

## NEW LEGISLATION

This section of the *TIB* covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council.

### STUDENT LOAN SCHEME ACT 2011

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The Student Loan Scheme Bill 2010 was introduced into Parliament on 27 August 2010. It received its first reading on 14 October 2010 and its second and third readings on 16 August 2011.

The Act reforms the way student loans are repaid by removing the end-of-year assessment process for the majority of borrowers, and the way borrowers manage their loans by increasing use of online services. It also rewrites the Student Loan Scheme Act 1992 and replaces the Student Loan Scheme Act 1992 from 1 April 2012.

Several changes were made to the bill at the Select Committee stage. The main changes were to delay the application of certain provisions until 1 April 2013 to give Inland Revenue more time to implement the changes in the bill. The Government also introduced Supplementary Order Paper No 200 at the Select Committee stage giving Inland Revenue the ability to recall student loans in cases of significant default in the repayment of a loan.

The resulting Act received Royal assent on 29 August 2011. This Act also amends a number of other Acts, including the Student Loan Scheme Act 1992, the Credit Contracts and Consumer Finance Act 2003 and the Tax Administration Act 1994.

## ESTABLISHMENT OF A STUDENT LOAN

*Sections 9–20, 222 and part of schedule 8*

Changes have been made to allow information to be transferred between StudyLink and Inland Revenue to enable the establishment of a loan account. The Act also provides for a near real-time transfer of loan advances from StudyLink to Inland Revenue to allow Inland Revenue to provide borrowers with a consolidated view of their loan balance.

### Background

Previously, borrowers had to contact two agencies to determine the total amount of student loan they owed as loan advances were held by StudyLink for a year before being transferring to Inland Revenue for collection. This increased the compliance costs involved for borrowers.

The Act introduces changes which provide for a near real-time transfer of loan advances from StudyLink to Inland Revenue. This ensures borrowers will only need to contact one agency to view their consolidated loan balance.

### Key features

- When a borrower applies for a loan, information will be transferred from StudyLink to Inland Revenue. Inland Revenue will use this information to check it against the information it holds on the borrower and set up the borrower's account.
- When a loan is approved, a borrower's contact details will be transferred to Inland Revenue. If the borrower's details change, StudyLink will advise Inland Revenue of the updated details.
- When StudyLink provides a loan advance to a borrower, the loan advance will be transferred to Inland Revenue in a near real-time basis.
- The loan establishment fee charged to a borrower by StudyLink has been increased from \$50 to \$60.
- Inland Revenue will issue statements to borrowers outlining loan advances, instead of StudyLink.
- Borrowers will continue to have at least 31 days from the date of the statement to object to the loan advances outlined in the statement.
- Student loans will be removed from the requirement to comply with the Credit Contracts and Consumer Finance Act 2003, while changes have been made to the Student Loan Scheme Act to incorporate similar rights that borrowers would have had under the Credit Contracts and Consumer Finance Act.

### Application dates

The following changes apply from 1 January 2012:

- the transfer of information from StudyLink to the Commissioner on establishment of the loan;
- the transfer of the loan advances to Inland Revenue on a near real-time basis; and
- the requirement for the Commissioner to notify borrowers of loan advances and the consolidated loan balance.

The disclosure requirements of the Credit Contracts and Consumer Finance Act apply from 30 August 2011, being the day after the date of Royal assent.

All other changes apply from 1 April 2012.

### Detailed analysis

#### *Preparation for loan being transferred*

Information on a borrower will be transferred from StudyLink to Inland Revenue on a near real-time basis when a borrower applies for a loan.

StudyLink will transfer information on an applicant to Inland Revenue to confirm that the information provided by borrowers is consistent with the information held by Inland Revenue. This will also allow an account to be set up for the borrower with Inland Revenue and facilitate the transfer of loan advances. The information transferred will be the applicant's name, IRD number and date of birth. If the information transferred from StudyLink to Inland Revenue differs from information held by Inland Revenue, the Commissioner must advise the Loan Manager that the information differs. The Loan Manager will then go back to the borrower to acquire the correct information.

Once the borrower has entered into the loan contract, the Loan Manager will transfer further details on a borrower to Inland Revenue, such as when the loan entitlement letter advising the borrower of their loan was issued and the borrower's contact details.

#### *Real-time transfer of information*

Changes were made to the bill at the Select Committee stage to provide for the near real-time transfer of loan advances from StudyLink to Inland Revenue. This will enable borrowers to have a consolidated view of their loan and allow them to access this at any time and from anywhere in the world. Borrowers will be able to manage their loan in an electronic environment.

Loan advances will appear on statements provided by Inland Revenue, rather than StudyLink, and borrowers will have a period of time (at least 31 days) from the date of this statement to object to a loan advance. Statements will be issued by Inland Revenue at least twice a year. Objections by borrowers to loan advances outlined in the statement will continue to be dealt with by StudyLink.

#### *Student loan establishment fee*

The current administration fee imposed by StudyLink when the loan is established will be incorporated into legislation and referred to as an “establishment fee”. The current fee of \$50 will be increased to \$60.

#### *Disclosure requirements and CCCFA implications*

As student loan contracts came within the definition of a “credit contract” under the Credit Contracts and Consumer Finance Act 2003 (CCCFA), an amendment was made to remove the requirement for the Student Loan Scheme to comply with the Credit Contracts and Consumer Finance Act.

The CCCFA was enacted to protect consumers who enter into contracts when there are generally no other legislative protections available. Student loan borrowers have protection under the Student Loan Scheme Act. There are also major differences between the features of student loans and other credit contracts, for example, the provision of hardship criteria and the income-contingent nature of repayment obligations and other protections available to borrowers which reduce the need to extend the requirements of the CCCFA to student loans. To strengthen protections provided under the student loan scheme, a number of amendments were made to the bill at the Select Committee stage to incorporate similar rights that a borrower would have under the CCCFA. These changes are as follows:

- The right to receive a copy of the loan contract within six working days of signing. This change reflects StudyLink’s current administrative practice.
- The right to cancel the contract within seven working days of the date of the loan entitlement letter.
- The right to disclosure of information in the loan contract, namely, the annual repayment threshold, base interest rate, repayment percentage, student loan establishment and administration fees, the right to cancel the contract within seven days and the right to object to loan advances.

- The requirement for the Commissioner to notify the borrower of loan advances made by StudyLink to the borrower, the date and amount of any interest or penalty imposed, and the date and amount of any establishment or administrative fees charged.
- The requirement for the Commissioner to notify the borrower of unilateral changes to the contract or statute that increase the borrower’s obligations if the borrower’s updated contact details are known.

#### *Definition of “unpaid amount”*

For the 2012–13 tax year, the current period-based approach to dealing with unpaid amounts will be retained. The period-based approach looks at the unpaid amounts for different periods and different obligations separately. This treatment reflects a tax approach whereby penalties and interest are applied separately to tax types and to tax periods. The provision has been retained until April 2013 to give Inland Revenue time to implement changes as detailed below.

#### *Changes from 1 April 2013*

The period-based approach to unpaid amounts is not in keeping with a loan approach whereby an aggregate approach to unpaid amounts is more appropriate. Therefore, from 1 April 2013, the definition of “unpaid amount” will be replaced with a new definition which reflects a “whole of loan” approach to outstanding amounts. “Unpaid amounts” will therefore be defined as the aggregate amount of the borrower’s obligations as has not been paid by the due date.

## DETERMINING WHETHER BORROWERS ARE NEW ZEALAND-BASED OR OVERSEAS-BASED

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*Sections 21–29 and schedule 1*

Changes have been made to the way borrowers who qualify for one of the exemptions from the requirement to be present in New Zealand are treated for the purposes of determining whether they are New Zealand-based.

### **Background**

The rules determining when a borrower is New Zealand-based or overseas-based mainly remain the same. This includes the current exemptions from the requirement that a borrower must be present in New Zealand for at least 183 consecutive days, which are continued in the new Act.

The original intent of the exemptions was that for borrowers who meet the requirements of one of the exemptions, the period covered by the exemption would go towards meeting the requirement that the borrower be New Zealand-based.

However, the Student Loan Scheme Act 1992 contained an error whereby a borrower was treated as New Zealand-based for the period they qualify for the exemption, rather than this period contributing towards determining whether the borrower was New Zealand-based.

### **Key features**

The new Act contains changes that ensure a borrower is treated as being physically in New Zealand for the days that they qualify for one of the exemptions. This means that the borrower must still be in New Zealand or treated as being in New Zealand for 183 days in order to become a New Zealand-based borrower and to qualify for an interest-free loan and have New Zealand-based repayment obligations.

### **Application date**

This change applies from 1 April 2012.

## BORROWER'S REPAYMENT OBLIGATIONS

*Sections 30–117, 221 and schedules 2, 3, 4 and 7*

The basis of assessment for salary and wage earners has been changed from an annual basis with an end-of-year assessment, to a pay-period basis. This means student loan deductions from salary and wages will be considered correct each pay day, unless there has been a significant over- or under-deduction.

### Background

Currently, the same repayment obligations apply to all New Zealand-based borrowers. That is, the repayment obligation is 10% of the borrower's annual net income if it exceeds the current repayment threshold of \$19,084.

The majority of borrowers who receive salary and wages only are required to file an end-of-year personal tax summary to square-up their repayment obligations for the year. The annual basis of assessment ensures accuracy of repayments only at the end of the year. There is no incentive to encourage correct deductions to be made during the year.

Changing from an annual basis of assessment to a pay-period basis for salary and wage deductions removes the requirement for salary and wage earners to file an end-of-year return and reduces compliance costs for the majority of borrowers. It will also enable Inland Revenue to shift resources from undertaking the end-of-year assessment and collecting large debts to ensuring deductions made during the year are correct, providing higher value services to borrowers.

### Key features

The Act changes the way New Zealand-based borrowers repay their loans by providing different repayment obligations for different classes of New Zealand-based borrowers as follows:

- For borrowers with salary or wages only or salary and wages and pre-taxed income, the repayment obligation on their salary and wages will be determined on a pay-period basis.
- For borrowers with pre-taxed income (which is defined as income from interest, dividends, taxable Māori authority distributions, or salary or wages from employment as a casual agricultural employee or as an election-day worker) or salary and wages and pre-taxed income only, the repayment obligations on their pre-taxed income will be determined on an annual basis and will apply when this income exceeds \$1,500.

- For borrowers with other income (income other than from salary or wages and pre-taxed income) the repayment obligation on the borrower's taxable income (including salary and wages, pre-taxed income, and other income) will be determined on an annual basis.

The bill simplifies the loan repayment process by removing the current annual assessment for the vast majority of borrowers whose income is from salary and wages only. Repayment deductions from salary and wages will be determined on a pay-period basis. That is, deductions made on a pay-period basis will be the borrower's repayment obligation, provided the employer has not made a significant under- or over-deduction. This will provide greater certainty for borrowers about their repayment obligations.

A separate loan repayment mechanism is provided for borrowers who have pre-taxed income. These borrowers will now be required to make a declaration of their pre-taxed income rather than the annual return as previously. The new legislation sets out how and when their repayment obligation must be paid.

Borrowers with business or other income will be required to file an end-of-year return to determine their other-income repayment obligations. The new legislation sets out how and when their repayment obligation must be paid, including the requirement to make interim payments during the year.

The current interim payment rules will continue to apply to borrowers with pre-taxed income and borrowers with other income. These rules require borrowers to pay their repayment obligation for the year in instalments during the year, similar to the way provisional tax operates.

Also, the current terminal payment will be replaced with remaining repayments due on the same dates as interim payments. Remaining repayments are discussed later in this bulletin.

Overseas-based borrowers will continue to have a repayment obligation of \$1,000, \$2,000 or \$3,000, depending on their loan balance. These borrowers will continue to be required to make repayments in two equal instalments, on 30 September and 31 March.

### Application dates

The provisions that deal with special assessments issued to borrowers with salary or wage income to recoup a significant under-deduction and the changes to enable six-monthly interim payments to be made when borrowers pay provisional tax six-monthly, apply from 1 April 2013.

Applications for special deduction rates for unused thresholds and declarations for full-time study exemptions and requests for borrower deductions to be made from salary and wages apply from 1 March 2012. This enables deduction rate certificates and exemptions, and borrower-requested deductions to be in place for a 1 April 2012 commencement of salary and wage deductions.

The remaining changes apply from 1 April 2012.

### Detailed analysis

New Zealand-based borrowers will be required to make repayments from salary and wage income, pre-taxed income, and other income.

#### *Repayments from salary and wages*

##### *Repayment codes*

New Zealand-based borrowers are required to have repayment deductions made from their salary and wage income. They are required to apply one of the following repayment codes to their salary or wages to enable repayment deductions to be made at the correct rate:

- SL – this is the standard code when deductions are made at the rate of 10 cents in the dollar on income above the pay-period repayment threshold (annual repayment threshold is \$19,084/number of pay days per year); or
- STC – this code is applied if a reduced deduction is required to be made and the borrower has applied to the Commissioner for a reduced rate. Reduced rates are available to a borrower when there is an unused repayment threshold from their primary job which can be used to reduce their deductions from their secondary job, if the borrower is in hardship, or when repayment deductions are reduced to take account of a business loss.
- SLBOR and SLCIR – these codes apply in cases where the employer is instructed to make additional deductions from a borrower's salary or wages by either the borrower or the Commissioner.

The SLCIR code is applied when the borrower is required to make additional deductions to repay a previous significant under-deduction which arose in either the current year or a prior year.

The SLBOR code is applied when the borrower wishes to make additional repayments to count towards qualifying for the 10% excess repayment bonus. The application of this tax code enables these additional payments to be identified so they are not included in the borrower's standard repayment deductions for the pay-period.

##### *Significant under- and over-deductions*

Standard deductions made from a borrower's salary or wages are considered correct and final unless there is a

significant under-or over-deduction. The Commissioner will determine the threshold for what is a significant over-deduction or a significant under-deduction, having regard to the resources available to the Commissioner and the need to maintain the integrity of the student loan scheme. The Commissioner must inform borrowers on or before 31 March of the significant over-deduction threshold that will apply for the following tax year.

When an error is made in the collection of standard repayment deductions from salary or wages, and the amount is considered to be a significant under-deduction or over-deduction, the borrower will either receive a refund or be required to repay the under-deduction.

There are two mechanisms available to recoup a significant under-deduction, either by way of a special deduction rate (SLCIR) from future salary or wages or by the Commissioner issuing a special assessment with a due date (at least 30 days after the date of the assessment notice) for the repayment of the under-deduction.

Significant over-deductions may be refunded or the borrower can choose to leave the over-payment against their loan to be considered as an excess repayment. Excess repayments are outlined later in this commentary.

If a borrower has been over-deducted or under-deducted but the amount does not exceed the significant threshold amount, the borrower's deduction will be considered to be correct and final and the amount will not be refunded or collected.

##### *Unused repayment threshold*

Borrowers with two or more jobs who estimate that the income from their main job for a three-month period will be below the repayment threshold for that period, can apply to the Commissioner to have the unused repayment threshold applied against their second job. The Commissioner will calculate the special deduction rate that should apply to the borrower's secondary job and issue a special deduction-rate certificate code to the borrower for the borrower to give to their employer.

The borrower will be required to review their estimate each quarter and advise Inland Revenue if any of the information or circumstances on which the special deduction rate is based change.

##### *Full-time study exemption*

Borrowers who study full-time but also work and earn under the annual repayment threshold can apply for a repayment exemption. This exemption ensures students are not disadvantaged as a result of the introduction of the pay-period basis of assessment where, but for the exemption, students would be required to make repayments if their earnings are above the pay-period threshold.

To qualify for the exemption, borrowers must:

- be engaged in a full-time study workload, being a programme of study which is 32 weeks or longer in a year and the study is at least 0.8% of equivalent full-time student units; or
- a period of at least 12 weeks or longer in a year and the study is at least 0.3% of equivalent full-time student units.

The exemption period commences when a borrower has a loan advance and continues while the borrower is undertaking a programme of study. The exemption period will not be broken by holiday periods between semesters provided there has been at least one semester of study completed and the holiday period does not exceed 15 weeks over the Christmas holiday period or three weeks for any other holiday period.

The exemption does not apply if the borrower has other income (income other than salary or wage or pre-taxed income).

Also, generally the PAYE rules in the Tax Administration Act 1994 apply to student loan deductions, and these deductions are in addition to PAYE deductions for income tax.

### *Pre-taxed income and other income repayment obligations*

#### *Repayment obligations on pre-taxed income*

Pre-taxed income is income that is not required to have student loan deductions made from it. If a borrower has income other than salary or wages and pre-taxed income, such as business income, they are an “other-income” borrower and are not required to comply with the pre-taxed repayment obligations.

For borrowers who derive solely pre-taxed income or salary and wages, and pre-taxed income, they will only have a pre-taxed income repayment obligation if the net pre-taxed income is \$1,500 or more and their total income is above the annual repayment threshold.

A borrower’s net pre-taxed income is their total pre-taxed income less the borrower’s allowable expenses for the year. Borrowers will be required to make an annual declaration of their pre-taxed income. The declaration must be made by 7 July following the end of the tax year, or another date specified by the Commissioner where the borrower has requested an extension to file the declaration or the Commissioner considers it appropriate.

The Commissioner will determine the borrower’s pre-taxed repayment obligation once the borrower files the declaration.

The calculation used to determine a borrower’s pre-taxed repayment obligation depends on whether their annual salary or wage income exceeds the annual repayment threshold.

If the borrower’s annual salary and wage income is less than the annual repayment threshold, the borrower’s pre-taxed repayment obligation is determined by the following formula:

$$a = b \times (c - d)$$

where:

**a** is the amount of the borrower’s pre-taxed repayment obligation

**b** is the repayment percentage (currently 10%)

**c** is the sum of the borrower’s net pre-taxed income (gross pre-taxed income less allowable expenses) and salary and wage income for the tax year

**d** is the annual repayment threshold (currently \$19,084).

If the borrower’s pre-taxed repayment obligation is zero or negative, the borrower will have no pre-taxed repayment obligation for the year.

If the borrower’s annual salary and wage income is equal to or greater than the annual repayment threshold, the borrower’s pre-taxed repayment obligation is determined by the following formula:

$$a = b \times c$$

where:

**a** is the borrower’s pre-taxed repayment obligation

**b** is the repayment percentage (currently 10%)

**c** is the borrower’s net pre-taxed income (gross pre-taxed income less allowable expenses).

The Commissioner will notify the borrower of their pre-taxed repayment obligation and the requirement for the borrower to make interim payments for the following year. These rules are outlined below under “Interim payment obligations”.

#### *Other income repayments*

Borrowers with other income (defined as income other than salary or wages and pre-taxed income) will be required to make student loan repayments based on their net income. A borrower’s net income is defined as their annual gross income less annual total deductions. If a borrower’s net income is less than the annual repayment threshold (currently \$19,084), the borrower has no other income repayment obligation.

If the borrower’s net income is above the annual repayment threshold and they have other income they will be required to file either a return at the end of the year (for New Zealand-based borrowers) or a declaration of details for New Zealand-based borrowers who are non-resident,

outlining their annual gross income and their annual total deductions in order to determine the borrower's net income. Once the return or declaration is filed, the Commissioner must assess the borrower's other income repayment obligation for the year and advise them of the amount of their other income repayment obligation and the due dates on or before which the amount must be repaid.

A borrower's other income repayment obligation for a tax year is determined using the following formula:

$$a = (b \times (c - d)) - e$$

where:

**a** is the amount of the borrower's other income repayment obligation

**b** is the repayment percentage (currently 10%)

**c** is the borrower's net income for the year

**d** is the annual repayment threshold (currently \$19,084)

**e** is the standard deduction made from the borrower's salary and wages derived during the year.

However, if the "other income" repayment obligation determined by the formula is zero or negative, the borrower will have no other income repayment obligation for the year.

#### *Remaining repayments*

If the borrower's interim payments made during the year do not fully satisfy the borrower's pre-taxed repayment obligation or the borrower's other "income repayment" obligation (as applicable) for the year, the difference is the borrower's "remaining repayments".

A borrower's remaining repayment due dates are determined as follows:

- For borrowers whose pre-taxed repayment obligation or other income repayment obligation for the year is less than \$1,000, the total remaining repayment is due in one instalment. The due date for the remaining repayment will be the interim payment date that immediately follows the date for filing the borrower's pre-taxed declaration, return of income, or details of annual gross income for New Zealand-based non-residents (as applicable).
- For borrowers whose pre-taxed repayment obligation or other income repayment obligation is \$1,000 or more but less than \$16,000, and who do not estimate their repayment obligation, the remaining repayments are due on the interim payment dates for the following tax year, that occur after the date the borrower is required

to file their pre-taxed declaration or return of income. For example, a borrower with other income is required to file a return for the 2012–13 year on 7 July 2013 is required to pay remaining repayments in relation to their other income repayment obligation on the three interim payment dates that occur after the date the borrower was required to file a return of income (7 July 2013), being 28 August 2013, 15 January 2014 and 7 May 2014.

- Where the borrower's pre-taxed repayment obligation or other income repayment obligation is \$16,000 or more, or their pre-taxed repayment obligation or other income repayment obligation is \$1,000 or more and they estimated their pre-taxed or other income repayment obligation, the remaining repayments are due on the interim payment dates for the same tax year that the declaration or return of income relates to. The effect of this is to impose late payment interest on borrowers who pay less than their repayment obligation during the year. For example, a borrower with other income who is required to file a return for the 2012–13 year on 7 July 2013 will have remaining repayments in relation to their other income repayment obligation due on the three interim payment dates during the 2012–13 year being 28 August 2012, 15 January 2013 and 7 May 2013.

#### *Interim payment obligations*

Borrowers with either a pre-taxed repayment obligation or another income repayment obligation will be required to pay interim payments during the year in the same manner as provisional tax with payments due on the three standard provisional tax dates.<sup>1</sup> For example, if a borrower has a March balance date, payments would be due on 28 August, 15 January and 7 May.

The following exceptions apply when a borrower has other income and they pay provisional tax:

- On a six-monthly basis: the borrower would pay their interim payments on the three standard provisional tax dates. For a March balance date borrower, these are 28 August, 15 January and 7 May. This rule will change from 1 April 2014.
- Using the GST ratio method, the borrower's interim payments will be due on the three standard provisional tax dates.

#### **Changes from 1 April 2013**

From 1 April 2013, borrowers who account for provisional tax on a six-monthly basis will be required to pay interim payments on the same two dates as they pay provisional tax. For a March balance date borrower, this will be 28 October and 7 May.

<sup>1</sup> When a borrower is in a transitional year (due to changing their balance date), the interim payment dates are the same dates as the provisional tax dates for that transitional year. The exception is when the borrower only has one payment date or when there is an odd number of payment dates.

As with provisional tax, borrowers can choose between two methods to calculate interim payments for student loan purposes: the standard method or an estimation of their liability.

### Standard method

Borrowers who use the standard method to calculate their interim payments are required to uplift their prior year's pre-taxed repayment obligation or other income repayment obligation by 5%. If the borrower has not filed their prior year's pre-taxed declaration or other income return, their interim payments will be based on their repayment obligation for the prior year uplifted by 10%. If a borrower's uplifted pre-taxed repayment obligation or other income repayment obligation is less than \$16,000, the amount of each interim payment is determined by the following formula:

$$a = b \times \frac{c}{d} - e$$

where:

- a** is the amount of the borrower's interim payment
- b** is the amount of the borrower's uplifted pre-taxed repayment obligation or other income repayment obligation
- c** is the number reflecting which of the interim payments is being calculated (eg, first, second or third)
- d** is the total number of interim payment due dates the borrower has for the tax year
- e** is the total of interim payments that were previously due.

### Example

A borrower with a March balance date who has an other income repayment obligation for the 2013–14 tax year, uses the standard method to calculate their interim payments. As they have not filed their 2012–13 return of income, their other income repayment obligation for the 2011–12 tax year (\$9,000) will be uplifted by 10% to determine their interim payments for the 2013–14 tax year. Their interim payments are calculated as follows:

#### First interim payment

$$= \frac{(\$9,000 \times 110\%) \times 1}{3} - 0$$

= \$3,300 which is due on 28 August 2013 and is paid on that date

If the borrower then files their 2012–13 return of income on 17 September 2013, and their other income repayment obligation for that year is \$11,428.6, the second interim payment will be calculated as follows:

#### Second interim payment

$$= \frac{(\$11,428.6 \times 105\%) \times 2}{3} - \$3,300$$

= \$4,700 which is due on 15 January 2014 and is paid on that date

This calculation is repeated for the final interim payment, giving an amount due of \$4,000 on 7 May 2014.

If the borrower's interim payment is not divisible into equal amounts, the final interim payment makes up any difference.

If the borrower's uplifted pre-taxed repayment obligation or uplifted other income repayment obligation exceeds the borrower's loan balance at the beginning of the year plus any loan advances made, the uplifted repayment obligation will be reduced accordingly.

### Estimation method (including borrowers whose uplifted repayment obligation is \$16,000 or more)

Borrowers whose pre-taxed repayment obligation or other income repayment obligation is \$1,000 or more, and who estimated their pre-taxed repayment obligation or other income repayment obligation or their uplifted repayment is \$16,000 or more, will determine their interim payments by dividing their estimated repayment obligation (or uplifted repayment obligation) by the number of interim payment due dates for the year.

### Example

A borrower with a March balance date, and who is required to make three interim payments for the 2013–14 tax year estimates that their other income repayment obligation for the year will be \$9,000. Their interim payments will be calculated as follows:

#### Interim payment

$$= \frac{\$9,000}{3}$$

= \$3,300

This amount will be payable on 28 August 2013, 15 January 2014 and 7 May 2014. If the borrower makes another estimate of their other income repayment obligation, the above calculation is performed for the remaining interim payment dates following the date of the new estimate.

### *Special deduction rate certificate for lower repayment obligation*

If a borrower derives other income and salary and wages in a tax year, and considers that their standard deductions from salary or wages will exceed their repayment obligations for the year, they can apply to the Commissioner for a special deduction rate certificate to apply a lower deduction rate to their salary or wages.

If the Commissioner accepts the application, the Commissioner will issue the borrower with a special deduction rate certificate, specifying the lower deduction rate and the period the rate applies for. The borrower will be required to provide the certificate to their employer. The certificate will cease when either the period outlined on the certificate is exceeded or the borrower or Commissioner withdraws the certificate by advising the employer accordingly.

### *Extensions of time to file a declaration of pre-taxed income*

With the introduction of the requirement to file a declaration of pre-taxed income, a new provision has been introduced to enable the borrower to apply (in a manner acceptable to the Commissioner) for an extension of time to file the declaration. The Commissioner also has the ability to provide borrowers with an extension of time to file a declaration without the borrower requesting such an extension.

### *Overseas-based borrowers' repayment obligations*

The current repayment obligations for overseas-based borrowers continue in this Act. That is, a borrower's repayment obligation is either \$1,000, \$2,000 or \$3,000, depending on their loan balance. These borrowers will continue to be required to make repayments in two equal instalments, on 30 September and 31 March.

Under the new provisions, the repayment obligations of overseas-based borrowers (\$1,000, \$2,000 or \$3,000) and repayment thresholds (\$1,000, \$15,000 and \$30,000) can be changed by Order in Council rather than by primary legislation. This ensures consistency with the way changes can be made to the annual repayment threshold and the repayment percentage that applies to New Zealand-based borrowers.

Changes have also been made to the definitions of "consolidated loan balance" and "loan balance" to ensure overseas-based borrowers' repayment obligations reflect adjustments to the loan balance at 31 March, including any administration fee charged, but excluding the excess repayment bonus. This gives effect to the original policy intent.

## EXCESS REPAYMENTS

*Sections 118–132, 222 and schedule 8*

Changes have been made to the way excess repayments are dealt with to account for the move towards loan repayments being determined on a pay-period basis. This includes re-enacting the existing excess repayment bonus provisions.

### Background

When a borrower makes payments or deductions of \$500 or more in excess of their compulsory repayment obligation for the year, they are entitled to a 10% excess repayment bonus. The bonus is calculated following the end-of-tax year assessment. The bonus is available to both New Zealand-based and overseas-based borrowers.

As a result of the repayment obligations on salary and wages being determined on a pay-period basis under the new rules, changes have been required to reflect the pay-period basis of assessment on the excess repayment bonus provisions.

There are also different time periods within which a borrower is required to request a refund of an excess repayment depending on whether the borrower is New Zealand-based or overseas-based.

### Key features

The major change to the excess repayment provisions policy is to exclude minor over-deductions that occur through the PAYE system from counting towards the 10% excess repayment bonus. This change is required to enable the pay-period assessment basis to apply to salary and wages. Any over-deductions that are determined as significant will be eligible for the 10% bonus, provided the other criteria for the bonus are met.

In addition, as a result of the introduction of the pay-period assessment basis for salary or wages, borrowers who want to make voluntary repayments through the PAYE system and qualify for the bonus can do so by separately tagging these payments with a new deduction code, SLBOR. This will allow Inland Revenue to separate these payments from standard salary or wage deductions when paid through the employer monthly schedule. This will allow the current practice, whereby some borrowers have their employer deduct additional amounts from their salary and wages, to continue.

When a borrower has a repayment or deduction made that exceeds their compulsory repayment obligations, the Student Loan Scheme Act 1992 only enabled borrowers to either apply the amount to their loan balance or have the amount refunded. The new rules provide another option for borrowers—to have their excess repayment applied to a future repayment obligation. This will be of benefit to borrowers whose excess repayment is below the \$500 threshold to qualify for the bonus. In this situation, the borrower could apply the excess to satisfy the following year's repayment obligation and thereby combine it with any other excess payments in that future year in the hope of the amount exceeding the \$500 threshold and thereby qualifying for the bonus in that year.

Previously, when the Commissioner advised a borrower that they had an excess repayment, overseas-based borrowers had two months from the date of the statement to request a refund of the excess, whereas New Zealand-based borrowers had six months.

The new rules standardise the period to request a refund at six months for both New Zealand-based and overseas-based borrowers.

Generally the excess repayment bonus is credited:

- on the day that the final excess repayment was made, if the borrower repays their loan in full; or
- on the date the borrower died or was declared bankrupt; or
- on 1 April in the year that follows the tax year that the excess repayment was made, in all other cases.

### Changes from date of enactment to 1 April 2012

Changes have been made to the Student Loan Scheme Act 1992 to ensure that from the date of enactment of the new rules, until 1 April 2012, the excess repayment bonus will be credited:

- on the date the borrower died or was declared bankrupt; or
- on 1 April in the year that follows the tax year that the excess repayment was made, in all other cases.

If a borrower has repaid their loan in full part-way through the year, has died or been declared bankrupt, the excess repayment bonus is calculated based on the borrower's obligations up to the date the borrower repaid their loan,

died, or was declared bankrupt. This treatment should benefit the majority of borrowers. However, if finalising the excess repayment bonus part-way through the year would disadvantage the borrower, the borrower can request that the bonus be finalised as at the end of the year.

During the Select Committee stage of the bill, a technical amendment was made to ensure that borrowers who receive other income in addition to salary or wages are able to receive a refund of overpaid loan deductions from their salary or wage income.

**Application date**

The changes apply from 1 April 2012, with effect from the 2012–13 tax year.

## INTEREST, RELIEF, PENALTIES AND OFFENCES, OBJECTIONS, DISPUTES AND CHALLENGES

*Sections 133–188, 221 and schedule 7*

Changes have been made to the interest and penalty provisions to bring the offences and penalty amounts up to date and into line with those that apply for tax offences more generally. These will have the effect of strengthening the rules applying to those who default on their student loan repayments.

### Background

The offences and penalties in the Student Loan Scheme Act 1992 have not been changed since the Act came into effect. This means that offences and penalties that apply to non-compliant borrowers have not kept up with the changes to offences and penalties that apply for not complying with tax obligations more generally. An incentive therefore exists for borrowers to comply with tax obligations (due to higher penalties) ahead of student loans repayment obligations.

The bill will bring penalties for not complying with filing, information provision, and repayment obligations more into line with the penalties applying to taxes. These changes are intended to:

- encourage borrowers to pay the correct interim payments when they are due;
- bring the rules up to date with changes to equivalent tax obligations (for example, higher penalties for evasion and the introduction of a late filing penalty); and
- reduce any tendency for borrowers to give student loan obligations a lower priority than tax repayment obligations.

The relief provisions currently available to a borrower namely, relief from late payment interest, hardship relief (limited to the current year, prior years or the next year), and financial relief by way of instalment arrangements have been retained.

The borrower currently has the contractual right to object to any loan advance that has been attributed to a borrower. These objections are dealt with by StudyLink. The borrower can also object to the Commissioner regarding any assessment made by the Commissioner, any penalty imposed, any decision concerning significant financial hardship, or the assessment of a repayment obligation. These objections are dealt with by the Commissioner and are retained in the new Act.

### Key features

The new rules include the following changes:

- The late payment penalty of 19.56% per annum has been replaced with a late payment interest of 10.6% per annum.
- Late filing penalties will be imposed for incomplete or absent declarations, or notifications in certain circumstances.
- The underestimation penalty that applies when a borrower has underestimated their repayment liability has been replaced with the ability to charge late payment interest from each overdue interim payment, and the penal repayment penalties that apply in cases of evasion will be replaced with a student loan shortfall penalty for borrowers who have taken an incorrect tax position.
- Student loan shortfall penalties will be imposed at the same rate that would apply for taking an incorrect tax position.
- The previous student loan criminal offences “rules” relating to wilfully or negligently failing to provide correct information will be replaced with the criminal offences that apply for tax purposes, such as absolute liability offences and knowledge and evasion offences. The same maximum penalty amounts that apply for income tax offences will also apply to student loan offences.
- The previous offence rules for aiding and abetting an offence will be retained in the student loan rules, but with higher penalties to reflect those imposed in relation to tax.
- The Commissioner can also enter into arrangements with borrowers for the repayment of outstanding amounts by way of instalments.
- The Commissioner can refrain from collecting amounts due if this would cause significant hardship to the borrower. The Commissioner can also refrain from issuing notices of assessment and collecting small amounts.
- The ability for borrowers to object to loan advances has been retained in the new Act. The current objection and challenge process has also been updated to reflect the process used in the Tax Administration Act 1994.

## Detailed analysis

### Interest

The legislation imposes interest on the loan balances of all borrowers and then provides a full interest write-off to borrowers for each day that they are New Zealand-based. The effect of this is to impose interest only on the loan balances of borrowers who are overseas-based.

The interest rate is determined by the following formula:

$$a\% = b\% + 0.74$$

where:

**a** is the interest rate for the tax year

**b** is the interest rate determined as the average of the monthly average 10-year Government bond yield rate published by the Reserve Bank for the 5 years ending in December in the year preceding the relevant tax year.

The interest rate for the year is currently 6.6%. Interest is calculated each day and charged and added to the loan balance on the last day of the tax year. The Commissioner is required to notify the borrower in writing of the amount of interest charged as soon as practical after interest is added to the borrower's loan balance.

### Changes from 1 April 2013

Up to 31 March 2013, the current treatment will remain whereby loan interest will be imposed on all borrowers and a full interest write-off will be provided for New Zealand-based borrowers. From 1 April 2013, loan interest will only be imposed on overseas-based borrowers. This will contribute towards reducing the complexity of statements issued to borrowers as interest will not be shown on the statements of borrowers who are New Zealand-based.

The calculation of loan interest will also change. Previously, loan interest was calculated daily, charged and compounded annually. From 1 April 2013, loan interest will be calculated daily but charged and compounded monthly. This change in calculation method will not affect the overall annual interest rate imposed on a borrower. However, any change in the 10-year Government bond yield rate, on which the interest rate is based, will influence the interest rate charged.

### Penalty for late payment

From 1 April 2012, the penalty for late payment will change its name from "late payment penalty" to "late payment interest". Also, when a borrower has not paid an amount by the due date and each individual unpaid amount is \$334 or more, late payment interest will be imposed on each amount outstanding as follows:

- 0.843% of the unpaid amount on the day after it was due; and

- 0.843% of the unpaid amount as at the day that is one month since the last time the late payment interest was imposed.

Late payment interest will be calculated, charged and compounded monthly.

Again, the Commissioner must notify the borrower as soon as possible, after the late payment penalty is imposed.

### Changes from 1 April 2013

From 1 April 2013, the way late payment interest is imposed will change.

Late payment interest will be calculated each day on the borrower's total unpaid amount above \$500 and the interest will be charged and compounded each month.

Also, instead of late payment interest being charged on each individual unpaid amount of \$334 or more, the threshold will be increased and late payment interest will apply if the total amount outstanding is \$500 or more.

### Small amounts

The Commissioner does not have to:

- issue a notice of assessment to borrowers if the repayment obligation or total remaining repayment for the tax year is less than \$20;
- collect a repayment obligation or a total remaining repayment for the tax year if the amount payable is less than \$20. This amount is not written off and remains part of the borrower's loan balance;
- collect and may write-off an amount payable by an employer or PAYE intermediary if the amount payable is less than \$20;
- collect a repayment obligation if the amount has not been paid by the due date and is less than \$334. This amount is not written off and is added back to the loan balance.

### Relief

There are three types of relief that a borrower can apply to the Commissioner for:

- relief from late payment interest;
- hardship relief (limited to the current year, prior years or the next year);
- financial relief by way of instalment arrangements.

### Relief from late payment interest

Relief from late payment interest is available to the borrower when the borrower applies and the Commissioner considers that, having regard to the circumstances, it is equitable to do so and the relief is warranted. The relief can cancel all or some of the late payment interest imposed and refund any amount paid in relation to the cancelled interest.

### Changes from 1 April 2013

From 1 April 2013, more detailed payment priority rules will apply. These rules are reflected in the provisions providing relief to borrowers from the late payment interest.

Some minor amendments will be required to the provisions providing relief to borrowers from the late payment interest both from 1 April 2012 and 1 April 2013 to correct technical errors. These amendments are included in the Student Loan Scheme Amendment Bill, which was before Parliament at the time of writing.

#### Hardship relief

When a borrower applies for hardship relief on the grounds that the payment of the repayment obligation would cause or has caused hardship or there are special reasons that make it fair and reasonable to provide relief, the Commissioner can decrease the borrower's repayment obligation.

The relief can be provided by either refunding a repayment obligation previously paid for the current year or for the previous tax year, or by reducing future deductions from salary and wages (by way of a special deduction rate) or a future pre-taxed repayment obligation or future other income repayment obligation. If the Commissioner reduces the borrower's repayment obligation due to hardship, the reduced amount is not written off and is not added to an unpaid amount but remains part of the borrower's loan balance.

Should the borrower's circumstances change and the change would have affected the borrower's entitlement to hardship, the borrower is required to notify the Commissioner who may review the previous decision to grant hardship relief. The hardship relief may be reversed and/or the borrower's repayment obligation may be reinstated.

#### Financial relief by way of instalment arrangements

Borrowers who have an unpaid amount can apply to the Commissioner to enter into an instalment arrangement for the repayment of the unpaid amount. Should the Commissioner grant the instalment arrangement, the borrower will continue to be liable for late payment interest on the amount outstanding during the instalment arrangement. If at the end of the arrangement the borrower has met all of the requirements of the instalment arrangement, the late payment interest that has accrued during the instalment arrangement will be reduced.

### Changes from 1 April 2013

Up to 31 March 2013, borrowers who enter into an instalment arrangement and meet their obligations under the arrangement will have the late payment interest reduced to reflect their compliance.

From 1 April 2013, for each month that a borrower under an instalment arrangement meets their obligations, the late payment interest the borrower is liable for will be reduced by two percentage points. This ensures that borrowers receive the benefit of compliance sooner, while removing the previous requirement to apply for the reduction in late payment interest. These changes to instalment arrangements for student loans reflect the way tax instalment arrangements are generally administered.

#### Late filing penalty

A late filing penalty has been introduced to encourage borrowers to file their pre-taxed income declaration or declaration of world-wide income by New Zealand-based non-resident borrowers. Before the penalty can be imposed, the Commissioner must notify the borrower in writing or by public notice that the late filing penalty will be imposed if the borrower does not provide the declaration to the Commissioner within 30 days of the date of notice.

Once the 30-day period has passed, the Commissioner can impose the penalty. The penalty depends on the borrower's net income as follows:

- a \$50 penalty will be imposed if the borrower's net income is less than \$100,000;
- a \$250 penalty will be imposed if the borrower's net income is between \$100,000 and \$1 million (inclusive);
- a \$500 penalty will be imposed if the borrower's net income is over \$1 million.

To ensure that two penalties are not imposed for the same offence, a late filing penalty for student loan purposes will not be imposed if a late filing penalty has been imposed under the Tax Administration Act 1994 in relation to the same return.

The late filing penalty will be due and payable on the later of:

- 60 days after the notification that the late filing penalty would be imposed;
- the same date as the first standard interim payment<sup>2</sup> for the borrower if the borrower does not have an extension of time to file a return. For a March balance date borrower, this will be 28 August;

<sup>2</sup> If a borrower is not liable to make interim payments, the date is the date at which the borrower would be liable to make interim payments if they were an interim payer.

- the same date as the final standard interim payment<sup>3</sup> for the borrower if the borrower has an extension of time to file a return. For a March balance date borrower, this will be 7 May.

**Shortfall penalties**

Currently, if a borrower evades or attempts to evade their repayment obligation, they can be subject to a penal repayment penalty of up to 300 % of the amount evaded. This penalty is now outdated and has been replaced with a range of shortfall penalties. These penalties increase in severity according to the offence ranging from not taking reasonable care in complying with repayment obligations to evasion.

The shortfall penalties will apply when a borrower:

- has taken an incorrect tax position which is lower than the correct tax position; and
- is also liable to pay a shortfall penalty for income tax.

Borrowers may also be liable to pay a student loan shortfall penalty if taking an incorrect tax position has also reduced their student loan repayment obligation.

The student loan shortfall penalty can be up to 150% of the shortfall in the borrower’s repayment obligation, and will be the same percentage rate imposed for the borrower’s income tax shortfall. This will ensure that borrowers who do not comply are penalised on the whole shortfall, and not just the income tax amount.

**Offences**

Criminal offences currently in the Student Loan Scheme Act relate to wilfully or negligently failing to provide correct information. These offences will be replaced with the criminal offences that apply for tax purposes, such as strict liability offences, and knowledge and evasion offences. The same maximum penalty amounts that apply for income tax offences will also apply to student loan offences.

The current offences for aiding and abetting an offence will be retained, but with higher penalty amounts to reflect those imposed in relation to tax, as will the offence relating to prejudicing employees because of their student loan liability. However, there will be no change to the penalty amount for the latter offence and the \$2,000 penalty will continue to apply.

The following table provides a summary of the offences and penalties under both the Student Loan Scheme Act 1992 and the Student Loan Scheme Act 2011.

Civil offences	Student Loan Scheme Act 1992		Student Loan Scheme Act 2011	
	Offence	Penalty	Offence	Penalty
Failure to pay	Late payment penalty	1.5% per month (19.56% pa)	Late payment interest	0.84% per month (10.6% pa)
Failing to file	n/a	n/a	Late filing penalty	Penalties range from \$50 to \$500, depending on borrower’s net income
Short-payment of interim payments	Underestimation penalty (failure to pay 80% of liability by 3rd interim payment date)	10% of under-estimation	Short payment was due on interim payment dates for the same year with payments spread evenly over those dates	Late payment interest imposed from interim payment due dates
Evasion	Penal repayment obligation	Up to 300% of deficient repayment obligation	Shortfall penalties <sup>4</sup> : <ul style="list-style-type: none"> <li>• Not taking reasonable care or taking an unacceptable tax position 20%</li> <li>• Gross carelessness 40%</li> <li>• Abusive tax position 100%</li> <li>• Evasion 150%</li> </ul>	

<sup>3</sup> If a borrower is not liable to make interim payments, the date is the date at which the borrower would be liable to make interim payments if they were an interim payer.

<sup>4</sup> These penalties are adjusted to take account of reductions due to borrower’s good behaviour, voluntary disclosure or temporary shortfall and increased penalty due to obstruction.

Criminal offences	Student Loan Scheme Act 1992		Student Loan Scheme Act 2011	
	Offence	Penalty	Offence	Penalty
Prejudice employees	Prejudice employees because of student loan	Max \$2,000 plus ability to award damages	Prejudice employees because of student loan	Max of \$2,000 plus ability to award damages
Failure to provide information	Refuses, fails or negligently fails to: <ul style="list-style-type: none"> <li>provide information or a return; or</li> <li>attempts to mislead or obstruct.</li> </ul> Negligently: <ul style="list-style-type: none"> <li>fails to notify employer; or</li> <li>misleads in relation to repayment deduction</li> </ul>	Max. of: <ul style="list-style-type: none"> <li>\$2,000 for 1st offence</li> <li>\$4,000 for 2nd offence</li> <li>\$6,000 for 3rd offence</li> </ul>	Does not provide information or returns to the Commissioner or other person	Max. of: <ul style="list-style-type: none"> <li>\$4,000 for 1st offence</li> <li>\$8,000 for 2nd offence</li> <li>\$12,000 for 3rd offence</li> </ul>
	Wilfully: <ul style="list-style-type: none"> <li>gives false information or returns; or</li> <li>misleads or attempts to mislead;</li> <li>fails to notify employer</li> </ul>	Max. of: <ul style="list-style-type: none"> <li>\$15,000 for 1st offence</li> <li>\$25,000 for 2nd offence</li> </ul>	Knowingly: <ul style="list-style-type: none"> <li>does not provide information or returns;</li> <li>gives false or altered information or returns;</li> <li>misleads;</li> <li>does not make deductions; with intent to evade the assessment or payment of a repayment obligation</li> </ul>	Max. penalty of \$50,000 and/or a maximum term of imprisonment of 5 years
	Aids, abets, incites, conspires to commit offence	Max. of: <ul style="list-style-type: none"> <li>\$15,000 for 1st offence</li> <li>\$25,000 for 2nd offence</li> </ul>	Aids, abets, incites, conspires to commit offence	Same maximum fine or term of imprisonment as person who committed offence

### Objection rights

A borrower can:

- object to a loan advance;
- dispute a decision by the Commissioner; or
- challenge a Commissioner's decision once the borrower has completed the disputes process.

### Objections

A borrower can object to the details of loan advances outlined on a statement issued by the Commissioner. The borrower has at least 31 days from the date of the statement to object, unless StudyLink has allowed an extension of time to object.

The Loan Manager must consider the objection and, as soon as practicable, notify the borrower and Inland Revenue

of their decision and the reasons for that decision. If the objector does not agree with the Loan Manager's decision, the borrower can require the Chief Executive to determine the decision. The request must be made within 21 days of the Loan Manager's decision or the Chief Executive may provide an extension of time for the borrower to request a determination of decision by the Chief Executive.

Once the Chief Executive has received a request to consider the objection, they must consider the objection and, as soon as practicable, notify the borrower in writing of their decision and the reasons for that decision.

If a borrower disagrees with the decision of the Chief Executive, the borrower can, within 30 days<sup>5</sup> of being notified of the Chief Executive's decision, apply to the Disputes Tribunal or District Court for determination of the

<sup>5</sup> The referee of a Disputes Tribunal or a District Court judge may extend the time allowed to apply to a Disputes Tribunal or District Court.

dispute. The Court or Tribunal will only consider objections once they have been considered by the Loan Manager and the Chief Executive.

#### *Dispute and challenge process*

The same disputes process that applies for income tax disputes will apply to disputes involving a decision by the Commissioner under this Act.

Once a borrower has concluded the disputes process, and the dispute has not been resolved, the borrower may challenge the decision.

A borrower may dispute any of the following matters (excluding the details of a loan advance) under the Act:

- any information (other than a loan advance) provided to the borrower;
- the Commissioner's decision not to treat a borrower as being physically in New Zealand or regarding the start and end dates of the borrower being treated as a New Zealand resident;
- the Commissioner's decision not to issue a special deduction rate certificate or that the certificate issued is erroneous;
- that the additional deduction rate certificate is incorrect or has been issued in error;
- the Commissioner's determination as to the salary or wage deduction to be made on the grounds that the determination is erroneous;
- the Commissioner's determination that a significant over-deduction was not made was erroneous or that the amount of the significant over-deduction stated in the notice was erroneous;
- the Commissioner's decision to prohibit a borrower from making an application for the borrower's unused repayment threshold to be allocated to their secondary income or an application for the exemption for full-time study;
- an assessment of the borrower's repayment obligations on the basis that the assessment is erroneous, excessive or issued in error;
- the imposition of interest or late payment interest, or the amount of interest charged or late payment interest charged;
- the Commissioner's decision not to provide relief from late payment interest, hardship relief, or financial relief by way of an instalment arrangement. The borrower can also challenge the relief provided on grounds that relief is not fair and reasonable; and

- the imposition of the late filing penalty or a shortfall penalty on the grounds that the penalty was imposed in error.

After considering the challenge the Commissioner must notify the borrower that the Commissioner has either:

- allowed the challenge in full;
- allowed the challenge in part; or
- disallowed the challenge.

#### **Application dates**

The changes relating to shortfall penalties, late filing penalties, and criminal offences for not complying with obligations, apply from 1 April 2012 onwards. However, they apply to obligations for the tax year and therefore cannot be determined until the end of the year.

The changes relating to the rights of a borrower to object to the details of loan advances and challenge details of their consolidated loan balance, apply from 1 January 2012, being the date from which that the loan advances provisions apply.

The other changes outlined above apply from 1 April 2012.

## MISCELLANEOUS AMENDMENTS

### *Sections 189–226 and schedules 5–10*

Changes have been made to the way payments are allocated and offset against a borrower's consolidated loan balance, and an annual administration fee of \$40 introduced to reflect the cost of administering the loan. There are also a number of other general amendments made to the Act, which are outlined below, together with the introduction of a new provision that allows the Commissioner to recall a loan, on demand, in certain circumstances.

#### *Administration fee*

A new Inland Revenue administration fee has been introduced to recover more of the costs of administering the student loan scheme from borrowers. The administration fee reflects the costs incurred by Inland Revenue in administering borrowers' loans.

To ensure that borrowers are not charged two fees in the same year, the administration fee will only be charged in years when a borrower is not charged an establishment fee through StudyLink.

The administration fee will be imposed when the borrower's loan is \$20 or more as at 31 March each year and imposed on 1 April each year.

The annual administration fee applies from 30 August, being the day after the date of Royal assent.

#### *Payment allocation rules*

The payment allocation rules specify the order in which the Commissioner offsets payments made by a borrower against their consolidated loan balance. For the period 1 April 2012 until 31 March 2013, the payment allocation rules reflect the rules enacted as part of the Student Loan Scheme Act 1992 namely, that payments satisfy interest first and any remainder is applied to the principal of the loan.

#### **Changes from 1 April 2013**

From 1 April 2013, more detailed payment priority rules will come into force, although the underlying concept remains that payments will go to repay debt first before current year obligations and debt repayments will go to pay interest first and then the loan principal.

The payment allocation rules are as follows.

For standard salary and wage deductions and additional deductions required by the Commissioner to repay a significant under-deduction, any amounts received must be offset against the borrower's consolidated loan balance.

Amounts received through salary and wage deductions required by the Commissioner to repay debts, or deductions required by the borrower or payments in respect of the borrower's consolidated loan balance (for example, from overseas-based borrowers), will first go towards paying any unpaid amount. Any remainder will be used to satisfy current year obligations. Any further amounts remaining will be offset against a borrower's loan balance.

There is an exception to these rules where payments are received by or for a borrower who is in an instalment arrangement. Borrowers who are in an instalment arrangement are required to comply with their current year obligations in order to continue to qualify for the instalment arrangement. The payment allocation rules in the Act reflect this requirement and therefore payments from or for borrowers in an instalment arrangement will first go to meet the current year's obligations, then any remainder will be offset against any unpaid amount. If there is any remainder, that amount will be offset against the borrower's loan balance.

#### *Cancellation of interest when loan balance is repaid early*

The Act continues the current practice whereby interest is calculated and accrued daily and is charged and compounded annually. When a borrower pays the amount outstanding as outlined in the last statement they received, they will still have a small amount of interest outstanding for the period between the last statement and the date of payment.

To address this issue, the new legislation ensures that when the loan is repaid in full within 30 days of the last statement, any loan interest incurred during the 30-day period is cancelled.

This amendment will only apply from 1 April 2012 until 1 May 2013, when the new method of calculating, charging and compounding loan interest applies and removes the need to provide specific rules for the cancellation of interest if the loan balance is repaid early.

#### *Recall of loan balance*

New section 204 allows the Commissioner of Inland Revenue to exercise existing powers in student loan contracts that provide for the full amount of student loans to be recalled or repaid on demand.

Previously, the Commissioner only had the ability to collect loan amounts that were due and owing and had the power under the relevant Acts to enforce only the payment of arrears.

All student loan contracts contain a clause allowing the loan balance to be recalled in certain circumstances, but in most cases this power is not available to Inland Revenue (instead this rests with another Crown agency).

The new legislation allows the Commissioner to exercise existing powers in student loan contracts that provide for the full amount of student loans to be recalled or repaid on demand.

The powers conferred on the Commissioner are no greater than the powers in the loan contracts as signed by borrowers in terms of the amount that can be demanded and the circumstances in which the recall powers can be exercised.

The powers clarify that Inland Revenue as the agency responsible for collecting student loan repayments, has the ability to exercise this existing recall term of the student loan contract. This will enable it to better manage cases of serious non-compliance.

The application of the change to enable the Commissioner to recall the loan will be 30 August 2011, being the day after the date of Royal assent.

#### *Write-off of consolidated loan balance*

From 1 April 2012, a borrower's consolidated loan balance must be written off (reduced to zero) if:

- the borrower dies; or
- the Commissioner has reasonable grounds for considering that the borrower has died; or
- the borrower's consolidated loan balance is less than \$20 at the end of the year.

When a borrower dies or the Commissioner considers the borrower has died, the write-off has effect from the date the borrower dies or is suspected to have died.

When the borrower's consolidated loan balance is less than \$20 at the end of the year, the write-off occurs at that date.

#### **Changes from 1 April 2013**

From 1 April 2013, when a borrower's loan balance is less than \$20 at any time during the year, the Commissioner may write-off the consolidated loan balance with effect from that date. This change will result in loans of less than \$20 being closed off sooner, thereby reducing both compliance and administration costs.

#### *Other changes*

A number of consequential amendments have been made. These:

- provide the ability to make regulations, which applies from 30 August 2011;
- prescribe the way a borrower and the Commissioner may provide information to each other, which comes into force on 1 January 2012; and
- include specific provisions to ensure a smooth transition between the Student Loan Scheme Act 1992 and the commencement of the new Act which apply from 1 January 2012.

Also, an amendment has made to ensure borrowers cannot gain an unintended advantage from the interest-free policy. The change precludes borrowers from obtaining a refund of excess payments made in the 2004 and 2005 years. This amendment applies from 30 August 2011, being the day after the date of Royal assent.