

11 October 2018

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PUB00314: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks

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 – farmland and main home exclusions – sale of lifestyle blocks* (exposure draft), which explains when lifestyle blocks sold within the bright-line period will be excluded from the bright-line test. Subject to some 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 inserting the following paragraph between paragraphs 4 and 5: *"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 29 and 31 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 laypeople.
4. The Law Society considers the wording of the 5th box in the decision tree on page 3 to be misleading and suggests it be reworded (i.e. *"been used for a dwelling"* should be changed to *"been used for, in connection with or for the benefit of a dwelling"*).

5. Inland Revenue may also want to consider the speculative nature of the first sentence at paragraph 14. The Law Society considers this is unnecessary and should be deleted.
6. As a minor point, paragraph 16 states that the “*area*” and “*nature*” of the land need to be considered separately. The Law Society considers that “*area and nature*” in the context of the definition of “*farmland*” is a composite term and should be analysed as such. It would be helpful for the exposure draft to consistently describe terms throughout the document.

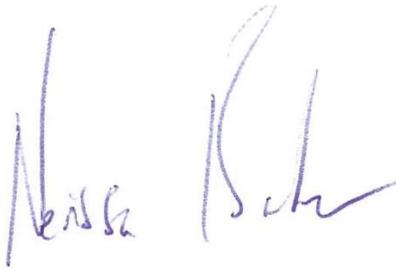
Minor formatting error

7. The first paragraph under the “Example 1” heading on page 8 has a stray full stop at the end and should be deleted.

Further information

8. 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