LS 2 (Tax credits for investors in multi-rate PIEs) and the person is not a natural person, or is a natural person who—

(i) has the tax credit as a beneficiary of a trust:

(ii) uses the tax credit in the calculation of their PIE schedular income under **section HM 36B** (Calculating PIE schedular income adjustments for natural person investors):

(2) In section LA 6, list of defined terms, insert “PIE schedular income”.

**101C Section LD 3 amended (Meaning of charitable or other public benefit gift)**

(1) In section LD 3(1), words before the paragraphs, replace “this subpart” with “sections DB 41 and DV 12 (which relate to deductions for gifts of money), and this subpart”.

(2) Replace section LD 3(1)(c) with:

(c) does not include—

(i) a testamentary gift:

(ii) a gift made by forgiving some or all of a debt.

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. However, **subsection (2)** does not apply to a person in relation to a tax position taken by the person in a return of income filed, or in an application made under section 41A of the Tax Administration Act 1994 for a refund,—

(a) in the period that starts on the first day of the 2008–09 income year and ends on 16 December 2019; and

(b) in relation to a gift made by the person by forgiving some or all of a debt; and

- (c) relying on section LD 3(1) as it was before the amendment made by **subsection (2)**.

*Clause 104B*

After *clause 104B(1)* (page 64, after line 23), insert:

- (1B) After section LS 2(2), insert:

*Relationship with **section HM 36B***

- (3) Despite subsection (2), when the amount of an investor's tax credit is taken into account in calculating an adjustment for PIE schedular income under **section HM 36B** (Calculating PIE schedular income adjustments for natural person investors), the amount of the credit is extinguished for any other purpose.

- (1C) In section LS 2, list of defined terms, insert "PIE schedular income".

In *clause 104B(2)*, replace "**Subsection (1)** applies" (page 64, line 24) with "**Subsections (1) and (1B)** apply".

*Clause 111C*

In *clause 111C*, replace *new section RE 10C(2)*, other than the heading (page 70, lines 2 to 4), with:

- (2) This section does not apply to a custodial institution that is the specified operator of a designated settlement system under the Reserve Bank of New Zealand Act 1989. The exclusion extends to a nominee or agent of the specified operator.

In *clause 111C*, *new section RE 10C(6)*, replace "**RF 4**" (page 70, line 27) with "**RF 4**".

*Clause 111F*

Delete *clause 111F* (page 72, lines 20 to 26).

*Clause 114*

Before *clause 114(1)* (page 76, before line 18), insert:

- (1A) In schedule 32,—
- (a) insert, in appropriate alphabetical order, "Sir Ray Avery Foundation";
  - (b) delete "Medicine Mondiale".

*New clause 116CB*

After *clause 116C* (page 77, after line 23), insert:

**116CB Section 22C amended (Outline of subpart)**

In section 22C(1), replace “BC 1 to BC 6, and BC 8” with “BC 1 to BC 8”.

*Clause 116G*

Delete *clause 116G(1)* (page 78, lines 21 to 23).

*Clause 116H*

In *clause 116H*, replace *new section 25MB(2)* (page 79, lines 8 to 11) with:

*Specified operators of designated settlement systems*

- (2) Despite **subsection (1)** and section 25E(1), the rules in this subpart do not apply to a custodial institution that is the specified operator of a designated settlement system under the Reserve Bank of New Zealand Act 1989. The exclusion extends to a nominee or agent of the specified operator.

In *clause 116H*, *new section 25MB(6)(b)*, replace “and 21” (page 79, line 35) with “and 20”.

*Clause 116I*

Delete *clause 116I* (page 80, lines 25 to 28).

*New clause 121B*

After *clause 121* (page 82, after line 37), insert:

**121B Section 106 amended (Assessment where default made in furnishing returns)**

Repeal section 106(1C).

*Clause 122B*

In *clause 122B(2)*, replace “113A(4):” (page 83, line 25) with “113A(4),—”.

*Clause 137B*

Replace *clause 137B* (page 94, lines 21 to 24) with:

**137B Section MD 1 amended (Refund of excess tax)**

Replace section MD 1(1)(b) with:

- (b) the amount has arisen on an amended assessment, and the Commissioner is satisfied, or is notified, that the person is entitled to the refund before the end of the 4-year period under section 108 of the Tax Administration Act 1994 for amendment of an assessment.

*New clause 141BB*

After *clause 141B* (page 95, after line 11), insert:

**141BB Section 364 amended (New section MD 1C inserted  
(Treatment of certain refunds not paid within 4-year period:  
2005–06, 2006–07, and 2007–08 income years))**

Repeal section 364(2).

*Clause 143B*

Replace *clause 143B* (page 96, lines 14 to 17) with:

**143B Section MD 1 amended (Refund of excess tax)**

Replace section MD 1(1)(b) of the Income Tax Act 1994 with:

- (b) either—
  - (i) the amount has arisen on an original assessment; or
  - (ii) the amount has arisen on an amended assessment, and the Commissioner is satisfied, or is notified, that the person is entitled to the refund before the end of the 4-year period under section 108 of the Tax Administration Act 1994 for amendment of an assessment.

*Clause 144B*

In *clause 144B*, replace *new section 409(3B)(b)* (page 97, lines 5 to 9) with:

- (b) either—
  - (i) the amount has arisen on an original assessment; or
  - (ii) the amount has arisen on an amended assessment, and the Commissioner is satisfied, or is notified, that the person is entitled to the refund before the end of the 4-year period under section 108 of the Tax Administration Act 1994 for amendment of an assessment.

*Clause 147B*

In *clause 147B*, in the first paragraph of the replacement text, replace “section 17 of the Tax Administration Act 1994” (page 98, lines 11 and 12) with “section 17 of Tax Administration Act 1994”.

### **Explanatory note**

This Supplementary Order Paper (SOP) proposes a number of remedial and technical amendments to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill. In addition to correcting minor faults of expression and punctuation errors, this SOP proposes amendments to—

**Proposed amendments to  
Taxation (KiwiSaver, Student Loans, and Remedial  
Matters) Bill**

SOP No 453

---

- standardise the date on which the provisions relating to early withdrawal of savings from KiwiSaver schemes for members with life-shortening congenital conditions come into force:
- defer by 1 day the date on which salary or wages deductions and payments would be treated as being credited for student loan purposes, to ensure alignment with Inland Revenue's system:
- ensure that New Zealand resident companies are not denied deductions, for income tax purposes, for payments made to related non-resident companies which are exempt from taxation under foreign law but taxable in New Zealand:
- ensure that gifts made by way of debt forgiveness do not qualify for donations tax credits or deductions:
- update the name of an entity in the list of donee organisations in schedule 32 of the Income Tax Act 2007:
- clarify certain provisions in the Income Tax Act 2007 and the Tax Administration Act 1994 relating to the rules relating to withholding and reporting of investment income by custodians, by excluding certain institutions from the application of the rules, and by removing the amendments relating to the approved issuer levy to allow further consideration of the consequences of the changes:
- remove the proposed requirement for listed PIEs to report investment income information for dividends paid to investors:
- clarify certain provisions in the Income Tax Act 2007 and the Tax Administration Act 1994 relating to refunds for natural person investors in PIEs:
- extend the limited protection under the KiwiSaver Act 2006 and the Income Tax Act 2007 for non-compliance with enactments related to securities for multi-rate PIEs and their natural person investors:
- clarify certain refund provisions in the Income Tax Act 2004, the Income Tax Act 1994, and the Income Tax Act 1976.

**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=2020&no=453&>

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Wellington, New Zealand:

Published under the authority of the House of Representatives—2020