

23 October 2024

Tax Technical  
Inland Revenue

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

Tēnā koe,

Re: PUB00489 - How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on draft QB XX/XX PUB00489 *How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons (PUB00489)*. This feedback has been prepared with the assistance of the Law Society's Tax Law Committee.
2. The Law Society endorses the conclusions reached in PUB00489, but considers that the discussion on how the transferors' use of residential land could be attributed to transferees should be further clarified by the Commissioner and proposes several minor changes for the Commissioner's consideration.<sup>1</sup>
3. Paragraph 21 proposes that the transferor's use of the residential land is attributed to the transferee in determining whether the main home exclusion applies. Additionally, paragraph 24 provides that in cases where land is owned by co-owners, the recipient of the land will be attributed the use of the land in proportion to the transferors' share in the residential land. The transferee in turn will need to track the attributed use of each transferor or co-owner separately. Although the Law Society welcomes this proposed application of the main home exclusion, we recommend the Commissioner clarify how apportionment applies in this scenario.
4. The *Commentary to Amendment Paper to the Taxation (Annual Rates for 2023-23, Multinational Tax, and Remedial Matters) Bill*, which set out the rules on how the new main home exclusion would apply, confirmed that the old apportionment rules with respect to the use of the land and time the land was occupied will be removed.<sup>2</sup> The Law Society therefore recommends that the Commissioner clarifies that the apportionment required between co-owners as proposed in PUB00489 can apply even though the old apportionment rules have been removed, and is limited to cases where the residential land is owned by multiple persons.
5. This is because an alternate reading of section CB 16A of the Income Tax Act 2007 could be that if out of the whole land area, the cumulative area used by both co-owners as their main home is more than 50% of the total area, then the main home exclusion could be attributed

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<sup>1</sup> Paragraphs 21 to 24.

<sup>2</sup> See page 16 of [Commentary to Amendment Paper to the Taxation \(Annual Rates for 2023-24, Multinational Tax, and Remedial Matters\) Bill](#).

to the whole land upon transfer. This would also result in not having to track the attributed use of each transferor as proposed. The Law Society recommends that this alternative interpretation is explicitly refuted in PUB00489, and that an example of how the main home exclusion would apply in co-ownership scenarios is included in the document.

6. The following minor amendments are also recommended:
  - a. At Example 2, assuming that the land was not acquired on an “off the plan” basis, Erin’s bright line start date should have been the date the title is registered under the Land Transfer Act 2017 and not the date the sale was settled.
  - b. At Example 4, it appears that there are multiple trustees in this fact scenario. Therefore, “Wang Mei is the trustee of the Weng Family Trust.” should be changed to “Wang Mei is [one of] the trustee[s] of the Weng Family Trust.”
7. The Law Society is available to discuss further or answer any questions that may arise. Please contact Aimee Bryant ([aimee.bryant@lawsociety.org.nz](mailto:aimee.bryant@lawsociety.org.nz))

Nāku noa, nā



Jesse Savage  
**Vice President**