

House of Representatives

Supplementary Order Paper

Thursday, 20 May 2004

Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill

Proposed amendments

Hon Dr Michael Cullen, in Committee, to move the following:

New clauses 14B and 14C

To insert after clause 14 (after line 36, page 18) the following:

14B Accrual expenditure

(1) Section EF 1(5)(a) is replaced by the following:

“(a) where the expenditure relates to the purchase of goods, the amount of expenditure incurred on goods that—

“(i) are not used in deriving gross income; and

“(ii) are not destroyed or rendered useless for the purpose of deriving gross income.”.

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

14C Disposition of depreciable property

(1) Section EG 19(3) is replaced by the following:

“(3) A taxpayer who in an income year disposes of any depreciable property for a consideration that is less than the adjusted tax value of the property at the time of disposition is allowed for the income year a deduction that is equal to the amount by which the adjusted tax value of the property on the date of disposition exceeds the consideration derived by the taxpayer if the depreciable property—

“(a) is not a building; or

“(b) is a building that is destroyed or rendered useless for the purpose of deriving gross income as a result of an event

referred to in paragraph (a) of the definition of **qualifying event**.”

- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

New clauses 18B and 18C

To insert after clause 18 (after line 20, page 22) the following:

18B Section EZ 9 replaced

- (1) Section EZ 9 is replaced by the following:

“EZ 9 New start grants for farmers

- “(1) This section applies to a taxpayer if—
- “(a) the taxpayer carries on a business of—
 - “(i) animal husbandry:
 - “(ii) poultry-keeping:
 - “(iii) beekeeping:
 - “(iv) breeding horses other than bloodstock:
 - “(v) horticulture:
 - “(vi) cropping; and
 - “(b) the taxpayer in carrying on the business incurs before 1 March 2004 a liability—
 - “(i) to make a payment under a financial arrangement:
 - “(ii) for expenditure or loss that is, before 1 June 2004, taken into account in calculating the taxpayer’s taxable income for an income year:
 - “(c) the taxpayer is paid a new start grant in respect of the business for an event referred to in paragraph (a) of the definition of **qualifying event**; and
 - “(d) as a prerequisite for the payment of the new start grant and on or before 30 September 2005, the liability referred to in **paragraph (b)** is forgiven or otherwise remitted; and
 - “(e) but for this section, the amount of the remitted liability would be gross income of the taxpayer under the accrual rules or under section CE 4.
- “(2) The amount of a remitted liability referred to in **subsection (1)** is not gross income of the taxpayer to the extent that the amount cannot be set off—
- “(a) against a loss that is incurred by the taxpayer in carrying on the business in the income year in which the liability is remitted:
 - “(b) under section IE 1, IE 2 or IF 1, against a loss that is incurred by the taxpayer in carrying on the business and is available to be set off against the taxpayer’s net income in the income year in which the liability is remitted:
 - “(c) under **subsection (3)**.

- “(3) The Commissioner may, despite sections IE 1, IE 2 and IF 1, require that an amount of a remitted liability referred to in **subsection (1)** be set off against a loss of another person if—
- “(a) the other person and the taxpayer are associated persons; and
 - “(b) the other person—
 - “(i) also carries on or has carried on the business in respect of which the new start grant is paid; or
 - “(ii) is or was the owner of an estate in fee simple or leasehold estate in land used in the business in respect of which the new start grant is paid; and
 - “(c) the Commissioner is satisfied that the taxpayer has—
 - “(i) a substantial degree of control over the other person;
 - “(ii) a substantial identity of interests with the other person; and
 - “(d) the loss of the other person is—
 - “(i) incurred in respect of the business or the land that is used in the business; and
 - “(ii) of a kind referred to in **subsection (2)(a) and (b)**.
- “(4) In determining the amount that is set off under **subsection (3)**, the Commissioner must have regard to the interests of the associated person that are separate from those of the taxpayer.
- “(5) The Commissioner must give notice in writing to the associated person of a determination under **subsection (3)**.”
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

18C New section EZ 9B

- (1) After **section EZ 9**, the following is inserted:

“EZ 9B Deduction for diminished value of expenditure on improvements destroyed or rendered useless by qualifying event

Subject to section DJ 1, a taxpayer is allowed for an income year a deduction that is equal to the diminished value for the income year of expenditure of a kind that is referred to in Schedule 7 if—

- “(a) the taxpayer or another person incurred the expenditure on improvements in preparing or developing a business or land that is used in a business; and
- “(b) the improvements were destroyed or rendered useless for the purpose of deriving gross income as a result of an event referred to in paragraph (a) of the definition of **qualifying event**; and
- “(c) the taxpayer would have been entitled for the income year to a deduction under section DL 2, DO 4 or DO 5

for the expenditure if the improvement had not been destroyed or rendered useless.

- “(2) **Subsection (1)** applies for the 2003–04 and subsequent income years.”

New clause 23B

To insert after clause 23 (after line 14, page 23) the following:

23B Sale of trading stock for inadequate consideration

- (1) In the heading to section GD 1, “Sale” is replaced by “Disposition”.
- (2) Section GD 1(4) is replaced by the following:
- “(4) This section does not apply in respect of any trading stock that—
- “(a) is transferred to a person under a relationship agreement; or
- “(b) is donated, or supplied for consideration worth less than the market value of the trading stock, to a person as a result of an event referred to in paragraph (a) of the definition of **qualifying event**.”
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

Clause 65

To insert after subclause (2) (after line 16, page 45) the following:

- (2B) The definition of **business of farming** is omitted.

To insert after subclause (15) (after line 22, page 47) the following:

- (15B) The definition of **new start grant** is replaced by the following:
- “**new start grant** means a grant of money that is designated by the Minister of Agriculture as a new start grant and is paid by the Government of New Zealand to a person in respect of—
- “(a) an adverse event:
- “(b) an event that is described in paragraph (a) of the definition of **qualifying event**”.

To insert in subclause (32) (in line 1, page 50)—

- (a) “(2B)” after “Subsections”:
- (b) “(15B),” after “(14),”.

New clause 116B

To insert after clause 116 (after line 2, page 75) the following:

116B Relief to taxpayers to whom new start grants payable

- (1) In section 177D(2)(a), “section EZ 9(3)” is replaced by “**section EZ 9(3) and (4)**”.

- (2) In section 177D(3), “adverse event” is replaced by “event that is referred to in paragraph (a) of the definition of **qualifying event** in section OB 1 of the Income Tax Act 1994”.
- (3) **Subsections (1) and (2)** apply for the 2003–04 and subsequent income years.

New clause 134B

To insert after clause 134 (after line 17, page 79) the following:

134B Relief from tax where new start grant made in respect of drought relief

- (1) In the heading to section 48A, “**in respect of drought relief**” is omitted.
- (2) Section 48A(1) is replaced by the following:
 - “(1) In this section, **new start grant** has the meaning given to the term by section OB 1 of the Income Tax Act 1994.”
- (3) In section 48A(3), in the words after paragraph (c), “section EZ 9(3)” is replaced by “**section EZ 9(3) and (4)**”.
- (4) **Subsections (1) to (3)** apply for the 2003–04 and subsequent income years.

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill.

The proposed amendments relate mainly to the flooding that occurred during February 2004. That flooding event is referred to in *paragraph (a) of the definition of qualifying event* that was inserted in *section OB 1 of the Income Tax Act 1994* by the *Taxation (Disaster Relief) Act 2004* (2004 No 4).

New clause 14B amends the definition of *unexpired expenditure* in *section EF 1 of the Income Tax Act 1994* to exclude expenditure on goods that are not used in deriving gross income because the goods are destroyed or rendered useless. The effect of this proposal is not restricted to the flooding event.

New clause 14C amends *section EG 19 of the Income Tax Act 1994* so that a taxpayer may claim a deduction for the adjusted tax value of a building that is destroyed or rendered useless as a result of the flooding event.

New clause 18B replaces *section EZ 9 of the Income Tax Act 1994*, which provided for new start grants that related to former climate events, known as *adverse events*. A condition of a new start grant is that existing liabilities of the recipient must be remitted before the grant is made. The *current section EZ 9* provides that taxpayers given new start grants for adverse events were not liable to pay income tax as a result of having those liabilities remitted, although the amounts remitted could be set off against losses of the taxpayer or of an associated person controlled by the taxpayer. The *proposed section EZ 9* provides for the same treatment in relation to new start grants made as a result of the flooding event.

New clause 18C inserts new section EZ 9B of the Income Tax Act 1994. The inserted section provides for the deduction by a taxpayer of the diminished value of expenditure of a kind that is referred to in Schedule 7 of the Income Tax Act 1994, which relates to farming, aquacultural or forestry improvements. The deduction is allowed if the expenditure was on improvements that were destroyed or rendered useless as a result of the flooding event and the taxpayer would otherwise have had an allowable deduction for the expenditure.

New clause 23B amends section GD 1 of the Income Tax Act 1994. The section provides that a disposition of trading stock at an undervalue is treated as a sale of the trading stock at market value. The proposed amendment introduces an exception for dispositions made as a result of the flooding event.

The proposed amendments to clause 65 correct some cross-references in section OB 1 of the Income Tax Act 1994 and insert a new definition of new start grant to include grants made in relation to the flooding event.

New clause 116B makes some consequential amendments to section 177D of the Tax Administration Act 1994.

New clause 134B makes some consequential amendments to section 48A of the Goods and Services Tax Act 1985.
