

5 February 2015

Public Consultation
Inland Revenue Department
PO Box 2198
Wellington

By email: public.consultation@ird.govt.nz

Draft QWB0040: Income Tax – Whether it is possible that the disposal of land that is part of an undertaking or scheme involving development or division will not give rise to income, even if no exclusion applies

1. The New Zealand Law Society (Law Society) appreciates the opportunity to comment on the draft *Questions We've Been Asked QWB0040: Income Tax – Whether it is possible that the disposal of land that is part of an undertaking or scheme involving development or division will not give rise to income, even if no exclusion applies* (the draft).
2. The Law Society agrees with the broad proposition set out in the draft that an amount derived on the sale of land should not be taxable pursuant to sections CB 12 and 13 of the Income Tax Act 2007 in circumstances where the land sold formed part of an original block that was subdivided and the retained land was always intended to be held by the taxpayer on a long term basis.
3. The Law Society considers that such a conclusion is consistent with the underlying policy intent of the relevant tax provisions not to operate to the extent that an undertaking or scheme involving development or division was not carried on with a view to disposal.
4. Notwithstanding that the Law Society agrees with the proposition underpinning the Commissioner's interpretation set out in the draft, the Law Society is concerned that the wording of the tax provisions themselves may continue to create confusion. Accordingly, we suggest that this is an issue that may best be dealt with by way of legislative clarification.

Specific comments

5. The Commissioner states at paragraph 28 of the draft that "to determine whether the amount derived on the disposition of a particular piece of land falls within the relevant provision, it is necessary to identify the "land" referred to in each part of the provision".
6. The Commissioner's interpretation relies upon the view being taken that the references to "the land" in paragraphs (b), (c) and (e) of section CB 12(1) and subparagraphs (ii) and (iii) of paragraph

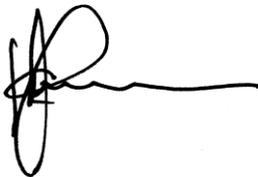
(b) of section CB 13(1) as the land involved in the undertaking or scheme notwithstanding that she acknowledges that those references to “the land” could also refer to the land disposed of.

7. The Commissioner supports her view of the correct method of identification of the relevant land by application of preferred authorities. However, the Law Society considers that there remain a number of interpretative issues that arise in reconciling the various cases. Indeed, the Commissioner acknowledges at paragraph 92 of the draft that the inferences that may be drawn from the relevant cases are conflicting.
8. In addition, once the relevant “land” is identified, the Commissioner’s interpretation appears to insert a gloss over the statutory provisions in order to restrict their application to situations where taxpayers intended to dispose of the land in question. While this may produce an outcome which the Law Society agrees is the correct one, it is arguably not one supported by the words of the tax statute.
9. With this in mind, the Law Society notes the Commissioner’s comment at paragraph 19 of the draft that the issue as to whether retained land is effectively tainted by subdivision work has been “a somewhat contentious issue over the years”, and that alternative views have been taken.
10. The Law Society considers that given these conflicting inferences and alternative views, this issue may be best clarified by a specific amendment to the relevant provisions in order to produce an unequivocal interpretation.

Conclusion

11. This submission was prepared with assistance from the Law Society's Tax Law Committee. If you wish to discuss this further please do not hesitate to contact the committee convenor Neil Russ, through the committee secretary Jo Holland (04 463 2967 / jo.holland@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal line extending to the right.

Chris Moore
President