

House of Representatives

Supplementary Order Paper

Wednesday, 9 March 2022

Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Bill

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

Clause 2

Replace *clause 2(2)* (page 14, lines 8 and 9) with:

- (2) **Sections 47, 50, 52(1) and (3), 53(2) and (3), 65, 80(1), (2), (4), (5), (6), (7), (8), (9), (10), and (11), 84, 85, 87, 97, 127(11), (14), and (15), and 130** come into force on 1 April 2008.

In *clause 2(9)*, after “force” (page 14, line 19), insert “on”.

In *clause 2(14)*, after “**80,**” (page 14, line 26), insert “**83B,**”.

In *clause 2(23)*, delete “**64BB,**” (page 15, line 5).

Clause 5

In *clause 5(2)(b)*, replace “cryptoassets” (page 19, line 5) with “cryptocurrency”.

In *clause 5(3)*, replace “cryptoassets” (page 19, lines 6 and 7) with “cryptocurrency”.

Clause 5B

In *clause 5B(2)*, delete *new paragraph (kaab)* (page 20, line 7).

After *clause 5B(2)* (page 20, after line 8), insert:

- (3) After section 3(1)(l), insert:
- (lb) arranging the provision, or transfer, of ownership of cryptocurrency:

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Clause 26

In *clause 26*, heading, after “**Section 24**” (page 42, line 11), insert “**amended and**”.

In *clause 26(1B)*, after “**Subsections (1A)**” (page 42, line 29), insert “, **(1ABA)**”.

Clause 27

In *clause 27*, heading, replace “**before repeal**” (page 42, line 33) with “**and repealed**”.

Clause 48

In *clause 48(1)*, new section *CB 6A(1)(a)*, replace “**subsections (3) to (7D) and (16)**” (page 57, lines 12 and 13) with “**subsections (3) to (7C)**”.

In *clause 48(1)*, new section *CB 6A(1)(b)(ii)*, replace “**subsections (3) to (7D) and (16)**” (page 57, line 20) with “**subsections (3) to (7C)**”.

In *clause 48(1)*, new section *CB 6A(1)(b)(iii)*, after “disposal” (page 57, line 21), insert “or at the time the instrument to transfer the land to another person is registered as described in **subsection (3)(a)**”.

In *clause 48(1)*, new section *CB 6A(3)*, replace “**(7D)**” (page 57, line 37) with “**(7C)**”.

In *clause 48(1)*, after new section *CB 6A(5C)* (page 59, after line 19), insert:

Dividing from and merging with pre-existing land

(5D) To the extent to which land (**land A**) is either transferred by a person and, before transfer from them, was part of other land (**pre-existing land**) that a person owned, or is transferred to a person and, after transfer to them, merges with other land (also **pre-existing land**) that the person owns, an instrument of transfer for the transfer is treated as not being for the pre-existing land.

In *clause 48(1)*, new section *CB 6A(7)*, replace “settlers” (page 59, line 27) with “original settlers”.

In *clause 48(1)*, new section *CB 6A(7)*, replace “**section CB 6AC**” (page 59, line 29) with “**section CB 6AB**”.

In *clause 48(1)*, new section *CB 6A(7B)*, replace “**section CB 6AD**” (page 59, lines 34 and 35) with “**section CB 6AC**”.

In *clause 48(1)*, delete new section *CB 6A(7D)* (page 60, lines 1 to 5).

In *clause 48(1)*, delete new section *CB 6A(16) and (17)* (page 61, lines 9 to 29).

In *clause 48(1)*, replace new sections *CB 6AC and CB 6AD* (page 61, line 33 to page 63, line 36) with:

CB 6AB Residential land transferred in relation to certain family trusts and other capacities

Transfer to trustee

(1) If a trustee holds land on a rollover trust, then the bright-line acquisition date for the land, when the trustee disposes of it, is the bright-

line acquisition date that the settlor had for the land before transfer to the trustee. The transfer to the trustee must be on or after 1 April 2022.

Transfer to original settlor

- (2) If a person (an **original settlor**) holds land that was transferred back to them from a trustee of a trust that the original settlor originally settled, and the trust is a rollover trust, then the bright-line acquisition date for the land, when the original settlor disposes of it, is the bright-line acquisition date that the trustee had for the land before transfer to the original settlor. The transfer to the original settlor must be on or after 1 April 2022.

Transfer to or from different capacity, proportionality

- (3) For the purposes of applying **subsections (1) and (2)** for a person who is a settlor in the case of **subsection (1)** or an original settlor in the case of **subsection (2)**, the person may have a capacity other than settlor or original settlor (for example: LTC owner). However, in the case of an original settlor, **subsection (2)** does not apply unless the land transferred back to them from the relevant trustee is—
- (a) the same land that they originally settled and all other original settlors also get back their land; or
 - (b) in part the same land that they originally settled if that part and all other transfers back to other original settlors are in the same proportions as in the original settlement.

Transfer to self

- (4) If a person transfers the same land to themselves in a different capacity, and there is no intervening transfer to a third party, then the bright-line acquisition date for the land when they dispose of it to a third party in that different capacity is the bright-line acquisition date that the person first had for the land. The transfer to the different capacity must be on or after 1 April 2022, and must not be to or from a person in their capacity of settlor, beneficiary, or trustee.

Key term: rollover trust

- (5) **Rollover trust** means, at the time of a relevant transfer to or from a relevant trust,—
- (a) all relevant transfers to either trustees in the case of **subsection (1)** or to original settlors in the case of **subsection (2)** are either by people who are beneficiaries or to people who are beneficiaries, as applicable, 1 of whom is a principal settlor (for example: if the land is transferred to 2 people who are original settlors, then they must be beneficiaries of the

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trust, in addition to any other capacity they might have, and 1 of them must be a principal settlor); and

- (b) all principal settlors are beneficiaries of the trust; and
- (c) all principal settlors are close family associates; and
- (d) all beneficiaries are either close family beneficiaries, or trustees of another trusts and at least 1 beneficiary of the other trust is a close family associate of a beneficiary the relevant trust.

Key term: close family beneficiary

(6) **Close family beneficiary** means, for the relevant trust, a beneficiary that is 1 or more of the following:

- (a) a principal settlor;
- (b) a close family associate of another beneficiary who is also a principal settlor;
- (c) a company in which a 50% or more voting interest, or a 50% or more market value interest if a market value circumstance exists, is owned by a beneficiary of the trust that is a close family associate of another beneficiary that does meet the principal settlor requirements for the trust;
- (d) a charity registered under the Charities Act 2005.

Key term: close family associates

(7) Two persons are **close family associates** if 1 or more of the following applies:

- (a) they are within 4 degrees of blood relationship;
- (b) they are married, in a civil union, or in a de facto relationship;
- (c) 1 person is within 4 degrees of blood relationship to the other person's spouse, civil union partner, or de facto partner.

Exception

(8) This section does not apply for the transfer of shares in an LTC to or from a trustee.

CB 6AC Residential land transferred in relation to certain Māori family trusts

Transfer to trustee

(1) If a Māori trustee holds land on a Māori rollover trust, the bright-line acquisition date for the land, when the Māori trustee disposes of it, is the bright-line acquisition date that the settlor had for the land before transfer to the Maori trustee. The transfer to the trustee must be on or after 1 April 2022.

Transfer to original settlor

- (2) If a person (an **original settlor**) holds land that was transferred back to them from a Māori trustee of a trust that the original settlor originally settled, and the trust is a Māori rollover trust, the bright-line acquisition date for the land, when the original settlor disposes of it, is the bright-line acquisition date that the Māori trustee had for the land before transfer to the original settlor. The transfer to the original settlor must be on or after 1 April 2022.

Transfer to or from different capacity, proportionality

- (3) For the purposes of applying **subsections (1) and (2)** for a person who is a settlor in the case of **subsection (1)** or an original settlor in the case of **subsection (2)**, the person may have a capacity other than settlor or original settlor (for example: LTC owner), but in the case of an original settlor, **subsection (2)** does not apply unless the land transferred back to them from the relevant trustee is—
- (a) the same land that they originally settled and all other original settlors also get back their land; or
 - (b) in part the same land that they originally settled if that part and all other transfers back to other original settlors are in the same proportions as in the original settlement.

Key term: Māori rollover trust

- (4) **Māori rollover trust** means, at the time of a relevant transfer to or from a relevant trust,—
- (a) all relevant transfers to either trustees in the case of **subsection (1)** or to original settlors in the case of **subsection (2)** are either by people who are beneficiaries or to people who are beneficiaries, as applicable (for example: if the land is transferred to 2 people who are original settlors, then they must be beneficiaries of the trust, in addition to any other capacity they might have); and
 - (b) all beneficiaries are—
 - (i) members of the same iwi or hapu;
 - (ii) descendants of the same tipuna; and
 - (c) the land is subject to Te Ture Whenua Māori Act 1993.

Key term: Maori trustee

- (5) **Māori trustee** means a trustee of a trust that is either a Maori authority, or eligible to elect to be a Maori authority, under section HF 2(3)(e)(i) (Who is eligible to be a Maori authority?).

In clause 48(1), delete new section CB 6AF (page 64, line 18 to page 65, line 11).

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Clause 56B

In *clause 56B(7)*, after *new section CZ 39(5C)* (page 71, after line 37), insert:

Dividing from and merging with pre-existing land

- (5D) To the extent to which land (**land A**) is either transferred by a person and, before transfer from them, was part of other land (**pre-existing land**) that a person owned, or is transferred to a person and, after transfer to them, merges with other land (also **pre-existing land**) that the person owns, an instrument of transfer for the transfer is treated as not being for the pre-existing land.

In *clause 56B(8)*, *new section CZ 39(6B)*, replace “**section CB 6AC** (Residential land transferred in relation to certain family trusts)” (page 72, line 3) with “**section CB 6AB** (Residential land transferred in relation to certain family trusts and other capacities)”.

In *clause 56B(8)*, *new section CZ 39(6B)*, replace “by **section CB 6AC**” (page 72, line 7) with “by **section CB 6AB**”.

In *clause 56B(8)*, *new section CZ 39(6C)*, replace “**section CB 6AD** (Residential land transferred to Maori authorities, or similar eligible persons, for certain family trusts)” (page 72, lines 11 and 12) with “**section CB 6AC** (Residential land transferred in relation to certain Maori family trusts)”.

In *clause 56B(8)*, *new section CZ 39(6C)*, replace “by **section CB 6AD**” (page 72, line 15) with “by **section CB 6AC**”.

In *clause 56B(8)*, delete *new section CZ 39(6E)* (page 72, lines 24 to 31).

Delete *clause 56B(9)* (page 72, line 32 to page 73, line 14).

Clause 64BB

Delete *clause 64BB* (page 76, lines 19 to 24).

Clause 64CB

Replace *clause 64CB(1)* (page 76, lines 29 to 36) with:

- (1) After section DG 10(1), insert:

Relationship with subpart DH

- (1B) Despite this section and sections DG 11, DG 12 and DG 13, for the purposes of applying those sections—
- (a) interest incurred in relation to disallowed residential property or to acquire an ownership interest in, or become a beneficiary of, an interposed residential property holder is ignored; and
 - (b) the debt to which the interest described in **paragraph (a)** relates is ignored; and

- (c) a close company must, for an asset that is disallowed residential property, exclude from the asset value determined for the asset the lesser of—
 - (i) the asset value that would be determined for the asset if this paragraph did not apply to the asset;
 - (ii) the amount of the company’s debt under which the company incurs interest in relation to the asset.

Clause 64D

Delete *clause 64D(2)* (page 77, lines 8 to 27).

Clause 64E

In *clause 64E*, new section *DH 5(5)(d)(i)*, replace “**section CB 6AC, CB 6AD, CB 6AF, FB 3A, FC 9**” (page 82, lines 2 and 3) with “**section FB 3A, FC 9, FC 9B(a) to (e)**”.

In *clause 64E*, replace new section *DH 6(4)*, other than the heading (page 85, lines 4 to 7), with:

- (4) For the purposes of this section, **section DH 8**, and the definition of **interposed residential property holder**, a loan entered into by a shareholder of a close company before it became an LTC is not affected by the company becoming an LTC.

In *clause 64E*, replace new section *DH 7(4)*, other than the heading (page 86, lines 8 to 13), with:

- (4) A repayment of the underlying loan is applied against the notional loan principal to reduce it, to a minimum of zero, unless the source of the repayment is the disposal of allowed property described in **subsection (3)(b)**. If the source of the repayment is the disposal of allowed property, then only the amount of the repayment that is in excess of the 26 March 2021 value of the allowed property is applied against the notional loan principal to reduce it, to a minimum of zero.

In *clause 64E*, new section *DH 10(4)(c)*, replace “**section CB 6AC, CB 6AD, CB 6AE, or CB 6AF**” (page 88, line 13) with “**section FC 9B(a) to (f)**”.

Clause 74

In *clause 74(9)*, new section *EM 5(8)*, replace “**subsection (4)**” (page 94, line 19) with “**subsection (4) or (9)**”.

Clause 80

In *clause 80(12)*, replace, in each place, “**(4)**” (page 99, lines 27 and 31) with “**(4), (5)**”.

Clause 80C

In *clause 80C*, replace *new sections FC 9B and FC 9C* (page 101, lines 11 to 28) with:

FC 9B Residential land: certain transferors

For the purposes of calculating a person's net income in relation to the disposal of residential land for which they derive an amount of income under **section CB 6A or CZ 39** (which relate to residential land), if the person is 1 of the following then they are treated as disposing of the relevant land for the greater of either its cost to them or the consideration they derive for the disposal:

- (a) a person transferring land to a trustee (the **recipient**), described in **section CB 6AB(1)** (Residential land transferred in relation to certain family trusts and other capacities), to which that subsection applies:
- (b) a trustee transferring land to an original settlor (also a **recipient**), described in **section CB 6AB(2)**, to which that subsection applies:
- (c) a person in a different capacity (also a **recipient**), described in **section CB 6AB(3)**, to which that subsection applies:
- (d) a person transferring land to a Maori trustee (also **recipient**), described in **section CB 6AC(1)** (Residential land transferred in relation to certain Maori family trusts), to which that subsection applies:
- (e) a Māori trustee transferring land to an original settlor (also a **recipient**), described in **section CB 6AC(2)**, to which that subsection applies:
- (f) a transferor transferring land to a recipient, described in **section CB 6AE** (Certain transfers of residential land included in settlement of claim under the Treaty of Waitangi), to which that section applies.

Defined in this Act: cost, dispose, income, net income, residential land

FC 9C Residential land: certain recipients

For the purposes of calculating a person's net income in relation to the disposal of residential land for which they derive an amount of income under **section CB 6A or CZ 39** (which relate to residential land), if the person is a recipient of a transfer, as described in **section FC 9B(a), (b), (c), (d), or (e)**, then they are treated as acquiring the relevant land for the greater of either its cost to the person (the **transferor**) that transferred it to them or the consideration they give the transferor for the land.

Defined in this Act: acquire, cost, dispose, income, net income, residential land

New clause 83B

After *clause 83* (page 104, after line 27), insert:

83B Section FM 15 amended (Amortising property and revenue account property)

- (1) After section FM 15(2), insert:

Acquisition by company B

- (2B) For the purposes of **sections CB 6A and CZ 39** (which relate to residential land), in relation to property that is land, company B is treated as having the same bright-line acquisition date as company A for that land.

- (2) In section FM 15, list of defined terms, insert “bright-line acquisition date” and “land”.

Clause 91B

Replace *clause 91B(5)* (page 110, line 35 to page 111, line 30) with:

- (5) Replace section LT 1(4) with:

Maximum amounts

- (4) The amount of the credit must not be more than the lesser of—
- (a) the amount of total tax given by **subsection (4B)**; and
 - (b) the amount calculated using the formula—
current loss credit – exploration abandonment excess.

Total tax

- (4B) In **subsection (4)(a)**, total tax is the amount of income tax paid by—
- (a) for a petroleum miner, the petroleum miner and any consolidated group of which they are a member on net income derived for all earlier tax years, calculated on a year-by-year basis and aggregated;
 - (b) for a farm-in party, the farm-in party and any consolidated group of which they are a member on net income derived for all earlier tax years, calculated on a year-by-year basis and aggregated.

Current loss credit

- (4C) In the formula in **subsection (4)(b)**, the item **current loss credit** is the amount given by **subsection (2)**.

Exploration abandonment excess

- (4D) In the formula in **subsection (4)(b)**, the item **exploration abandonment excess** is the greater of zero and,—

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- (a) if the amount of the net loss described in subsection (1)(c) is less than or equal to the total amount of the deductions described in subsection (1)(a)(i) and (ii), zero; or
- (b) if the amount of the net loss described in subsection (1)(c) is equal to or exceeds the total amount of the deductions described in subsection (1)(a)(i) to **(iii)** and the amount described in **subsection (1)(a)(iii)** is greater than zero, the amount calculated by multiplying the amount referred to in **subsection (1)(a)(iii)** for the income year by the tax rate referred to in subsection (3)(b) and subtracting the amount of income tax (the **post-abandonment tax**) paid by—
 - (i) for a petroleum miner, the petroleum miner and any consolidated group of which they are a member on net income derived for tax years beginning after drilling for the purposes of exploration ceased in the exploratory well, calculated on a year-by-year basis and aggregated:
 - (ii) for a farm-in party, the farm-in party and any consolidated group of which they are a member on net income derived for tax years beginning after drilling for the purposes of exploration ceased in the exploratory well, calculated on a year-by-year basis and aggregated; or
- (c) if neither of **paragraphs (a) and (b)** applies, the amount calculated using the formula—
$$(\text{net loss} - \text{decommissioning deductions}) \times \text{tax rate} - \text{post-abandonment tax}.$$

Definition of items in formula

- (4E) In the formula in **subsection (4D)(c)**,—
- (a) **net loss** is the amount of the net loss described in subsection (1)(c):
 - (b) **decommissioning deductions** is the total amount of the deductions described in subsection (1)(a)(i) and (ii):
 - (c) **tax rate** is the tax rate referred to in subsection (3)(b):
 - (d) **post-abandonment tax** is the amount of income tax described in **subsection (4D)(b)**.

In *clause 91B(6)*, replace “**subsections (4B)(b) and (4C)**” (page 111, lines 31 and 32) with “**subsections (4B) and (4D)**”.

In *clause 91B(7)*, replace “**subsections (4B)(b) and (4C)**” (page 111, lines 33 and 34) with “**subsections (4B) and (4D)**”.

Replace *clause 91B(8)* (page 111, lines 35 and 36) with:

- (8) In section LT 1(7),—

- (a) replace “subsections (4)(b)” with “**subsections (4B), (4D),**”;
- (b) replace “the amount referred to in subsection (4)(a)” with “the current loss credit”.

New clauses 188F and 188G

After *clause 188E* (page 156, after line 26), insert:

188F Section 73 amended (Certain unremitted deductions and employer contributions entered in and paid out of holding account)

After section 73(1), insert:

- (1B) For the purposes of subsection (1)(a)(ii), an amount of an employer contribution for an employee includes a contribution payable on or before 31 March 2020 that remains unpaid on 1 April 2020 in relation to which the relevant information referred to in subsection (1)(b) and (c) has been provided to the Commissioner.

188G Section 78 amended (Treatment of certain unremitted deductions and employer contributions in holding account)

After section 78(3)(a), insert:

- (ab) for an employer contribution referred to in **section 73(1B)**, on 1 April 2020; or

New clause 192B

After *clause 192* (page 157, after line 8), insert:

192B Section 85 amended (Time when deductions and employer contributions treated as received for interest purposes)

- (1) Repeal section 85(1).
- (2) In section 85(2),—
 - (a) replace “The amount is treated” with “An amount referred to in section 73(1) is treated”;
 - (b) after subsection (2)(b), insert:
 - (bb) for an employer contribution referred to in **section 73(1B)**, on 1 April 2020; or

Explanatory note

This Supplementary Order Paper (SOP) proposes several changes to the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Bill (the **Bill**) which are of a technical nature and are all consistent with the underlying policy intent.

GST policy items

Modernising information requirements for GST

The SOP would make minor technical changes to the proposals for modernising information requirements for GST.

Excluding cryptoassets from GST

The SOP would replace two existing references to “cryptoassets” with “cryptocurrency”. It would also broaden the section reference of a provision and make a further amendment to ensure brokerage services provided in relation to cryptoassets are captured as an exempt financial service.

Housing measures

Interest limitation rules for residential investment property

The SOP would make minor technical amendments to the existing interest limitation proposals for residential property. Specifically:

- Within the Bill is a rule that will apply when a shareholder borrows money to acquire shares in a close company that owns property subject to the interest limitation rules and the company subsequently elects to become a look-through company. Proposed amendments within the SOP will ensure that the policy intent is given effect to.
- The Bill contains transitional rules for how taxpayers may treat loans drawn down before 27 March 2021 that cannot reasonably be traced, in addition to the repayment of such loans. The SOP would amend the repayments rule to ensure the outcome intended by the Finance and Expenditure Committee (the **FEC**) is achieved.
- Several technical amendments are necessary to ensure the interest limitation rules apply as intended to persons subject to the mixed-use asset rules.

Bright-line test

5-year new build bright-line test

As currently drafted, land would not qualify for the new build bright-line test if an agreement to sell land is entered into but a new build is not completed until after this date. The SOP would effect a minor wording change so that the land qualifies for the new build bright-line test if there is a new build on the land when settlement occurs.

This can be a common scenario for people purchasing new builds, whereby a sale and purchase agreement is signed while the property is being built and settlement is scheduled to occur a set number of working days after the code compliance certificate has been issued.

Rollover relief

The Bill extends rollover relief for certain transfers or disposals of residential land under the bright-line test. The SOP would make the provisions more accessible to users of the legislation and better align the wording of the provisions with the policy intent.

The SOP would also:

- Clarify the relief that applies if a person transfers land to themselves in a different capacity (for example, in their capacity as a shareholder in a look-through company or partner in a partnership).
- Provide rollover relief for transfers within a consolidated group of companies (as recommended by the FEC).

Other measures

KiwiSaver employer contributions pre-1 April 2020

The SOP contains proposals to clarify that the Government’s decision to effectively guarantee employer KiwiSaver contributions applies to employer contributions made prior to 1 April 2020 as well as employer contributions made after this date.

Petroleum decommissioning

As currently drafted, the Bill includes amendments recommended by the FEC that allow the industry a refundable tax credit for a limited subset of exploration wells, consistent with the policy intent.

The SOP would clarify the drafting to ensure it operates as intended.

Debt remission within an economic group

As introduced, the Bill proposes replacing the term “forgive” with “remitted” in several sections to cover a wider range of debt remission scenarios. The SOP inserts an application provision to ensure this applies from 1 April 2008, as intended.

Fair dividend rate foreign currency hedges rules

As introduced, the Bill modifies the second hedge-by-hedge method for calculating the portion of a foreign currency hedge to which the fair dividend rate (**FDR**) method can be applied (referred to in the rules as the FDR hedge portion). The SOP would introduce an amendment to the formula for calculating FDR hedge portions to clarify that a negative result must be treated as zero. This will ensure that the method operates as intended where there is a negative result.

Departmental disclosure statement

The Inland Revenue Department considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

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Regulatory impact statement

As the proposals within this Supplementary Order Paper are either technical or remedial in nature, no regulatory impact statement is required.