

14 December 2018

Public Rulings
Office of the Chief Tax Counsel
Inland Revenue
Wellington

By email: PublicConsultation@ird.govt.nz

RE: PUB00311: What are the requirements for claiming tax deductions for payments to family members for services?

The New Zealand Law Society appreciates the opportunity to comment on *PUB00311: Draft Question We've Been Asked: What are the requirements for claiming tax deductions for payments to family members for services?* (exposure draft). The Law Society's Tax Law Committee has reviewed the item and has only two minor comments to make.

The first relates to paragraph 11 of the exposure draft. That paragraph says that the taxpayer must apply to the Commissioner for a new approval (for payment to the spouse or partner) if the taxpayer increases the amount paid or to be paid except where the increase is by way of an industry or general wage increase. It is difficult to see the basis for the distinction. Presumably the Commissioner approves a monetary amount – say \$20,000 per annum. It follows that if the taxpayer wishes to pay more than that, for whatever reason, a new approval is to be sought. It is 'taxpayer-friendly' for the Commissioner not to require a new approval if, say, there is a general wage increase, but in our view the concession introduces uncertainty. It is better that no distinctions are drawn and that any increase in the payment needs a new application for approval, but perhaps in a simplified manner.

The second comment concerns paragraph 12. Paragraph 12 states that the information that needs to be provided to the Commissioner in seeking approval includes details of services provided to the taxpayer by other workers and what is paid to them. In our view that is unnecessary. The matters the Commissioner must be satisfied about before she grants approval are set out in section DC 5(2)(a) – (c), Income Tax Act 2007. It is accepted that the Commissioner will need certain information from the taxpayer before she can be so satisfied. Whether there are other employees of the business, what services they provide and what they are paid would seem irrelevant, as the Commissioner is not required to be satisfied that there are no other employees doing the kind of work done or to be done by the spouse or partner.

We hope you find these comments helpful. If you have any questions or wish to discuss the comments, the convenor of the Tax Law Committee, Neil Russ, can be contacted via the Law Society's Law Reform Adviser, Emily Sutton (Emily.Sutton@lawsociety.org.nz / 04 463 2978).

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke extending to the right.

Andrew Logan
Vice President