

LEGISLATIVE COMMENTARY

The Budget night legislation was divided into two separate Acts:

The Income Tax Amendment Act (No 3) 1989

The Land Tax Amendment Act 1989

This legislative commentary explains the provisions contained in those Acts.

INCOME TAX AMENDMENT ACT (NO 3) 1989

1. SPECIFIED SUPERANNUATION CONTRIBUTION WITHHOLDING TAX (SSCWT) AND PAYE TAX DEDUCTIONS

(Sections 6 to 11 and 14 of the Income Tax Amendment Act (No 3) 1989).

Section 6 amends section 336ZC of the Tax Act to provide that SSCWT payments by the employer to the Commissioner will be made twice monthly.

Subsection (1) provides that:

- Deductions of withholding tax made in the first period, that is, on or before the 15th of the month, will be payable by the 20th day of the month, and
- Deductions of withholding tax made in the second period, on or after the 16th day of the month, will be payable by the 5th day of the next month.

Subsection (2) provides that deductions of withholding tax made in April 1990 are payable by 5 May 1990.

Section 7 amends section 336ZD of the Tax Act and provides new due dates for the statements which are furnished by the employer to the Commissioner with the SSCWT payments.

Subsection (1) provides that those statements are due on the same date as the payment of the withholding tax deductions. That is:

- No later than the 20th of the month for the first period (from the first of the month to the 16th), and
- No later than the 5th of the next month for the second period (from the 16th day to the end of the month).

Subsection (2) provides that the statement applicable to deductions made in April 1990 is required to be furnished by 5 May 1990.

Subsection (3) provides that subsection (1) will apply as from 1 May 1990.

Section 8 amends section 336ZF of the Tax Act, which relates to failure to deduct SSCWT.

Subsection (1) provides that where an employer has failed to deduct tax this shall constitute a debt payable:

- By the 20th of the month for tax not deducted in the first period, (from the first to the 15th day of the month), and
- By the 5th of the next month for tax not deducted in the second period (from the 16th day to the end of the month).

Subsection (2) provides that where the employer has failed to deduct tax in April 1990, the amount in default shall constitute a debt payable on 5 May 1990.

Subsection (3) provides that subsection (1) will apply as from 1 May 1990.

Section 9 amends section 353(1) of the Tax Act to provide that tax deduction payments by employers to the Commissioner will be made twice monthly.

Subsection (1) provides that:

- Tax deductions made in the first period (that is, from the first day of the month to the 15th day) will be due by the 20th of the month, and
- Tax deductions made in the second period (from the 16th day of the month to the end of the month) will be due by the 5th of the next month.

Subsection (2) provides a new subsection which defines the meaning of three new terms:

“First period” means the period from the 1st to the 15th day of the month,

“Second period” means the period from the 16th day to the end of the month, and

“Period” to be first or second period as the case may require.

Subsection (3) provides that tax deductions made in April 1990 are payable to the Commissioner by 5 May 1990.

Subsection (4) provides that subsections (1) and (2) will apply as from 1 May 1990.

Section 10 amends section 355 of the Tax Act and provides that employees who deduct and pay their own tax will be required to make those payments to the Commissioner twice monthly.

Subsection (1) provides that:

- Payment for the first period (from the 1st to the 15th of the month) will be due by the 20th of the month, and
- Payment for the second period (from the 16th day to the end of the month) will be due by the 5th of the next month.

Subsection (2) provides that tax deductions made by employees in April 1990 are due 5 May 1990.

Subsection (3) provides that subsection (1) will apply as from 1 May 1990.

Section 11 amends section 366 of the Tax Act which deals with an employer's failure to make tax deductions.

Subsection (1) requires that where the employer has failed to make tax deductions, the amount in default will be deemed payable to the Commissioner:

- By the 20th of the month for the first period (that is from the first to the 15th day of a month) and
- By the 5th of the next month for the second period (from the 16th day of the month to the end of the month)

Subsection (2) provides that default payments that arise in April 1990 shall be deemed due and payable on 5 May 1990.

Subsection (3) provides that subsection (1) will apply as from 1 May 1990.

Section 14 amends section 374H of the Tax Act which deals with the requirement for employers to deduct tax credits from PAYE deductions in certain circumstances.

Subsection (1) repeals a proviso to section 374H(1) of the Tax Act and substitutes a new subsection (1A). The effect of the amendment is that where an overpayment of family support has arisen, the amount refundable to the Commissioner will become due:

- On the 20th of the month if the overpayment arose in the first period, (that is between the first and the 15th day of any month), and
- On the 5th of the next month if the overpayment arose in the second period (between the 16th and the last day of the month).

Subsection (2) provides that overpayments for April 1990 shall be due 5 May 1990.

Subsection (3) provides that subsection (1) of this section will apply as from 1 May 1990. 1 May 1990.

2. NATIONAL SUPERANNUITANT SURCHARGE

(Section 4 of the Income Tax Amendment Act (No 3) 1989)

Section 4 amends the formula for calculating "other income" (surchargeable income) in section 336B of the Tax Act.

Following the amendment the calculation of "other income" will be as follows:

a - b - d

Where:

a is the taxable income of the superannuitant

including:

specified foreign social security pensions*, and

overseas pensions, but

excluding:

pensions from registered superannuation schemes and annuities from the life insurance fund of a company to which section 204 applies,

PLUS:

half of any pensions from registered superannuation schemes and annuities from the life insurance fund of a company to which section 204 applies, other than those pensions or annuities which are included in assessable income.

b is gross national superannuation, and

d is the amount of any specified foreign social security pension*.

* specified foreign social security pension means an overseas pension, the amount of which reduces a taxpayer's entitlement to national superannuation.

3. RETIREMENT TAX

(Sections 2, 3, 5, and 15 of the Income Tax Amendment Act (No 3) 1989)

These sections attribute a portion of the current tax take from income tax, fringe benefit tax, and specified superannuation contribution withholding tax towards the cost of national superannuation.

Section 2 defines “retirement tax” as a retirement tax under Part VA of the Income Tax Act 1976.

Section 3 introduces a new Part VA into the Act comprising sections 257A to C.

Section 257A states that other Parts of the principal Act (except part 1) shall not apply to retirement tax unless expressly provided for in Part VA.

Section 257B defines retirement tax to be a part of:

- Income tax (payable by all classes of taxpayer),
- Fringe benefit tax, and
- Specified Superannuation contribution withholding tax.

Section 257C:

- Provides that retirement tax shall be assessed on the taxable income of every taxpayer, the taxable value of fringe benefits provided by employers and the specified superannuation contributions provided by employers to a superannuation fund at the rate specified in clause 14 of the First Schedule to the Income Tax Act, and
- Introduces a new schedule, the Twentieth Schedule, to the Income Tax Act which contains a list of estimated rates of retirement tax for the years 1990/1991 to 2019/20.

Subsection (2) provides that this section shall apply with respect to:

- (a) Taxable income derived in the income year commencing on the 1st day of April 1990 and in every subsequent income year;
- (b) Fringe benefits provided on or after the 1st day of April 1990; and
- (c) Specified superannuation contributions made on or after the 1st day of April 1990.

Section 5 of the Amendment Act amends Section 336S of the principal Act to provide that the fringe benefit tax rate of 49 percent includes a rate of retirement tax specified in clause 14 of the First Schedule to the principal Act.

This section applies to fringe benefits provided on or after the 1st day of April 1990.

Section 15 makes a number of amendments to the First Schedule to the Principal Act.

Subsection (1) inserts a footnote character “1” after the rates specified in clauses 2 to 10 and clause 13 of Part A of the First Schedule to the principal Act (refer subsection (3) of this section below)

Subsection (2) inserts a new clause into Part A of the First Schedule to the principal Act. The new clause specifies that the rate of retirement tax on taxable income of taxpayers, the taxable value of fringe benefits provided by employers and the specified superannuation contributions provided by employers to a superannuation fund shall be 7.5 cents. This rate will apply for the 1990/91 income year.

Subsection (3) inserts the following footnote after clause 14 of the principal Act.

“1 includes retirement tax calculated at the rate specified in clause 14 of this Schedule.”

This subsection and subsection (1) above ensures that the rates specified in clauses 2 to 10 and clause 13 of Part A of the First Schedule include the rate of retirement tax.

Subsection (4) inserts a footnote character “1” after the rates of income tax specified in Part B of the First Schedule to the principal Act.

Subsection (5) inserts the following footnote after the rates of income tax specified in Part B of the First Schedule to the Principal Act.

“1 includes retirement tax calculated at the rate specified in clause 14 of this Schedule.”

Subsection (6) provides that this section shall apply with respect to:

- (a) the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent income year;
- (b) Fringe benefit tax on fringe benefits provided on or after the 1st day of April 1990; and
- (c) Specified superannuation contribution withholding tax on specified superannuation contributions made to a superannuation fund on or after the 1st day of April 1990.

FAMILY SUPPORT CREDIT OF TAX

Section 12 of the Income Tax Amendment Act (No 3) 1989)

Section 12 of the Finance Act (No 5) 1989 implements the Budget announcement that the threshold family income above which family support ceases to abate will be increased from \$16,000 to \$17,500 with effect from 1 October 1989. For the purposes of the end of year adjustment for the 1989/90 income year a composite threshold of \$16,750 will apply.

Subsection (1) makes the required amendments to increase the threshold to \$17,500.

Subsection (2) provides a composite threshold for the calculation of end-of-year entitlement for the 1990 income year. For that year abatement will commence when the specified income exceeds \$16,750.

Subsection (3) provides arrangements for the issue of Certificates of Entitlement in respect of the remainder of the 1990 tax year. The instalments in relation to certificates in respect of the period 1 April 1989 to 30 September 1989 are to be calculated on the basis of the present \$16,000 threshold. Instalments on certificates in respect of the period 1 October 1989 to 31 March 1990 are to be calculated on the basis of the \$17,500 threshold.

Subsection (4) is the application provision. Subsection (1) applies to the 1990 tax year.

Subsection (5) repeals the transitional arrangements for the 1990 tax year at the end of that year.

5. GUARANTEED MINIMUM FAMILY INCOME TAX CREDIT

Section 13 of the Income Tax Amendment Act (No 3) 1989)

This section gives effect to the Budget announcement that the level of the guaranteed minimum family income for a family with one child is to be increased from \$300 per week to \$310, effective from 1 April 1989.

Section (1) substitutes the new level of the guaranteed minimum family income into section 374E of the principal Act.

Subsection (2) provides for the increase to apply for the 1990 income year and every subsequent year.

6. LAND TAX

(Land Tax Amendment Act 1989)

Section 1 - Subsection (1) provides that the land tax amendments made by sections 2 - 10 of the Land Tax Act 1989 apply to the Land Tax Act 1976 (the principal Act in this case). Subsection (2) provides that the amendments made by sections 2 - 7 and 10 apply to the year of assessment commencing on 1 April 1990 and for every subsequent year.

Sections 8 and 9 are excluded from the 1 April 1990 commencement date as these sections set the rate of land tax to apply for the current year of assessment.

Section 2 - Subsection (1) repeals the definitions of the words "energy", "friendly society" and "service organisations" in section (2) of the principal Act as the sections in the principal Act that made use of these definitions will no longer exist.

Subsection (2) also amends section (2) of the principal Act by excluding from the definition of a "local authority" any local authority trading enterprises, any airport company, any port company, and any energy supply operation to which section 197C of the Income Tax Act 1976 applies. These entities are excluded from the definition of a local authority to ensure that they do not qualify for the exemption provided in section 27(1)(d) of the principal Act. It is not strictly necessary to exclude airport companies because of section 29A(3)(d) but it was done for clarification purposes.

Subsection (3) further amends section (2) of the principal Act by excluding from the definition of a Public authority any of the Enterprises listed in the First and Second Schedules to the State-Owned Enterprises Act 1986. This provision is necessary for the same reasons the definition of a local authority was amended; to ensure these SOEs do not qualify for the exemption in section 27(1)(d) of the principal Act.

Subsection (4) is simply a consequential amendment as a result of the above changes.

Section 3 - Provides that the principal Act binds the Crown. This is a major provision. It provides that the Land Tax Act will now apply to the Crown ensuring that public authorities are required to pay land tax. A public authority has a very wide definition and includes every department or instrument of Executive Government of New Zealand (but as amended does not include SOEs who are subject to land tax in their own right).

Section 4 - Subsection (1) replaces the current \$175,000 special exemption with a \$10,000 total land value threshold beneath which no land tax is payable. This section provides that no taxpayer will ever be eligible for more than one de minimis provision.

Subsection (2) replaces the current section 13(3) of the Land Tax Act with a new provision which ensures that no joint owner of land will be eligible for the \$10,000 de minimis rule where the joint estate exceeds \$10,000. Where a person owns part of a joint estate with a land value of less than \$10,000 then the de minimis rule does not apply to that assessment.

Example of joint/separate assessment: The assessment covers A and B partnership who joint own land and partner A who also owns land separately. The example covers 3 combinations of land ownership.

CASE:	1	2	3
Joint Assessment: A and B Partnership:	\$4,000	\$8,000	\$12,000
De Minimis rule applies:	Yes	Yes	No
Land Tax Payable:	\$ 0	\$ 0	\$ 120

Individual Interest Partner A:			
Share of joint estate:	\$ 2,000	\$ 4,000	\$ 6,000
Land owned in own right:	\$ 5,000	\$10,000	\$ 5,000
De Minimis rule applies:	Yes	No	No
Land Tax Payable:	\$ 0	\$ 140	\$ 110
Tax credit from joint assessment:	\$ 0	\$ 0	\$ 60
Amount to be paid:	\$ 0	\$ 140	\$ 50

Subsection (3) repeals section 15 of the Land Tax Act as the special exemption no longer exists and the apportioning rules no longer apply.

Subsection (4) repeals section 23(3) of the principal Act because the special exemption no longer exists.

Section 5 - Repeals section 26 of the principal Act. Section 26 provided that absentee land owners were required to pay land tax at a rate 50% greater than non-absentee land owners. This provision was not considered to be equitable and was easily avoided.

Section 6 repeals section 27 of the principal Act and introduces a new section 27. Subsection (1) of this new section is a mix of some of the old section 27(1) exemptions and various new exemptions as follows:

Exemptions Introduced

Land tax will be payable by the Crown from 1 April 1990 except for land used for usages listed below which are not subject to land tax:

Paragraph (a) provides that National Parks are exempt.

Paragraph (b) provides that land vested in the Crown or owned by any public authority and forming a domain, a recreation, historic, scenic, nature, scientific, or Government purpose reserve are exempt. This paragraph also provides that Crown or public authority lands that comprise a wildlife management reserve, wildlife refuge, or wildlife sanctuary are exempt. Flood ponding areas and foreshore areas are exempt from land tax as are the bottom of any navigable river.

Paragraph (c) provides that the vice-regal residence and Parliament grounds are exempt.

Paragraph (d) provides that the Crown is eligible for the exemptions provided in paragraphs (i) and (k). This is land used for museums, cemeteries, libraries, sports and games grounds etc.

Paragraph (e) provides that the national and public road networks are exempt from land tax.

Exemptions Amended

Paragraph (f) provides that land occupied by the New Zealand Railways Corporation and used as a permanent railway is exempt from land tax. This exemption does not apply to land used as marshalling yards or as loading/unloading areas, or for administrative or ancillary purposes. This exemption matches the exemption provided to the national and local road network and provides a consistent land tax treatment between the 2 transport networks.

Paragraph (g) provides that land the Crown has set aside or granted for pastoral purposes will be exempt from land tax. This is normally land used for sheltering livestock being moved by a drover.

Paragraph (o) provides that land used for the purposes of a university, college, high school, secondary school, or other public educational institution not run for pecuniary profit is exempt from land tax. This paragraph, previously 27(1)(b) in the principal Act, used to refer to land “owned” but has now been changed to refer to land “used” instead. This means that land owned by an individual and rented at a profit to a university will not be subject to land tax. It also means that land owned by a University but not used for that University’s purpose will be subject to land tax.

Paragraph (p) is a modified version of the old section 27(1)(1). Section 27(1)(1) has been changed to ensure that hobby farmers will not be subject to land tax . It was considered that hobby farm land should be not be subject to land tax as the land is used for a mixed residential/agricultural purpose. Hobby farmers now qualify for this exemption because the business test that used to be included in the old paragraph (1) has been removed. The section was further modified to ensure that individuals could not qualify for this exemption where the agricultural land use is merely a way of avoiding land tax on land which is actually intended for other than agricultural purposes.

Exemptions Continued Unchanged

Paragraph (h) - (n) and (q) - (t) maintain some of the exemptions provided for by section 27(1) prior to the amendments.

- (a) Paragraph (h) continues the exemption for Maori customary land.
- (b) Paragraph (i), previously old paragraph 27(1)(g), provides that societies and trustees may receive an exemption from land tax for land used as the site of a public museum, library, cemetery, domain, etc.
- (c) Paragraph (j), previously old paragraph 27(1)(h), continues the exemption for land owned by a charitable body where that land is used for the purposes of that charitable body and not for any pecuniary profit of any individual.
- (d) Paragraph (k), previously old paragraph 27(1)(n), continues that exemption for land owned or occupied by any trust or association using that land for games or sports not including horse racing, greyhound racing, or trotting, and not used for the private pecuniary profit of any individual.
- (e) Paragraph (l), previously old paragraph 27(1)(o), continues the exemption for land owned or occupied by any racing club, or company owned by a racing club, if the land is used solely or principally for the purposes of horse racing, greyhound racing, or trotting.
- (f) Paragraph (m), previously old paragraph 27(1)(d), continues the exemption provided to any society incorporated under the Agricultural and Pastoral Societies Act 190 and used as a showground or meeting place.
- (g) Paragraph (n), previously old paragraph 27(1)(f), continues the exemption for land owned by a society incorporated under the Libraries and Mechanics Institutes Act 1908.
- (h) Paragraph (q), previously old paragraph 27(1)(p), continues the current residential exemption.
- (i) Paragraph (r), previously old paragraph 27(1)(q), continues the exemption for long-term boarding establishments.
- (j) Paragraph (s), previously old paragraph 27(1)(r), continues the exemption for homes for the elderly.
- (k) Paragraph (t), previously old paragraph 27(1)(s), continues the historical places trust exemption.

Subsection (2) of this new section to the Land Tax Act, is the current section 27(2) with a minor amendment. The amendment adjusts the references to take into account the rearranging of the exemptions provided in the new 27(1) compared with the old section 27(1). Subsection (2) of section (6) of the amendment Act provides for various consequential repeals.

Section 7 repeals section 28 and section 28A of the principal Act as these sections provided an advantageous land tax treatment to certain taxpayers over other taxpayers in similar positions. It also helps simplify the land tax system.

Section 28 applied to

- a) Land owned or in trust for any religious society, if the land or the rents or profits thereof are used exclusively for charitable purposes, and if the principal purpose for which the society is established is the teaching, maintenance, or advancement of religion:
- b) Land vested in the Masterton Trust Lands Trustees:
- c) Land vested in the Greytown Trust Lands Trustees:
- d) Land vested in Trustees of Cornwall Park, Auckland.

Section 28A applied to a local authority supplying energy to the public where the principal purpose of the authority is not the supplying of energy to the public.

Section 8 repeals the existing schedule in the principal Act and introduces a new schedule with 2 parts. Part A specifies that the rate of land tax for the year of assessment commencing on 1 April 1989 is 1.5 cents/dollar. Part B provides that the rate of land tax applying for the year of assessment commencing on 1 April 1990 and every subsequent year is 1 cent/dollar. This section has an enactment date of 1 April 1989.

Section 9 confirms the rate of land tax for the year of assessment commencing on 1 April 1989 shall be the rate specified in Part A of the newly introduced schedule. This is 1.5 cents/dollar.

Section 10 amends or repeals certain sections in other Acts which provide exemptions from land tax. These amendments mainly affect producer boards and other statutory bodies. Addendum 1 lists those persons affected.

Addendum 1: Exemptions from Land Tax Provided Under Other Acts Hereby Repealed

Land owned by the -

- a. Earthquake and War Damages Commission
- b. Armed Forces Canteen Council
- c. Medical Research Council
- d. Primary Products Marketing Authorities
- e. Dairy Board
- f. Fishing Industry Board

- g. Apple and Pear Board
- h. Wool Board
- i. Queen Elizabeth Trust
- j. Meat Board
- k. Pork Industry Board
- l. New Zealand Horticulture Export Authority

APPENDIX A TO TIB NO. 2, AUGUST 1989

EXPLANATION TO BUDGET NIGHT LEGISLATION

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