

11 October 2018

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PUB00315: Income tax – bright-line test – main home exclusions – sale of subdivided section

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the draft Question We've Been Asked: *Income tax – bright-line test – main home exclusions – sale of subdivided section* (exposure draft), which explains when a section subdivided from a residential property, and sold within the bright-line period, will be excluded from the bright-line test. Subject to the minor comments noted below, the exposure draft reads well, and the examples provided are appropriate and useful to the reader.

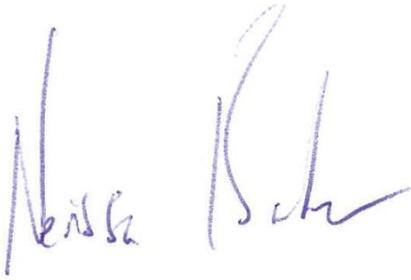
Comments

2. The exposure draft deals with the application of the bright-line test for residential land but excludes situations in which land is held in a trust. Given the significant number of trusts used as land-holding vehicles in New Zealand, the Law Society considers that guidance relating to property held in trust should be included. This could be addressed by replacing paragraph 6 of the exposure draft with the following: *“The analysis and conclusions in this QWBA apply whether or not the property is held in a trust, but for the sake of simplicity this QWBA assumes that the property is not held in a trust so that the additional requirements in the main home exclusion where residential land is held by a trust do not apply”*.
3. The exposure draft refers to “curtilage” at para’s 19 and 28 however, this term is not defined anywhere. It would be helpful for a definition of “curtilage” to be provided in the exposure draft to make the document more easily understandable to the layperson.

Further information

4. This submission was prepared with assistance of the Law Society's Tax Law Committee. If you wish to discuss his further, please contact the committee's convenor Neil Russ, via the committee secretary, Emily Sutton at Emily.Sutton@lawsociety.org.nz, (04) 463 2978.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Nerissa Barber". The signature is written in a cursive style with a large initial "N" and "B".

Nerissa Barber
Vice President