



30 January 2018

Inland Revenue  
PO Box 2198  
Wellington 6140

By email: [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz)

**PUB00319: When is an arrangement considered to be “materially different” from the arrangement identified in a private or product ruling?**

**Introduction**

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on draft Question We've Been Asked *PUB00319: When is an arrangement considered to be “materially different” from the arrangement identified in a private or product ruling?* (draft QWBA).

**Comments**

2. The Law Society considers Inland Revenue's view expressed in paragraph 13 of the draft QWBA to be unnecessarily expansive, and inconsistent with the current wording of the legislation.
3. Sections 91EB(2)(a) and 91FB(2)(a) of the Tax Administration Act 1994 (TAA) provide that a ruling does not apply to a person in relation to a tax type for an arrangement, to the extent to which, in relation to the tax type, the arrangement is materially different from the arrangement identified in the ruling.
4. If an arrangement is materially different from the arrangement identified in a ruling, Inland Revenue proposes to declare that the ruling does not apply in relation to the tax type for the arrangement from the point in time that the arrangement is materially different. This is illustrated in example 4 provided in the draft QWBA. This example suggests a ruling will not apply to income tax as the arrangement subsequently implemented is different from the arrangement identified in the ruling. The reasoning behind this is that the difference is capable of affecting how one section (section CX 55) in Part C of the Income Tax Act 2007 (ITA) applies to the arrangement, notwithstanding this difference does not affect how the other sections in Part C (sections CA 1, CB 1, CB 2, CB 3, CB 4 and CB 5) ruled on apply to the arrangement.
5. This interpretation and reasoning overlooks and does not give full effect to the words "to the extent to which" in sections 91EB(2)(a) and 91FB(2)(a) of the TAA. Using example 4 provided in the draft QWBA, if an arrangement is materially different from an arrangement identified in a ruling only to the extent of the application of section CX 55 of the ITA, this is the extent to which the arrangement is materially different from the arrangement identified in the ruling. The ruling should still be applicable to income tax with respect to the other sections of the ITA to which the

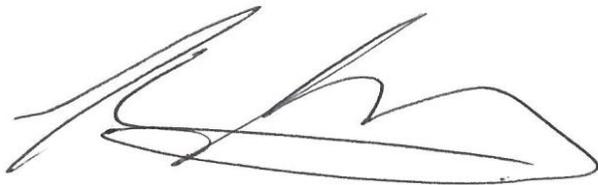
ruling applies (sections CA 1, CB 1, CB 2, CB 3, CB 4 and CB 5), given the arrangement is not materially different from the arrangement identified in the ruling with respect to the application of these sections. Declaring the ruling in example 4 inapplicable only in relation to section CX 55 (but applicable to income tax in relation to the other sections in Part C) would give effect to the words "to the extent to which" in sections 91EB(2)(a) and 91FB(2)(a) in the TAA.

6. The words "to the extent to which" in sections 91EB(2)(a) and 91FB(2)(a) of the TAA should be interpreted to only declare a ruling invalid in part (and not in full) for a tax type only to the extent of any difference between the subsequent arrangement and the arrangement identified in a ruling.
7. The Law Society considers that the interpretation as proposed in this letter is also desirable from a policy perspective. This would prevent taxpayers from applying for rulings on a section by section basis, in fear of a ruling not applying to a tax type if there is a difference between an arrangement subsequently implemented and an arrangement identified in a ruling if such a difference only affected one section out of a number of sections that a ruling applied to.
8. The Law Society submits that if Inland Revenue's intention is for sections 91EB(2)(a) and 91FB(2)(a) of the TAA to be interpreted in accordance with the draft QWBA as it currently stands, this should be achieved through a legislative change.

#### **Further information**

9. This submission has been prepared with the assistance of the New Zealand Law Society's Tax Law Committee. If you wish to discuss this further, please contact the committee's convenor, Neil Russ, via the committee secretary, Jo Holland ([jo.holland@lawsociety.org.nz](mailto:jo.holland@lawsociety.org.nz) / 04 463 2967).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, sweeping flourish underneath.

Kathryn Beck  
**President**