

# House of Representatives

# Supplementary Order Paper

Tuesday, 16 October 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 (21B):* after *clause 2(21)* (page 15, after line 27), insert:

(21B) **Sections 98B, 119B, 133B, 133C, 133F, 151BA, 213(13B), (18B), (24B), (24C), and (30B), and 214B** come into force on 1 January 2019.

*New subclause (23B):* after *clause 2(23)* (page 15, after line 37), insert:

(23B) **Sections 133D and 133E** come into force on 1 January 2020.

#### *New clause 98B*

After *clause 98* (page 87, after line 8), insert:

#### **98B New section 225AB inserted (Order in Council amending Schedule 18B of Income Tax Act 2007)**

After section 225A, insert:

#### **225AB Order in Council amending Schedule 18B of Income Tax Act 2007**

- (1) This section provides a power to amend, by Order in Council, the list of sales of bloodstock yearlings in **schedule 18B** of the Income Tax Act 2007 that meet the definition of a **premier yearling sale** in **section EC 39B(4)** of that Act.

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- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Revenue, amend **schedule 18B** of that Act by—
- (a) adding the name of a sale of bloodstock yearlings:
  - (b) substituting the name of a sale of bloodstock yearlings in recognition of a change in its name:
  - (c) removing the name of a sale of bloodstock yearlings.
- (3) Before recommending the making of an Order in Council to—
- (a) add the name of a sale of bloodstock yearlings to **schedule 18B** of that Act, the Minister of Revenue must be satisfied that the sale—
    - (i) is of bloodstock yearlings of interest to New Zealand resident and non-resident prospective buyers; and
    - (ii) will be held in New Zealand:
  - (b) remove the name of a sale of bloodstock yearlings from **schedule 18B** of that Act, the Minister of Revenue must be satisfied that the sale—
    - (i) is no longer of bloodstock yearlings of interest to New Zealand resident and non-resident prospective buyers:
    - (ii) will no longer be held in New Zealand.
- (4) Before making a recommendation under **subsection (2)**, the Minister of Revenue must—
- (a) consult the Minister for Racing on the proposed amendment; and
  - (b) be satisfied that consultation has been undertaken on the proposed amendment that is appropriate and reasonable for the purposes of this section.

*New clause 119B*

After *clause 119* (page 92, after line 28), insert:

**119B New sections CG 8B and CG 8C inserted**

- (1) After section CG 8, insert:

**CG 8B Recoveries after deductions for high-priced bloodstock removed from New Zealand**

*When this section applies*

- (1) This section applies when—
- (a) high-priced bloodstock is removed from New Zealand before being—

- (i) first raced in New Zealand;
- (ii) used for breeding in New Zealand; and
- (b) a person who is a prospective bloodstock breeder has been allowed a deduction in relation to the high-priced bloodstock.

*Income*

- (2) The person has an amount of income to the extent to which the greater of the high-priced bloodstock's market value on the day on which it is removed from New Zealand and the total amount of deductions the person has been allowed in relation to the high-priced bloodstock exceeds the total of any amounts of income the person has derived in relation to the high-priced bloodstock.

*Timing of income*

- (3) The income is allocated to the income year in which the high-priced bloodstock is removed from New Zealand.

Defined in this Act: amount, deduction, high-priced bloodstock, income, income year, New Zealand, prospective bloodstock breeder

**CG 8C Recoveries after deductions for high-priced bloodstock disposed of to non-residents**

*When this section applies*

- (1) This section applies when—
  - (a) a person who is a prospective bloodstock breeder (**person A**) disposes of high-priced bloodstock to a non-resident (**person B**) for consideration before the high-priced bloodstock has been—
    - (i) first raced in New Zealand;
    - (ii) used for breeding in New Zealand;
    - (iii) removed from New Zealand; and
  - (b) person A has been allowed a deduction in relation to the high-priced bloodstock.

*Income*

- (2) The amount described in **subsection (3)** is income of person A.

*Amount of income*

- (3) The amount is the greater of—
  - (a) the amount of consideration receivable by person A for disposing of the high-priced bloodstock; and
  - (b) the amount given by the formula in **subsection (4)**.

*Formula*

- (4) For the purposes of **subsection (3)(b)**, the amount is calculated using the formula—
- ownership disposal percentage × total deductions.

*Definition of items in formula*

- (5) In the formula in **subsection (4)**,—
- (a) **ownership disposal percentage** is the percentage of person A's total share or interest in the high-priced bloodstock that they have disposed of to person B:
- (b) **total deductions** is the amount equal to the total amount of deductions person A has been allowed in relation to the high-priced bloodstock.

*Timing of income*

- (6) The income is allocated to the income year in which the high-priced bloodstock is disposed of.

*Relationship with section CB 2*

- (7) This section overrides section CB 2(2).
- Defined in this Act: amount, deduction, dispose, high-priced bloodstock, income, income year, New Zealand, prospective bloodstock breeder

- (2) **Subsection (1)** applies to bloodstock acquired on or after 1 January 2019.

*New clauses 133B to 133F*

After *clause 133* (page 95, after line 36), insert:

**133B Section EC 39 amended (First income year in breeding business)**

- (1) After section EC 39(2), insert:

*Prospective breeders' bloodstock to which this section applies*

- (2B) This section also applies to stud-founding bloodstock at the end of the prospective bloodstock breeder's first income year in which the stud-founding bloodstock is 2 years of age.
- (2) In section EC 39, in the list of defined terms, insert “prospective bloodstock breeder” and “stud-founding bloodstock”.
- (3) **Subsection (1)** applies to bloodstock acquired on or after 1 January 2019.

**133C New section EC 39B inserted (Stud-founding bloodstock and related terms)**

- (1) After section EC 39, insert:

**EC 39B Stud-founding bloodstock and related terms**

*Meaning of stud-founding bloodstock*

- (1) **Stud-founding bloodstock** means high-priced bloodstock that a prospective bloodstock breeder owns if—
- (a) the prospective bloodstock breeder acquires the high-priced bloodstock before it is 2 years of age; and
  - (b) within 4 months after the day on which the prospective bloodstock breeder acquires the high-priced bloodstock—
    - (i) the prospective bloodstock breeder notifies the Commissioner of their intention to use the high-priced bloodstock for breeding bloodstock for profit; and
    - (ii) information as the Commissioner requires is provided to the Commissioner; and
  - (c) the high-priced bloodstock is registered on the New Zealand Register of Thoroughbred Horses or on the New Zealand Register of Standardbred Horses; and
  - (d) the high-priced bloodstock is registered to breed.

*Meaning of high-priced bloodstock*

- (2) **High-priced bloodstock** means bloodstock that—
- (a) is sold, when a yearling, at a premier yearling sale for an amount greater than the relevant national minimum price threshold for the calendar year in which the sale occurs; and
  - (b) is expected, when sold at the premier yearling sale, to be capable of being used for breeding when it reaches maturity.

*Meaning of prospective bloodstock breeder*

- (3) A **prospective bloodstock breeder** means a person who acquires bloodstock—
- (a) when they do not have an existing bloodstock breeding business; and
  - (b) with the intention of—
    - (i) having the bloodstock first raced in New Zealand; and
    - (ii) using the bloodstock for breeding bloodstock in New Zealand for profit.

*Meaning of premier yearling sale*

- (4) A **premier yearling sale** means a sale of bloodstock yearlings that is listed in **schedule 18B** (Premier yearling sales).

*Meaning of national minimum price threshold*

- (5) **National minimum price threshold**, for a class of bloodstock and for the 2019 calendar year, means the national minimum price

threshold set by **section EZ 6B** (National minimum price threshold for 2019 calendar year) for bloodstock of the class.

Defined in this Act: bloodstock, business, Commissioner, high-priced bloodstock, national minimum price threshold, New Zealand, premier yearling sale, prospective bloodstock breeder, stud-founding bloodstock

- (2) **Subsection (1)** applies to bloodstock acquired on or after 1 January 2019.

**133D Section EC 39B amended (Stud-founding bloodstock and related terms)**

Replace **section EC 39B(5)**, other than the heading, with:

- (5) **National minimum price threshold**, for a class of bloodstock and for a calendar year, means the national minimum price threshold set under **section EC 39C** or by **section EZ 6B** (National minimum price threshold for 2019 calendar year), as applicable, for bloodstock of the class for the calendar year.

**133E New section EC 39C inserted (Setting and publication of national minimum price threshold)**

- (1) After section EC 39B, insert:

**EC 39C Setting and publication of national minimum price threshold**

*Setting of national minimum price threshold*

- (1) The Commissioner must set a national minimum price threshold for each class of bloodstock set out in **schedule 18C, column 2** (Breeds and classes of bloodstock). The national minimum price threshold for a calendar year (the **threshold year**) must be set at the amount given by,—
- (a) for each class of the standardbred breed of horses,—
- (i) for each of the 3 calendar years immediately preceding the threshold year, calculating the value at the 97th percentile of sale prices for that class at the premier yearling sales in the calendar year; and
  - (ii) dividing the sum of the 3 percentile values calculated in **subparagraph (i)** by 3; and
  - (iii) rounding the amount calculated in **subparagraph (ii)** to the nearest multiple of \$1,000, with the amount being rounded up if it ends in \$500:
- (b) for each class of the thoroughbred breed of horses,—
- (i) for each of the 3 calendar years immediately preceding the threshold year, calculating the value at the 95th percentile of sale prices for that class at the premier yearling sales in the calendar year; and

- (ii) dividing the sum of the 3 percentile values calculated in **subparagraph (i)** by 3; and
- (iii) rounding the amount calculated in **subparagraph (ii)** to the nearest multiple of \$1,000, with the amount being rounded up if it ends in \$500.

*When national minimum price threshold must be set and published*

- (2) The Commissioner must set and publish the national minimum price threshold that applies for a calendar year before the first premier yearling sale in that calendar year is held.

*Consequence of late setting and publication of national minimum price threshold*

- (3) This subsection applies when the Commissioner does not set and publish the national minimum price threshold that applies for a calendar year before the first premier yearling sale in that calendar year is held. For sales of bloodstock yearlings at the premier yearling sales that occur before the Commissioner has set and published the national minimum price threshold that applies for that calendar year, the national minimum price threshold for each class of bloodstock set out in **schedule 18C, column 2** that has most recently been set under **section EC 39C** or by **section EZ 6B** (National minimum price threshold for 2019 calendar year) is, for the purposes of **section EC 39B(2)**, treated as being the national minimum price threshold for the calendar year in which the sale occurs.

Defined in this Act: bloodstock, Commissioner, national minimum price threshold, premier yearling sale

- (2) **Subsection (1)** applies for the 2020 and later calendar years.

### **133F New sections EC 47B to EC 47E inserted**

- (1) After section EC 47, insert:

#### **EC 47B Removal of high-priced bloodstock from New Zealand after earlier deductions**

*When this section applies*

- (1) This section applies when—
  - (a) high-priced bloodstock is removed from New Zealand before being—
    - (i) first raced in New Zealand;
    - (ii) used for breeding in New Zealand; and
  - (b) a person who is a prospective bloodstock breeder has been allowed a deduction in relation to the high-priced bloodstock.

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*Treatment as disposal*

- (2) The person is treated as having disposed of the high-priced bloodstock.

Defined in this Act: deduction, high-priced bloodstock, New Zealand, prospective bloodstock breeder

**EC 47C When prospective breeders treated as being in breeding business**

*When this section applies*

- (1) This section applies when a prospective bloodstock breeder is preparing their stud-founding bloodstock for use for breeding bloodstock in New Zealand for profit.

*Prospective breeders treated as being in breeding business*

- (2) The prospective bloodstock breeder is treated as having, and carrying on, a bloodstock breeding business.

*Other bloodstock not part of breeding business*

- (3) Despite **subsection (2)**, if the prospective bloodstock breeder also owns bloodstock that are not stud-founding bloodstock, those bloodstock are not treated as part of the prospective bloodstock breeder's bloodstock breeding business.

Defined in this Act: bloodstock, business, prospective bloodstock breeder, stud-founding bloodstock

**EC 47D Change of prospective bloodstock breeders' expectation or intention after earlier deductions**

*When this section applies*

- (1) This section applies when—
- (a) a person owns high-priced bloodstock that they acquired as a prospective bloodstock breeder; and
  - (b) the person has been allowed a deduction in relation to the high-priced bloodstock; and
  - (c) the person has not used the high-priced for breeding bloodstock in New Zealand for profit; and
  - (d) the person—
    - (i) no longer expects that the high-priced bloodstock will be able to be used for future breeding;
    - (ii) no longer intends to use the high-priced bloodstock for breeding bloodstock in New Zealand for profit.

*Treatment as disposal at market value*

- (2) The person is treated as having disposed of the high-priced bloodstock. The disposal is treated as having occurred at the high-priced



bloodstock's market value on the day on which the person's expectation or intention first changed.

Defined in this Act: deduction, high-priced bloodstock, prospective bloodstock breeder

**EC 47E Prospective breeders commencing actual breeding businesses**

*When this section applies*

- (1) This section applies when, ignoring **section EC 47C**, a bloodstock owner commences a bloodstock breeding business using bloodstock that are not stud-founding bloodstock.

*Stud-founding bloodstock subsumed into breeding business*

- (2) If the bloodstock owner owns stud-founding bloodstock they acquired as a prospective bloodstock breeder, they may apply to the Commissioner to have the stud-founding bloodstock treated as being used in the course of the business.

*Application to Commissioner*

- (3) The application must be made with the supporting information that the Commissioner requires within 1 month after the day on which the business commenced.

*Effect of application being approved*

- (4) If the Commissioner approves the application, **sections CG 8B** (Recoveries after deductions for high-priced bloodstock removed from New Zealand), **CG 8C** (Recoveries after deductions for high-priced bloodstock disposed of to non-residents), and **EC 47B to EC 47D** are, from the date on which the business commenced, treated as not applying in relation to the bloodstock owner and the stud-founding bloodstock.

Defined in this Act: apply, bloodstock, business, Commissioner, prospective bloodstock breeder, stud-founding bloodstock

- (2) **Subsection (1)** applies to bloodstock acquired on or after 1 January 2019.

*New clause 151BA*

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

**151BA New section EZ 6B inserted (National minimum price threshold for 2019 calendar year)**

After section EZ 6, insert:

**EZ 6B National minimum price threshold for 2019 calendar year**

The national minimum price threshold for the 2019 calendar year for each class of bloodstock set out in **schedule 18C, column 2** (Breeds and classes of bloodstock) is set at—

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- (a) \$84,000 for standardbred yearling fillies; and
- (b) \$109,000 for standardbred yearling colts; and
- (c) \$467,000 for thoroughbred yearling fillies; and
- (d) \$402,000 for thoroughbred yearling colts.

Defined in this Act: bloodstock, national minimum price threshold

*Clause 213*

*New subclause (13B):* after *clause 213(13)* (page 119, after line 38), insert:

(13B) Insert, in appropriate alphabetical order:

**high-priced bloodstock** is defined in **section EC 39B(2)** (Stud-founding bloodstock and related terms)

*New subclause (18B):* after *clause 213(18)* (page 120, after line 13), insert:

(18B) Insert, in appropriate alphabetical order:

**national minimum price threshold** is defined in **section EC 39B(5)** (Stud-founding bloodstock and related terms)

*New subclauses (24B) and (24C):* after *clause 213(24)* (page 121, after line 2), insert:

(24B) Insert, in appropriate alphabetical order:

**premier yearling sale** is defined in **section EC 39B(4)** (Stud-founding bloodstock and related terms)

(24C) Insert, in appropriate alphabetical order:

**prospective bloodstock breeder** is defined in **section EC 39B(3)** (Stud-founding bloodstock and related terms)

*New subclause (30B):* after *clause 213(30)* (page 121, after line 20), insert:

(30B) Insert, in appropriate alphabetical order:

**stud-founding bloodstock** is defined in **section EC 39B(1)** (Stud-founding bloodstock and related terms)

*New clause 214B*

After *clause 214* (page 122, after line 5), insert:

**214B New schedules 18B and 18C inserted**

After schedule 18, insert new **schedules 18B and 18C** set out in **schedule 1B**.

*New schedule 1B*

After *schedule 1* (page 158, after line 26), insert:

**Schedule 1B**  
**New schedules 18B and 18C inserted**

**s 214B**

<b>Schedule 18B</b>	
<b>Premier yearling sales</b>	
<b>ss EC 39B, YA 1</b>	
Australasian Classic Yearling Sale (Auckland)	
Karaka – National Yearling Sale Series – Book 1 Sale	
New Zealand National Standardbred Yearling Sale (Auckland and Christchurch)	
New Zealand Premier Yearling Sale (Christchurch)	
<b>Schedule 18C</b>	
<b>Breeds and classes of bloodstock</b>	
<b>ss EC 39C, EZ 6B</b>	
<i>Column 1</i>	<i>Column 2</i>
<b>Breeds of bloodstock</b>	<b>Classes of bloodstock</b>
Standardbred	Yearling fillies
	Yearling colts
Thoroughbred	Yearling fillies
	Yearling colts

**Explanatory note**

This Supplementary Order Paper inserts new clauses amending the Tax Administration Act 1994 and the Income Tax Act 2007.

Under current law, a person who acquires bloodstock for breeding must have an existing bloodstock breeding business to qualify for tax deductions in relation to the bloodstock.

The proposed amendments will enable new investors in certain bloodstock yearlings to claim tax deductions in relation to that bloodstock, as if they had an existing bloodstock breeding business, where they notify the Commissioner of Inland Revenue of their intention to use the bloodstock for breeding bloodstock for profit in the future and provide the information required by the Commissioner. Only bloodstock sold at a premier yearling sale for an amount above a price threshold set for the calendar year in which the sale occurred are proposed to qualify.

The objective is to encourage new investment in the New Zealand racing industry and ensure that New Zealand horses can compete with the best in the world.

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*New clause 98B* inserts *new section 225AB* into the Tax Administration Act 1994 to enable *new schedule 18B* of the Income Tax Act 2007, which lists the names of premier yearling sales, to be amended by Order in Council.

*New clause 119B* inserts *new sections CG 8B and CG 8C* into the Income Tax Act 2007 as integrity measures, which treat a prospective bloodstock breeder as deriving income equal to the greater of all previous deductions and the market value or sale price, as applicable, if their high-priced bloodstock is removed from New Zealand or sold to a non-resident without first racing or breeding in New Zealand.

*New clause 133B* amends section EC 39 of the Income Tax Act 2007 to ensure that prospective bloodstock breeders are able to write down the cost of their stud-founding bloodstock over time for income tax purposes.

*New clause 133C* inserts *new section EC 39B* into the Income Tax Act 2007 to define **stud-founding bloodstock, high-priced bloodstock, prospective bloodstock breeder, premier yearling sale and national minimum price threshold**.

*New clause 133D* replaces *new section EC 39B(5)* of the Income Tax Act 2007 after a year to update the definition of **national minimum price threshold** to refer to the threshold set for a calendar year by the Commissioner under *new section EC 39C*.

*New clause 133E* inserts *new section EC 39C* into the Income Tax Act 2007 to require the Commissioner to set and publish a national minimum price threshold for a calendar year for each of 4 classes of bloodstock before the first premier yearling sale in that year is held and to prescribe the calculation method the Commissioner must follow.

*New clause 133F* inserts *new sections EC 47B to EC 47E* into the Income Tax Act 2007. *New section EC 47B* provides that a prospective bloodstock breeder is treated as having disposed of their high-priced bloodstock if it is removed from New Zealand without first racing or breeding in New Zealand. *New section EC 47C* treats prospective bloodstock breeders as carrying on a bloodstock breeding business, ensuring they can claim tax deductions for expenditure relating to their stud-founding bloodstock. *New section EC 47D* provides that a prospective bloodstock breeder is treated as having disposed of their high-priced bloodstock at market value if they no longer intend to, or expect to be able to, use it for breeding. *New section EC 47E* establishes a mechanism that enables a prospective bloodstock breeder who establishes an actual breeding business to subsume their stud-founding bloodstock into that business and have the proposed integrity measures no longer apply.

*New clause 151BA* inserts *new section EZ 6B* into the Income Tax Act 2007 to set the national minimum price threshold for the 2019 calendar year for each class of bloodstock.

*New clause 214B* inserts *new schedules 18B and 18C* into the Income Tax Act 2007, set out in *new schedule 1B*, which list the names of premier yearling sales and the breeds and classes of bloodstock for the purposes of the proposed rules.

Amendments to *clause 2* provide for an application date of 1 January 2019 for most of the proposed amendments, and an application date of 1 January 2020 for the pro-

posed amendments that relate to the Commissioner being required to set and publish the national minimum price threshold each calendar year. Amendments to *clause 213* insert 5 new definitions into section YA 1 of the Income Tax Act 2007.

### **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 statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2018&no=135&>

### **Regulatory impact assessment**

The Inland Revenue Department produced a regulatory impact assessment on 11 September 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>
- <https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments>