



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, 2 September 1999

TAXATION (ANNUAL RATES AND REMEDIAL MATTERS) BILL

Proposed Amendments

Rt Hon SIR WILLIAM BIRCH, in Committee, to move the following amendments:

PART 1—AMENDMENTS TO INCOME TAX ACT 1994

Clause 4H: After new section EO 4A (2), (line 25, page 6) the following is inserted:

“(2A) This section does not apply to a person who incurs expenditure in relation to a film under an arrangement that is entered into on or before 30 June 2001 if—

“(a) The film is either—

“(i) A New Zealand film; or

“(ii) A film for which the New Zealand Film Commission has issued a provisional certificate, unless materially incorrect information was provided to the Commission in obtaining the certificate; and

“(b) To the extent that the expenditure is incurred on depreciable intangible property of a type listed in Schedule 17, the expenditure is an amount paid to another person—

“(i) Who at all times in the income year in which the payment is made—

“(A) Is resident in a country or territory specified in Schedule 3, Part A; and

“(B) Is liable to income tax in that country or territory by reason of domicile, residence, place of incorporation or place of management in that country or territory; and

“(C) Has calculated its income liable to income tax in that country or territory without applying a feature of the taxation law of that country or territory specified in Schedule 3, Part B; or

- “(ii) Which is gross income of the other person;
and
- “(c) All expenditure to which **subsection (2)(a)** applies incurred by persons (as if no person satisfied the other paragraphs of this subsection) is not more than 140% of the physical cost of production of the film;
and
- “(d) Without in any way limiting the application of section BG 1, on the date that the arrangement is entered into, there is an expectation based on reasonable commercial assumptions that the gross income to be derived by the person as a result of the expenditure will be at least equal to the sum of—
- “(i) All expenditure incurred by the person under the arrangement; and
- “(ii) A return on each amount of expenditure that is equivalent to the return on 5-year Government stock measured on the date that the arrangement is entered into.
- “(2B) **Subsection (2A)** applies only if—
- “(a) One or more contracts have been entered into before 7 July 1999 for the supply of goods or services in New Zealand in relation to the film; and
- “(b) At least \$1,000,000 of expenditure has been incurred under the contract or contracts before 7 July 1999; and
- “(c) The film has not been completed before 7 July 1999.
- “(d) Any person who has entered into a contract referred to in **paragraph (a)** notifies the Commissioner in writing on or before 1 November 1999 that **paragraphs (a) to (c)** are satisfied.”

After new section EO 4A (7), (line 32, page 6) the following is inserted:

- “(8) In this section—
- “‘Government stock’ means any stock issued under Part VI of the Public Finance Act 1989; and
- “‘Physical cost of production’ means all expenditure incurred in producing a film, whether incurred in New Zealand or elsewhere, but does not include—
- “(a) Expenditure in marketing or selling the film; and
- “(b) Expenditure on depreciable intangible property of a type listed in Schedule 17.”

Clause 26: After subclause (3B), (line 34, page 30) the following is inserted:

- (3C) After the definition of “goods and services tax payable”, the following definition is inserted:
- “‘Government stock’ is defined in **section EO 4A (8)** for the purpose of that section.”.

After subclause (4B), (line 5, page 31) the following is inserted:

- (4BA) In the definition of “New Zealand film”, “section EO 4” is replaced by “sections EO 4 and **EO 4A**”.
- (4BB) After the definition of “petroleum permit”, the following definition is inserted:
- “‘Physical cost of production’ is defined in **section EO 4A (8)** for the purpose of that section.”.

To omit subclause (8D), (line 27, page 32) and substitute:

(8D) **Subsections (3C), (4BA), (4BB) and (4I)** apply on and after 7 July 1999.

EXPLANATORY NOTE

Clause 4H of the Taxation (Annual Rates and Remedial Matters) Bill amends *section EO 4A* to ensure that all film-related expenditure is potentially subject to the claw back of deductions for expenditure to the extent that the expenditure is effectively reimbursed to the investor. The amendment applies on and after 7 July 1999.

The main amendment proposed in this Supplementary Order Paper excludes a person who has incurred substantial expenditure in relation to a New Zealand film before 7 July 1999 if certain tests of commerciality and certain notification requirements are met.

Clause 26 is amended to reflect new definitions used in the main amendment.