

House of Representatives
Supplementary Order Paper

Tuesday, 21 March 2006

**Taxation (Depreciation, Payment Dates Alignment, FBT, and
Miscellaneous Provisions) Bill**

Proposed amendments

Hon Peter Dunne, in Committee, to move the following:

Clause 99

To replace in *clause 99* (page 132, line 13) “income year” with “tax year”.

New clause 126B

To insert after *clause 126* (page 216, after line 32) the following:

126B Adjustments for unclassified benefits on amalgamation

(1) In section ND 1R(2),—

(a) “\$450” is replaced by “\$15,000”:

(b) the formula is replaced by the following:

$$\frac{\$15,000 \times \text{days in the quarter after amalgamation}}{365.}$$

(2) In section ND 1R(3),—

(a) “\$450” is replaced by “\$15,000”:

(b) the formula is replaced by the following:

$$\frac{\$15,000 \times (274 + \text{days in the quarter before amalgamation})}{365.}$$

(3) Section ND 1R(4) is replaced by the following:

“(4) If the amalgamating company pays fringe benefit tax annually, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of \$15,000 referred to in section ND 1Q(3)(b) by an amount calculated using the formula—

$$\frac{\$15,000 \times \text{days in the year after amalgamation}}{365.}$$

- “(5) If the amalgamated company pays fringe benefit tax annually, and the amalgamated company is a new company established on amalgamation, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of \$15,000 referred to in section ND 1Q(3)(b) by an amount calculated using the formula—
- $$\frac{\$15,000 \times \text{days in the year before amalgamation}}{365.}.”$$
- (4) **Subsections (1) to (3)** apply for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

Clause 143

To replace in *clause 143* (page 234, lines 3 and 4) “Dates for payment of provisional tax” with “Months for payment of provisional tax and terminal tax”.

Clause 163I

To replace in *clause 163I* (page 281, line 1) “Department for Courts” with “Ministry of Justice”.

New clause 179B

To insert after *clause 179* (page 300, after line 13) the following:

179B Not taking reasonable care

- (1) After section 141A(4), the following is added:

“(5) If the Commissioner assesses a shortfall penalty under this section in relation to a tax position of a taxpayer after deciding under **section 141KB(1)** that the taxpayer is not liable to pay a shortfall penalty that has been assessed under section 141B in relation to the tax position, the liability for the shortfall penalty under this section is treated as arising at the time of the decision under **section 141KB(1)**.”

- (2) **Subsection (1)** applies for a tax position taken by a taxpayer after 1 April 2003.

New clauses 180B and 180C

To insert after *clause 180* (page 301, after line 9) the following:

180B New section 141KB inserted

- (1) After section 141K, the following is inserted:

“141KB Discretion to cancel some shortfall penalties

“(1) The Commissioner may decide in the circumstances given by **subsection (2)** that a taxpayer is not liable to pay a shortfall penalty that would otherwise be imposed by section 141B in relation to a tax position.

“(2) The Commissioner may exercise the discretion given by **subsection (1)** if—

“(a) the Commissioner is satisfied that—

“(i) the tax position is taken as a result of a clear mistake or simple oversight; and

- “(ii) the tax shortfall arising from the tax position is or would be subject to a reduced penalty under section 141G(1)(a) as a result of a voluntary disclosure or is a temporary tax shortfall under section 141I(3); and
- “(iii) it is appropriate that the taxpayer not be liable to pay a shortfall penalty under section 141B in relation to the tax position; and
- “(b) the Commissioner—
 - “(i) does not assess the shortfall penalty before exercising the discretion;
 - “(ii) assesses the shortfall penalty before 1 April 2006 and receives before 1 October 2006 a written request from the taxpayer for a decision under **subsection (1)**.
- “(3) If the Commissioner decides under **subsection (1)** that a taxpayer is not liable to pay a shortfall penalty that the Commissioner has assessed, the assessment of the shortfall penalty is treated as not having been made.
- “(4) If the Commissioner decides under **subsection (1)** that a taxpayer is not liable to pay a shortfall penalty that would otherwise be imposed by section 141B in relation to a tax position, the taxpayer is not excluded from liability to pay a shortfall penalty under section 141A in relation to the tax position.”
- (2) **Subsection (1)** applies for a tax position taken by a taxpayer after 1 April 2003.

180C Due date for shortfall penalties

- (1) In section 142B, the following is added:
 - “(2) Subsection (1)(a) does not apply for a shortfall penalty assessed under section 141A if **section 141A(5)** determines the time at which liability for the shortfall penalty is treated as arising.”
- (2) **Subsection (1)** applies for a tax position taken by a taxpayer after 1 April 2003.

Explanatory note

This Supplementary Order Paper amends the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill*.

The amendment to *clause 99* corrects an error in the application provision for the clause.

New clause 126B amends *section ND 1R* of the Income Tax Act 2004 so that the section’s application to companies involved in an amalgamation reflects the amendments made by *clause 126*.

The amendment to *clause 143* corrects a cross reference in a definition inserted by the clause.

The amendment to *clause 163I* corrects a reference to the Department for Courts, which is no longer a separate department.

New clause 179B is associated with *new clause 180B*. The clause adds a subsection to *section 141A* of the Tax Administration Act 1994. *New section 141A(5)* delays a taxpayer's liability to pay a shortfall penalty for not taking reasonable care that is assessed after the application of *new section 141KB*.

New clause 180B inserts *new section 141KB* of the Tax Administration Act 1994. *New section 141KB* provides that the Commissioner may decide in certain circumstances that a taxpayer is not liable to pay a shortfall penalty that would otherwise be imposed by *section 141B* of the Tax Administration Act 1994 in relation to an unacceptable tax position. The new section applies to tax positions taken by taxpayers after 1 April 2003. The Commissioner may decide to cancel a shortfall penalty that has been assessed before 1 April 2006 if the cancellation is requested in writing before 1 October 2006.

New clause 180C is a consequence of *new clause 179B*. The clause adds a subsection to *section 142B* of the Tax Administration Act 1994. *New section 142B(2)* provides that *section 142B(1)(a)* does not set the due date for a shortfall penalty to which *section 141A(5)* applies.

