

15 December 2016

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By email: erica.burke@ird.govt.nz

Dear Erica

PUB0220 Date of Acquisition of Land – revised draft QWBA

Thank you for your email of 2 December 2016, inviting further input on the revised *PUB00220: Draft Question We've Been Asked: Income Tax – Date of Acquisition of Land* (exposure draft). The New Zealand Law Society appreciates the opportunity to comment on this.

The Law Society appreciates that IRD will be keen to promptly notify taxpayers of the change to the Commissioner's position on the application of the bright-line test to "bare" nominations. However, there is inconsistency between the position in respect of nominations where there is an exchange of funds and nominations where there is not. This would appear to warrant further analysis before the exposure draft is published.

The Law Society is also concerned that there appears to be no analysis of the distinction between the assignment and novation of contracts to third parties, and the potentially different tax consequences of those legal forms.

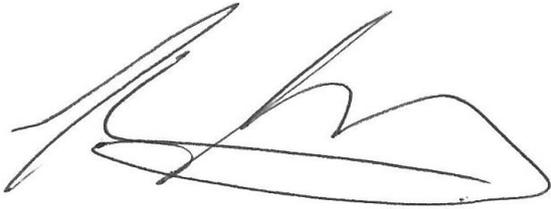
In addition, there is no guidance for practitioners and taxpayers as to how such transactions would be identified and tax withheld and paid from a practical perspective.

In the circumstances, rather than finalise the item at this time, the Law Society recommends that a short note be published in the next TIB to the effect that:

- the Commissioner has changed her mind on how the bright-line test applies to nominations;
- taxpayers should no longer rely on the example in TIB Volume 28, No 1 (Feb 2016) at page 82 concerning nominations as reflecting the Commissioner's view; and
- the Commissioner will set out her position more fully in a QWBA to be issued soon.

These comments were 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 'K. Beck', written in a cursive style.

Kathryn Beck
President