

House of Representatives

Supplementary Order Paper

Tuesday, 4 September 2018

Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill

Proposed amendments

Hon Stuart Nash, in Committee, to move the following amendments:

Clause 2

New subclause (7B): After subclause (7) (page 15, after line 8), insert:

- (7B) **Sections 151B and 151C** are treated as coming into force on 4 September 2010.

New subclause (19B): after subclause (19) (page 15, after line 24), insert:

- (19B) **Sections 225B and 228B** are treated as coming into force on 15 May 2018.

Subclause (21): before “**178**” (page 15, line 27), insert “**153B,**”.

New clauses 151B and 151C

After clause 151 (page 99, after line 35), insert:

151B Section EZ 23B amended (Property acquired after depreciable property affected by Canterbury earthquakes)

- (1) In section EZ 23B(1), in the words before the paragraphs, replace “2019–20” with “2024–25”.
- (2) In section EZ 23B(8)(a), replace “2018–19” with “2023–24”.

151C Section EZ 23BB amended (Interest in property acquired after depreciable property affected by Canterbury earthquakes)

- (1) In section EZ 23BB(1), in the words before the paragraphs, replace “2019–20” with “2024–25”.

- (2) In section EZ 23BB(9)(a)(i), replace “2018–19” with “2023–24”.

New clause 153B

After clause 153 (page 100, after line 29), insert:

153B Section FH 5 amended (Payments by New Zealand resident or New Zealand deducting branch producing deduction without income)

- (1) Repeal section FH 5(1)(a).
- (2) Replace section FH 5(2)(a) with:
- (a) the payee is a non-resident who receives the payment other than through a New Zealand deducting branch of the payee; and
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2018.

Clause 221

Replace “**228**” (page 123, line 10) with “**228B**”.

New clause 225B

After clause 225 (page 123, after line 30), insert:

225B Section 20 amended (Calculation of tax payable)

Replace section 20(3K) with:

- (3K) For the purposes of subsections (3), (3C), and (3J), and the definitions of **percentage actual use** and **percentage intended use** in section 21G(1), goods and services used in the course or furtherance of an activity that is not a taxable activity by a registered person who is a non-profit body resident in New Zealand are treated as being used in the course or furtherance of the taxable activity of the registered person—
- (a) to the extent that the goods and services are not used for the making of exempt supplies; and
- (b) if the goods and services are not excluded from the effect of this subsection by an election of the registered person under **subsection (3KB)**.
- (3KB) If a registered person is a non-profit body resident in New Zealand and carries on an activity, that is not a taxable activity, in the course or furtherance of which the registered person uses an asset and receives supplies of goods and services, for use solely in relation to the asset, to which **subsection (3K)** would apply in the absence of this subsection, the registered person may elect that the supplies be excluded from the effect of **subsection (3K)** after a date (the elec-

tion date), and that the asset be treated as disposed of on the election date in the course or furtherance of the taxable activity and reacquired on the election date for use in the course or furtherance of an activity that is not a taxable activity, by—

- (a) notifying the Commissioner, in a way acceptable to the Commissioner, of—
 - (i) the election; and
 - (ii) the election date, which must be the same as or later than the date of the notification and before 1 April 2021; and
 - (iii) the information required by the Commissioner relating to the election; and
- (b) including in a return for the taxable period in which the election date occurs an amount of output tax on the disposal equal to the tax on a taxable supply having a value equal to the total of—
 - (i) each amount that affects under **subsection (3K)** the calculation of the registered person's input tax before the election date and is included in the cost of the asset; and
 - (ii) each amount that affects under **subsection (3K)** the calculation of the registered person's input tax before the election date and is included in the operating costs of the asset in the period of 7 years before the election date.

New clause 228B

After clause 228 (page 124, after line 19), insert:

228B New section 88 inserted (Valuation: non-profit body disposing of certain assets, deregistering, or acquiring certain assets of non-profit body)

After section 87, insert:

88 Valuation: non-profit body disposing of certain assets, deregistering, or acquiring certain assets of non-profit body

- (1) **Subsection (2)** applies to a registered person who—
 - (a) is a non-profit body resident in New Zealand; and
 - (b) makes in a taxable period a supply (the **asset supply**) of an asset that the registered person has used in the course or furtherance of an activity that is not a taxable activity; and
 - (c) before 15 May 2018, makes a return for the taxable period.

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- (2) The registered person may not, on or after 15 May 2018, take a tax position relating to the asset supply that differs from the tax position taken in the return for the taxable period.
- (3) A person may make an election under **subsection (4)** if—
 - (a) the person is deregistered and deemed under section 5(3) to supply goods and services on a date (the **supply date**) that is on or after 15 May 2018 and before 1 April 2021; and
 - (b) immediately before the supply date, the person uses the goods and services in the course or furtherance of an activity that is not a taxable activity and **subsection (3K)** applies to the goods and services.
- (4) The registered person may elect under this subsection that the consideration in money for each supply under section 5(3) of an asset is the total of—
 - (a) each amount that affects under **subsection (3K)** the calculation of the registered person's input tax before the supply date and is included in the cost for the registered owner of the asset supplied; and
 - (b) each amount that affects under **subsection (3K)** the calculation of the registered person's input tax before the supply date and is included in the operating costs of the asset in the period of 7 years before the supply date.
- (5) A registered person makes an election under **subsection (4)** by notifying the Commissioner in a way acceptable to the Commissioner—
 - (a) of the election, and the information required by the Commissioner relating to the election; and
 - (b) when the registered person provides the return for the taxable period that includes the supply date.
- (6) **Subsection (7)** applies to the amount of input tax for a registered person (the **recipient**) from a supply of secondhand goods if—
 - (a) the supply is of an asset formerly held by a non-profit body (the **original owner**) resident in New Zealand; and
 - (b) the recipient is—
 - (i) associated with the original owner;
 - (ii) a non-profit body;
 - (iii) associated with a non-profit body; and
 - (c) an election under **subsection (4)** or **section 20(3KB)** determined the output tax for the original owner on a supply of the asset; and

- (d) the supply of the asset to the recipient occurs less than 5 years after the supply of the asset by the original owner.
- (7) Despite section 3A(2) and (3), the input tax for the recipient does not exceed the output tax for the original owner on the supply of the asset by the original owner.

Explanatory note

This Supplementary Order Paper inserts new clauses amending the Income Tax Act 2007 and the Goods and Services Tax Act 1985.

New clauses 151B and 151C amend sections EZ 23B and EZ 23BB of the Income Tax Act 2007, which allow depreciation roll-over relief for properties affected by the Canterbury earthquakes in 2010 and 2011. A prerequisite for a person to receive the depreciation relief is that the person obtain replacement property in Canterbury. The new clauses extend the deadline for obtaining the replacement property from the end of the 2018–19 income year to the end of the 2023–24 income year.

New clause 153B amends section FH 5 of the Income Tax Act 2007. That section is intended to neutralise a cross-border arrangement that would otherwise generate payments that are deductible in New Zealand and are not taxed as income in a foreign country due to a mismatch in the tax treatment of the payer. The proposed amendment ensures that the section applies as intended to cross-border payments that are subject to non-resident withholding tax in New Zealand. It also narrows the application of the section so that it does not apply to payments that are disregarded in the foreign country but are assessable as income in New Zealand because they are received through a deducting branch in New Zealand. Such payments do not give rise to a tax advantage of the sort that the section is intended to address.

New clauses 225B and 228B amend the Goods and Services Tax Act 1985 to clarify the treatment of supplies made and received by a non-profit body that is a registered person and uses an asset in the course or furtherance of an activity that is not a taxable activity.

New clause 225B replaces section 20(3K) with *subsections (3K) and (3KB)*. The replacement *subsection (3K)* provides that goods and services used by the non-profit body are treated as being used in the course or furtherance of the taxable activity of the non-profit body except if the supplies are used solely in relation to an asset for which the non-profit body makes an election under *subsection (3KB)*. As a result, if a non-profit body disposes of an asset for which it has not made an election, it is treated as disposing of the asset in the course or furtherance of its taxable activity. A non-profit body that makes an election under *subsection (3KB)* for an asset is treated as disposing of the asset and reacquiring it at the time of the election. The output tax on the disposal is limited by the amount of input tax on supplies that relate solely to the asset and are received by the non-profit body before the election.

New clause 228B inserts *new section 88*, which provides for the valuation of supplies of assets used by non-profit bodies who are registered persons. *Subsections (1) and*

(2) provide that a non-profit body is bound by a tax position concerning the output tax on the disposal of an asset if the tax position is taken in a return before 15 May 2018. *Subsections (3) to (5)* provide for the availability of an election concerning the value of a supply that is made during the period 15 May 2018 to 1 April 2021 as a consequence of the deregistration of the non-profit body. *Subsections (6) and (7)* limit the amount of input tax for a non-profit body, or an associated person, who acquires from an unregistered person an asset for which a non-profit body has made an election under *subsection (4)* or *section 20(3KB)* within the period of 5 years before the acquisition.

The SOP also makes consequential changes to *clause 2*, which provides for the dates on which clauses in the Bill come into force, and to *clause 221*, which gives the clauses that amend the Goods and Services Tax Act 1985.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the revised disclosure statement for the Bill can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2018&no=74>

Regulatory impact assessment

The Inland Revenue Department produced a regulatory impact assessment on 3 May 2018 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact assessment can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>