

Student Loan Scheme Amendment Bill (No 2)

Commentary on the Bill

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OVERVIEW

The Student Loan Scheme Amendment Bill (No 2) introduces a number of changes to the administration of the student loan scheme, particularly in relation to borrowers who are overseas.

Since 1 April 2006, student loans for most borrowers who live in New Zealand have been “interest-free”. That is achieved, however, by charging interest on these loans but then writing it off at the end of the year, which adds complexity to the legislation.

The rationale for introducing interest-free loans was to reduce the costs to students of tertiary education, to encourage tertiary-educated New Zealanders to stay in New Zealand and contribute to the economy, and to remove barriers to skilled New Zealanders returning home.

There are a number of concerns about the operation of the student loan scheme rules in the new “interest-free” environment. The financial incentives for borrowers to leave New Zealand without informing Inland Revenue have increased, since borrowers who are based overseas generally attract interest on their loans. It is also difficult for Inland Revenue, which collects repayments, to know who is and who is not overseas. Furthermore, compliance is low amongst borrowers overseas, while the legislation appears to be creating disincentives for them to return to New Zealand.

The bill introduces changes to deal with these and other problems and generally updates the legislation to make it consistent with the policy intent of interest-free loans.

The main administrative change in the bill will allow Inland Revenue and the New Zealand Customs Service to match information, to help determine whether a borrower is eligible for an interest-free loan.

New rules for borrowers who go overseas include the introduction of a repayment “holiday” of up to three years, and the introduction of progressive repayment rules, based on the size of a borrower’s loan account, for all overseas borrowers who are not on a repayment holiday.

Interest-free loans for people studying full-time overseas will be extended from post-graduates to undergraduates.

The amnesty for overseas borrowers in arrears, introduced last year, is to be extended by a year, allowing those borrowers to make a “fresh start”.

The late payment penalty for all borrowers, whether in New Zealand or overseas, will reduce from 2% to 1.5% a month to make it less punitive, and the hardship provisions in the Student Loan Scheme Act are being amended to give Inland Revenue greater flexibility in administering them.

These and other proposed changes are explained in this commentary. Unless otherwise indicated, section references in the text are to the Student Loan Scheme Act.

Policy changes

INFORMATION MATCH BETWEEN INLAND REVENUE AND CUSTOMS

(Clauses 28, 36, 38 and 39)

Summary of proposed amendments

The proposed changes introduce an information match between Inland Revenue and the New Zealand Customs Service (Customs). The purpose of the information match is to assist Inland Revenue in determining whether a borrower is:

- eligible for an interest-free loan;
- based in New Zealand or overseas; or
- resident or non-resident.

Application date

The changes will apply from the day after enactment.

Key features

New section 62A of the Student Loan Scheme Act 1992 and new sections 280G and 280H of the Customs and Excise Act 1996 allow an information match of student loan borrower information. Sections 81 and 87 of the Tax Administration Act 1994 are also being amended.

Inland Revenue will provide Customs with the names, aliases, dates of birth and tax file numbers of student loan borrowers. An information match will occur by Customs comparing the name and date of birth information against any arrival and departure information it holds. If Customs has arrival or departure information relating to any borrower, it will supply Inland Revenue with the time and date of arrival or departure for that particular borrower.

Inland Revenue will use the border crossing information obtained from Customs to determine whether borrowers are eligible for interest-free student loans. Borrowers who are overseas for more than six months are generally not eligible.

Inland Revenue will also use border crossing information to help ascertain whether borrowers are:

- based in New Zealand or overseas; or
- resident or non-resident.

Borrowers are considered resident if they are present in New Zealand for more than 183 days in any period of 12 months or have a permanent place of abode in New Zealand. Borrowers are considered non-resident if they are absent from New Zealand for more than 325 days in any period of 12 months, provided they do not have a permanent place of abode in New Zealand.

The Commissioner of Inland Revenue and the Chief Executive of Customs may enter into an agreement to determine the frequency, form and method for the exchange of information.

Schedule 3 of the Privacy Act 1993 is also being amended. This means that the information match will be subject to the rules in Part 10 of that Act.

Background

At present, borrowers are required to inform Inland Revenue when they have been, or expect to be, overseas for more than three months. The introduction of interest-free student loans has increased the financial incentive for borrowers not to advise Inland Revenue of their absence overseas. This is because borrowers who are overseas for more than six months are generally not eligible for interest-free student loans, while borrowers remaining in New Zealand are eligible.

The government agreed to introduce an information match to help Inland Revenue identify which borrowers are eligible for interest-free loans.

ARRIVAL AND DEPARTURE INFORMATION

(Clauses 28, 36 and 39)

Summary of proposed amendments

The proposed change allows Inland Revenue to obtain access to any information recording system that stores arrival and departure information that is used by the New Zealand Customs Service (Customs). The purpose of the access is to assist Inland Revenue in determining whether a borrower is:

- eligible for an interest-free loan;
- based in New Zealand or overseas;
- resident or non-resident; or
- in New Zealand.

Application date

The changes will apply from the day after enactment.

Key features

Under new section 62A of the Student Loan Scheme Act and new section 280I of the Customs and Excise Act, the Chief Executive of Customs may allow authorised Inland Revenue employees to have access to information stored in any recording system used by Customs to store arrival or departure information.

Inland Revenue is able to gain access to such a recording system only for the purposes of assisting in determining which borrowers are eligible for the interest write-off that gives effect to interest-free loans, whether they are based in New Zealand or overseas, resident or non-resident and whether they are in New Zealand. Inland Revenue will be required to maintain a record of every time the database is accessed, to allow the appropriate use of database to be monitored.

Obtaining access to a Customs' database will allow Inland Revenue to confirm borrowers' arrival and departure dates on an ad hoc basis – for example, if a borrower challenges the date that the information match shows that he or she left New Zealand.

Background

Under section 17 of the Tax Administration Act 1994, Inland Revenue can seek arrival and departure information from the New Zealand Customs Service on a case-by-case basis. The changes will allow Inland Revenue to have direct access to the Customs database for information on arrivals and departures.

EXTENDING THE AMNESTY ON STUDENT LOAN PENALTIES

(Clauses 4, 19, 30 and 35)

Summary of proposed amendments

The amnesty on student loan penalties, announced last year, is being extended until 31 March 2008. The purpose of extending the amnesty is to give the chance of a fresh start to non-resident borrowers in arrears who have been identified as the result of the proposed data match.

Under the amnesty, borrowers who were non-resident at some time in the past but who have returned to New Zealand will not have any new non-resident liability established.

The accounts of borrowers who repaid their loans by 13 November 2006, the date of introduction of the bill, will not be adjusted, even though the borrowers concerned might have been technically in arrears.

Application date

The amendments will apply from 1 April 2007.

Key features

The existing amnesty (sections 45A to 45D) is being repealed. A new Part 8 (sections 89 to 105) is being inserted, and section 2 is being amended.

“Fresh start”

If Inland Revenue has not raised non-resident assessments for tax years before 1 April 2007, it will not be required to do so.

For borrowers with arrears who are non-resident as at 31 March 2006, existing penalties will be removed and the unpaid balance of assessments (whether resident or non-resident) will be cancelled up to 1 April 2007. Compounding interest at the applicable rate(s) applies on the loan balance over the period of default.

The effect of these amendments is to wipe the slate clean for borrowers who are non-resident as at 31 March 2006. For borrowers who are resident as at 31 March 2006, but who were non-resident at any time before that date, Inland Revenue will not issue any non-resident assessment if not already made. For borrowers who have repaid their loan by 13 November 2006, their account will not be reopened.

Amnesty conditions

In exchange for not establishing or removing penalties under the “fresh start” amendments, borrowers who are non-resident as at 31 March 2006 will have the chance to apply to Inland Revenue for the amnesty and begin making regular payments. Borrowers will have from 1 April 2007 until 31 March 2008 to apply to Inland Revenue to come within the amnesty.

Meeting repayment requirements

Borrowers will be considered to have complied with the amnesty terms if they repay an amount based on the size of their loan balance (as at the date they apply for the amnesty). The amount they are required to repay is as follows:

- \$2,000 for loan balances of \$15,000 or less;
- \$4,000 for loan balances of \$15,001 to \$30,000; and
- \$6,000 for loan balances of over \$30,000.

The amount must be paid by the borrower in four equal instalments, which are due as follows:

- for amnesty applications between 1 April 2007 and 31 August 2007, the first payment is due on 30 September 2007 and every six months thereafter;
- for amnesty applications between 1 September and 29 February 2008, the first payment is due on 31 March 2008 and every six months thereafter; and
- for amnesty applications made in March 2008, the first payment is due on 30 September 2008 and every six months thereafter.

Inland Revenue will have a once-only discretion to follow up any missed repayment and, provided the payment is made within one month of Inland Revenue contacting the borrower, the missed payment will not be treated as a failure to meet the terms of the amnesty.

Inland Revenue will be able to reduce, in part, the amount payable in cases of significant financial hardship. Significant financial hardship includes difficulties that arise because of:

- borrowers’ inability to meet minimum living expenses;
- their inability to carry out their usual occupation because of illness, injury or disability;
- their inability to meet mortgage repayments on their primary residence, resulting in the mortgagee seeking to enforce the mortgage on the residence;
- the cost of modifying a residence to meet special needs arising from a disability of a borrower or a borrower’s dependant;
- the cost of palliative care for a borrower or a borrower’s dependant; or
- the cost of a funeral for a borrower’s dependant.

Amounts payable under the amnesty will replace any overseas repayment obligations.

If borrowers become New Zealand-based during the two-year period in which repayments are due under the amnesty, the amounts they pay to meet their New Zealand-based repayment obligations (which are income-based) will count towards the amnesty's required repayments.

Amnesty conditions for borrowers who applied for the existing amnesty

Borrowers who applied for the existing amnesty (which ends on 31 March 2007) must meet the repayment requirements as outlined above. Under the proposed extension, Inland Revenue will give credit for amounts already paid under the existing amnesty.

Borrowers who do not apply for the amnesty or who do not comply with its terms

Borrowers who do not apply for the amnesty by 31 March 2008 will have their loan balance increased by five percent of the balance at that date. However, if Inland Revenue considers that the resulting increase is more than the late payment penalties the borrower might otherwise have attracted, it may adjust the increase to an amount it considers fair and reasonable.

If borrowers apply for the amnesty but fail to meet its terms, their loan balances will also be increased, but by a smaller amount that takes into account the degree of their compliance with repayment requirements. The increase in the loan balance will occur on 1 April of the year following a borrower's failure to meet the terms of the amnesty.

Borrowers who had repaid their loans by 13 November

Some borrowers who were non-resident as at 31 March 2006 would have found themselves in arrears had they been correctly assessed, and would therefore technically be subject to the amnesty conditions. The changes ensure that borrowers who have repaid their loans by 13 November 2006 will not have any changes made to their account.

Objection to decisions concerning amnesty

Borrowers can object to Inland Revenue's decision to increase their loan balance if they have failed to come within the amnesty or comply with its terms, on the grounds that the decision is erroneous.

Background

The existing amnesty on student loan penalties applies for the year to 31 March 2007. Borrowers who are non-resident and have arrears and penalties at the start of the amnesty period are eligible to have all penalties written-off, provided they meet their obligations under the Student Loan Scheme Act for two years. The amnesty was introduced to remove barriers to borrowers returning to New Zealand.

Extending the amnesty will allow borrowers identified as non-resident as a result of the data match – which will take effect after the existing amnesty ends – to apply to come within the amnesty.

SIMPLIFYING THE LAW ON WHICH REPAYMENT RULES APPLY

(Clauses 4–8, 17 and 24)

Summary of proposed amendments

To simplify the law as to which set of repayment rules – those for people based in New Zealand or those for people based overseas – that borrowers are subject to, their annual repayment obligations will be based on whether or not they are eligible for an interest-free loan, rather than on their tax residence.

Application date

The amendments will apply from 1 April 2007.

Key features

Section 2, the heading to Part 2, sections 14, 15, 44 and 57 of the Student Loan Scheme Act are being amended. A new section 14A is being inserted.

Borrowers' repayment obligations will be based on whether they satisfy the eligibility criteria for an interest-free loan, rather than on their tax residence, as at present.

Aligning repayment conditions with when a borrower ceases to be entitled to an interest-free loan will simplify matters in that there will be just one, clear-cut rule for both: borrowers will be either eligible for an interest-free loan, and therefore subject to the repayment rules for New Zealand-based borrowers, or they will not be eligible for an interest-free loan, so will be subject to the repayment rules for overseas-based borrowers. Borrowers will become subject to the repayment rules for borrowers in New Zealand from the day they became entitled to an interest-free loan.

Generally, borrowers who are overseas for more than six months are not eligible for interest-free loans. However, Inland Revenue is able to grant an exemption to these rules in certain circumstances. Borrowers who are granted an exemption will also be subject to the repayment rules for New Zealand-based borrowers.

Background

Currently, borrowers' residence status for student loans purposes is based on tax residence. Tax residence can be difficult to determine because it is subject to whether a person has a permanent place of abode in New Zealand, which is not always clear-cut (and Inland Revenue cannot always establish whether a permanent place of abode exists). It also makes administration of the student loan scheme difficult and makes it complicated for borrowers to understand which repayment rules they are subject to.

NEW REPAYMENT RULES FOR BORROWERS BASED OVERSEAS

(Clauses 9 and 33)

Summary of proposed amendments

New rules for borrowers based overseas will automatically entitle them to a three-year repayment holiday, and introduce progressive repayment obligations that are based on the size of borrowers' loan balances.

Application date

The amendments will apply from 1 April 2007.

Key features

The existing Part 3 is being repealed. A new Part 3 (sections 31 to 36A) and a new Part 9 (sections 106 to 111) introduce changes so that borrowers based overseas will automatically be entitled to a three-year repayment holiday. During the holiday they will not have compulsory repayment obligations, although their loan balance will attract interest. If they do not use the full three-year holiday, they will be entitled to use the remainder next time they become an overseas based-borrower. Borrowers can also opt not to make use of the repayment holiday.

The other major feature of the new rules for borrowers who are based overseas is the introduction of progressive repayment obligations, which will be based on the size of borrowers' loan balances, as follows:

- \$1,000 a year for loan balances of \$15,000 or less;
- \$2,000 a year for loan balances of \$15,001 – \$30,000; and
- \$3,000 a year for loan balances of over \$30,000.

The progressive repayment obligations apply to all overseas borrowers who are not on a repayment holiday.

Transitional provisions will apply to borrowers who are based overseas as at 1 April 2007:

- Borrowers who have met their student loan repayment requirements will be entitled to a three-year repayment holiday.
- Borrowers who have not met repayment requirements and who come within the amnesty on student loan penalties and meet its terms are eligible to apply to Inland Revenue for a three-year repayment holiday once they have met the amnesty's required repayment behaviour.

- Borrowers who have not met repayment requirements and who do not come within the amnesty or who come within the amnesty but fail to meet its terms are entitled to a repayment holiday whose length depends on the time they have been non-resident:
 - Borrowers who have been non-resident for one year or more but less than two years are eligible for a two-year holiday.
 - Borrowers who have been non-resident for more than two years but less than three years are eligible for a one-year holiday.
 - Borrowers who have been non-resident for more than three years are not eligible for a repayment holiday.

A repayment holiday ensures that the loan balances of those going overseas short-term will not increase at a punitive rate. The holiday recognises the New Zealand tradition of taking “OE” – and that it may be unrealistic to expect borrowers to make repayments while they are travelling and doing holiday jobs.

Background

Non-resident repayment obligations were initially designed so that loans would be repaid in a maximum of 15 years. This was achieved by requiring quarterly payments of a fixed amount of the principal (based on the loan balance at the beginning of the tax year following the year of departure), plus the estimated interest for the year. If the loan balance was less than \$15,000, \$1,000 of principal was required each year. For loans over \$15,000, principal of 1/15th of the original loan balance was required. For many borrowers the amount that they are currently expected to pay is simply not achievable.

The existing repayment rules are not consistent with the objective of encouraging borrowers to return to New Zealand and are undermining the government’s intent of ensuring that debt levels are commensurate with the benefits borrowers receive from their tertiary study.

LATE PAYMENT PENALTY RATE

(Clause 17)

Summary of proposed amendment

The late payment penalty rate will be reduced from 2.0 percent per month to 1.5 percent.

Application date

The change will apply to amounts subject to a late payment penalty on or after 1 April 2007.

Key features

Section 44 is being amended to reduce the penalty on overdue amounts to 1.5 percent.

Background

Any amount not paid by the due date incurs a late payment charge of 2.0 percent. A further 2.0 percent compounding penalty is charged for each subsequent month of default. This is equal to an annual interest rate of 26.82 percent, which is often criticised as being too punitive.

HARDSHIP APPLICATIONS

(Clause 23)

Summary of proposed amendments

Borrowers who have met their repayments as they fall due during the tax year may be granted relief after the end of the tax year, once the extent to which payment of the full amount of their annual repayment obligation would cause (or has caused) serious hardship is established.

Borrowers who anticipate that they will qualify for serious hardship relief may apply to have any payments which fall due during the year reduced, including to zero. However, the extent to which relief for a tax year should be given will not be finally determined until after the end of the year.

Application date

The change will apply from 1 April 2007.

Key features

Section 54 is being repealed. New sections 55 to 55D clarify that payments of obligations that fall due during a tax year do not preclude a borrower from being granted relief from meeting a repayment obligation. Any amount which has already been paid that exceeds the amount of the repayment obligation determined at the end of the tax year may be refunded.

Inland Revenue will be able to reduce any payments which fall due during the year, including reducing them to zero, upon application by a borrower if it considers that the borrower is likely to qualify for hardship relief. However, this will be provisional, and the extent to which hardship relief should be given will be established after the end of the tax year, when all the facts for that year are established.

Background

New Zealand-based borrowers are required to have repayment deductions made from their salary and wages during the tax year if their primary employment earnings are expected to exceed the repayment threshold. Other New Zealand-based borrowers with an end-of-year liability of more than \$1,000 in a year are required to make interim payments (akin to provisional tax) during the following tax year. These payments are credited towards their annual repayment obligation after the end of the tax year.

Borrowers based overseas are required to make instalments of their repayment obligation during the tax year.

Borrowers may be granted relief from payment of their repayment obligation in cases of serious hardship. (The payment is not written off, but is payable from future obligations.) However, under current law, the repayment obligation cannot be reduced below payments made during the year, and the obligation to make payments due during the year cannot be suspended.

INTEREST-FREE LOANS FOR BORROWERS STUDYING OVERSEAS

(Clause 14)

Summary of proposed amendment

Inland Revenue will be able to grant interest-free loans to borrowers studying full-time overseas at undergraduate level. At present, they are limited to postgraduates studying overseas. The change does not mean that borrowers will be able to take out a loan for study that is undertaken overseas; rather, it means that any existing loan they had before leaving New Zealand will be interest-free while they are studying.

Application date

The amendment will apply from 1 April 2007.

Key features

Section 38AJ is being amended to give Inland Revenue the power to grant borrowers studying full-time overseas at undergraduate level an interest-free loan. Undergraduate level will be defined as study that leads to a qualification equivalent to level 7 on the New Zealand Register of Quality Assured Qualifications (bachelor's degree level).

Borrowers will be required to provide proof to Inland Revenue in the form of verification from the National Qualifications Framework that establishes the equivalency of their course. They will also be required to provide Inland Revenue with evidence from their overseas tertiary provider that establishes their full-time enrolment in the undergraduate course.

Background

Inland Revenue already has the power to grant borrowers studying full-time overseas at postgraduate level an interest-free loan.

REMOVAL OF INTEREST WRITE-OFFS FOR BORROWERS INELIGIBLE FOR INTEREST-FREE LOANS

(Clauses 16 and 23)

Summary of proposed amendments

The bill updates the legislation by abolishing interest write-offs for borrowers who are ineligible for interest-free loans. The interest write-offs are being abolished because they are inconsistent with the policy intent of interest-free loans, which is to encourage borrowers to remain in, or return to, New Zealand.

Application date

The amendments will apply from 1 April 2007.

Key features

Sections 38A to 41 and section 55 are being repealed to abolish the interest write-offs that were in place before the introduction of interest-free loans. They are the full interest write-off for resident borrowers who are studying, the base interest write-off for resident borrowers, the partial base interest write-off for resident borrowers, the interest write-off for non-resident borrowers studying full-time overseas.

Background

Under current law, borrowers who are overseas for more than six months and who are ineligible for interest-free loans may be eligible for one of the following interest write-offs.

Full interest write-off for resident borrowers studying

Borrowers who are resident for tax purposes but who are not eligible for an interest-free loan for an entire tax year may be eligible for a full interest write-off for the entire year if they have studied for part of that year. Eligible borrowers who complete their study part-way through the academic year are entitled to a full interest write-off to 31 March the following year. Borrowers receive the write-off even if they have been overseas for most of the year.

Base interest write-off for resident borrowers

Borrowers who are not eligible for an interest-free loan, who retain their tax residence and who earn below the repayment threshold are eligible to have their base interest written off for up to two years.

Partial base interest write-off for resident borrowers

Borrowers who are not eligible for an interest-free loan, who retain their tax residence and whose base interest charged is more than half of their repayment obligation are eligible to have the difference written off for up to two years.

Interest write-off for non-resident borrowers studying full-time overseas

Non-resident borrowers can qualify for a base interest write-off or base interest reduction in certain limited circumstances. Borrowers can qualify for either provision if they have:

- renegotiated all or part of their assessed repayment obligation for a year on financial hardship grounds; and
- satisfied Inland Revenue that they have been engaged in full-time study overseas and payment of base interest charged during the year in which they were in full-time study would cause serious hardship.

INTEREST WRITE-OFFS VALIDATED

(Clause 33)

Summary of proposed amendments

Borrowers who had an interest write-off to which they were not entitled, but had repaid their loans by 13 November 2006 will not have the write-off reversed.

Application date

The amendments will apply from the day after enactment.

Key features

New section 88 ensures that borrowers whose loan balance was treated by Inland Revenue as being less than or equal to zero on 13 November 2006 and who were given a full interest write-off, a base interest write-off or a partial base interest write-off will have any write-off they received validated.

This amendment does not affect any loan obtained on or after 14 November 2006.

Background

A significant number of borrowers have received interest write-offs to which they were not entitled, and the write-offs would otherwise need to be reversed.

Miscellaneous technical amendments

OVERSEAS EMPLOYMENT EXEMPTION

(Clause 13)

Summary of proposed amendments

The law on allowing interest-free loans to borrowers who are overseas for more than six months because of the nature of their employment is being strengthened to ensure that their salary or wages are derived in New Zealand. The change is intended to ensure that the interest-free exemption is available only to those who earn employment income from New Zealand.

Application date

The changes will generally apply from the day after enactment. In the case of applications made for an exemption before enactment, the changes will apply from 1 April 2008.

Key features

The words “derived from New Zealand” are being inserted into section 38AH(c)(i) of the Act.

Background

Generally, borrowers who are overseas for more than six months are ineligible for the full interest write-off that gives effect to interest-free student loans. However, Inland Revenue is able to grant an exemption from this rule for borrowers who are overseas because of the nature of their employment. To be eligible for this exemption, borrowers must:

- be a tax resident;
- have a permanent place of abode only in New Zealand;
- provide proof that they receive a “source deduction payment” (as defined in section OB 2(1) of the Income Tax Act 2004); and
- provide proof that the majority of absences from New Zealand are because of the borrower’s employment.

INTEREST-FREE STUDENT LOANS FOR NEW BORROWERS

(Clauses 15 and 29)

Summary of proposed amendments

Inland Revenue will have the discretion to grant new borrowers a full interest write-off for up to 183 days. The full interest write-off gives effect to interest-free student loans. The changes make it possible for new borrowers who have gone overseas briefly during their required 183-day presence to have interest-free loans from the beginning.

Application date

The amendments will apply from 1 April 2006.

Key features

New section 38AL will give Inland Revenue the discretion to grant new borrowers a full interest write-off for up to 183 days from the date they first become a borrower. Section 65A is also being amended to allow borrowers to object if Inland Revenue does not grant them an interest write-off.

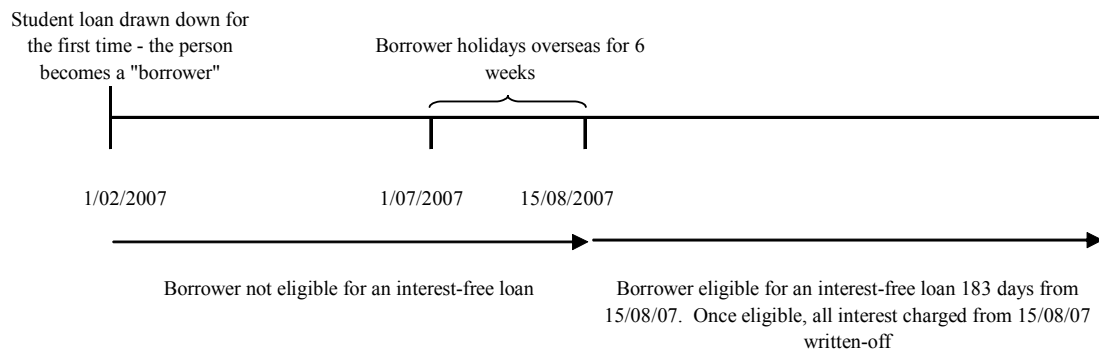
Background

For new borrowers to be entitled to an interest-free loan from the start, they must be in New Zealand for 183 consecutive days or more from the day they first draw down a loan. If they travel overseas for 31 days or less during what would otherwise have been a period of 183 consecutive days in New Zealand, the time overseas will be counted as if the borrower had remained in New Zealand.

New borrowers who travel overseas for more than 31 days in the 183 days from the day they first become a borrower will not be eligible for the full interest write-off until 183 days after they return to New Zealand (at which point all interest charged from the day they returned to New Zealand would be written off).

The diagram gives an example of a borrower who, under current law, would not be eligible for an interest-free loan from the time she first became a borrower.

Person who has lived in New Zealand for all of his/her life



Someone who has lived in New Zealand all her life begins studying in the 2007 calendar year, draws down a student loan for the first time on 1 February 2007 and becomes a “borrower”. On 1 July 2007 she goes overseas for a six-week holiday. She has been away from New Zealand for more than 31 days so the time overseas is counted as time overseas. She returns permanently to New Zealand on 15 August 2007.

Under the existing legislation, the borrower in the example is not eligible for an interest-free loan from 1 February 2007 because she has not been in New Zealand for 183 consecutive days (including periods of 31 days or less overseas) from the date she became a borrower. She would be eligible for an interest-free loan only after 183 days in New Zealand (from 15 August 2007), despite living in New Zealand, for all intents and purposes, throughout the entire period since becoming a borrower.

This problem arises as a consequence of having to deliver interest-free loans by way of an interest write-off. If interest-free loans could be delivered by way of a pure “interest-free” policy, no borrowers would be charged interest unless they were away from New Zealand for at least 184 consecutive days – and the borrower in the preceding example would be eligible for an interest-free loan from 1 February 2007 onwards. A transitional provision in the proposed legislation ensures that the same result is achieved as if interest-free loans could be delivered as pure “interest-free” loans.

The discretion will allow Inland Revenue to treat periods when a borrower was overseas for more than 31 days in aggregate as if the borrower had remained in New Zealand (for the six months from when he or she first drew down a loan).

Providing Inland Revenue with the discretion to grant an interest write-off needs to apply to the 183 days only from the date someone becomes a borrower. The reason is that once a borrower has become entitled to an interest-free loan, entitlement is lost only when he or she has been out of New Zealand for 184 consecutive days (including in the aggregate periods of 31 days or less in New Zealand).

REFUNDS OF OVER-PAYMENTS WHEN ASSESSMENTS ARE REOPENED

(Clause 25)

Summary of proposed amendments

Borrowers will be able to claim a refund, in any tax year, of the difference in assessed student loan repayment obligations when their repayment obligation is reduced as a result of a reassessment. An over-payment is any amount deducted or paid in excess of a borrower's repayment obligation for a year.

Application date

The amendment will apply for any tax year.

Key features

Section 58A(1) is being amended so that if a borrower's repayment obligation is reduced upon reassessment by Inland Revenue, he or she will be able to claim a refund of the difference in the assessed repayment obligations. The borrower has six months from being notified by Inland Revenue of the difference in the assessed repayment obligations to claim a refund.

Background

The Student Loan Scheme Amendment Act 2005 introduced changes so that when a borrower's repayment obligation is reduced upon reassessment for tax years before 1 April 2006 the borrower can claim a refund of the difference in the assessed repayment obligations. The bill extends this provision so it applies for any tax year.

APPLICATIONS IN WRITING

(Clauses 21 and 23)

Summary of proposed amendments

The bill removes the requirement that applications for relief from penalties or having to meet a repayment obligation on hardship grounds must, in all circumstances, be made in writing. The change is intended to prevent unnecessary work for both borrowers and Inland Revenue when a written application is not necessary.

Application date

The change relating to penalties will apply to applications made from the day after enactment and that relating to hardship, from 1 April 2007.

Key features

The requirement in existing sections 53 and 54 to make a written application is being removed, and Inland Revenue may accept an application by telephone, in writing or by any other manner acceptable to it. Inland Revenue may still require written applications in some circumstances, however.

Background

Borrowers must currently apply for relief from penalties or from having to meet their repayment obligation on hardship grounds in writing. In many cases, Inland Revenue already holds the information necessary to verify a borrower's financial position. Requiring a written application can therefore create unnecessary work for both borrowers and Inland Revenue.

OTHER TECHNICAL AMENDMENTS

The bill makes a number of fairly minor technical amendments intended to update the rules.

Charging late payment penalties *(Clause 18)*

A remedial change ensures that amounts which have become overdue, and thus subject to late payment penalties, are not also subject to interest. Interest on student loans is charged under the contract which borrowers enter into with the Crown. A change to the contract in 2005 failed to include the provision, which ensured that interest ceases to be charged once a payment becomes overdue and thus subject to late payment penalties. New section 44B corrects this problem. The change will apply from 1 April 1992, the date the student loan scheme was introduced.

Overdue amounts of less than \$250 *(Clause 22)*

Section 54 is being amended to allow Inland Revenue to refrain from collecting amounts in arrears of less than \$250, since they do not incur late payment penalties and are uneconomical to collect. The amount in question will not be written off but will be payable in a future year. The change will apply to amounts in arrears from the day after enactment.

Raising of small balance write-off thresholds *(Clauses 20 and 26)*

The small balance thresholds in section 51 (\$5 for borrowers' end-of-year repayment obligations and underpaid employer repayment deductions) and section 60 (\$10 for final loan balances) are being raised to \$20. The thresholds allow Inland Revenue to write off amounts that are uneconomical to pursue and have not been increased since the student loan scheme was introduced. The changes will apply from 1 October 2007.

Declaration of worldwide income *(Clauses 7, 8, 11, 12 and 14)*

New sections 14A and 38AEA and amendments to sections 15, 38AE and 38AJ provide that borrowers who are New Zealand-based but not resident for tax purposes will be required to declare to Inland Revenue any income that does not have a source in New Zealand. The change is aimed at people who seek an interest-free loan under the exemption for borrowers who are volunteers for charitable organisations overseas or for full-time study overseas. The changes will apply from 1 April 2007.

Advising of absence from New Zealand
(Clause 10)

Borrowers will be required to inform Inland Revenue when they have been, or expect to be, overseas for more than six months, instead of three months, as currently required. Section 37 is being amended accordingly. The changes will apply from 1 April 2007.

Transitional provisions repealed
(Clauses 31, 34 and 35)

The heading to Part 7 and transitional provisions in sections 89 to 102, relating to assessments and repayments for tax years before 1 April 1994, are being repealed because they are now redundant. The changes will apply from 1 April 2007. New section 112 will ensure that Tax Administration Act provisions will continue to have effect.

Removal of information match between Inland Revenue and the Ministry of Education
(Clauses 27, 37 to 39)

Sections 62(2)(ab) and 62((2AA) and section 85D of the Tax Administration Act are being repealed, and section 307C of the Education Act 1989 and schedule 3 of the Privacy Act 1993 are being amended because the information match between Inland Revenue and the Ministry of Education, to verify borrowers' study status, is being abolished. This data match is now redundant, given that the full interest write-off for borrowers who are studying is being abolished.

Removal of need to set a base interest rate
(Clauses 4, 32 and 40)

Sections 2 and 87 and the Student Loan Scheme (Interest Rate Formulas) Regulations 2006 are being amended because there is no longer a need to set a base interest rate because of the proposed change to abolish the base interest write-off and partial base interest write-off.