New Zealand Law Society
Te Kāhui Ture o Aotearoa

7 August 2026

Tax Technical
Inland Revenue Department

By email: public.consultation@ird.govt.nz

Tēnā koe,

PUB00519: When a disposal of land will be part of a profit-making undertaking or scheme subject to income tax under s CB 3

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the revised Interpretation Statement *PUB00519: When a disposal of land will be part of a profit-making undertaking or scheme subject to income tax under s CB 3* (**Draft Statement**).

2. In the Law Society's view, the scope of section CB 3 is uncertain and there is no judicial authority definitively resolving the uncertainties. Consequently, pending further guidance from the courts, views as to the scope of the section can only be speculative.

3. Inland Revenue's position, summarised at page 1 of the Draft Statement, entails three main propositions. The Law Society's views on these three propositions are as follows.

The first proposition

4. Inland Revenue's first proposition is as follows:

> We no longer consider that ss CB 12 and CB 13 comprehensively tax all undertakings or schemes involving development or division. These provisions materially differ in scope and application from s CB 3, and there is nothing to suggest they were intended to replace s CB 3 for land disposals.

5. This may be correct and is certainly defensible. The Law Society remains of the view, however, that, in the absence of direct authority, it is unclear whether section CB 3 might catch an amount derived from the disposal of land as part of an undertaking or scheme involving land development or division.

The second proposition

6. Inland Revenue's second proposition is as follows:

> This does not undermine the exclusions to the land sale rules (including the exclusions to ss CB 12 and CB 13). The exclusions relate to the capital use of land (for example, as a residence or business premises). An undertaking or scheme under s CB 3 is separate to and does not relate to any capital use of the land.

7. In the Law Society's opinion, the first sentence may be correct and is defensible. However, the second and third sentences are likely incorrect or, at least, misleading. This is because amounts of a revenue nature would generally be considered income under section CA 1(2) ("income under ordinary concepts"). Therefore, if section CB 3 is to catch anything at all that would not be taxable anyway, it must catch capital receipts in some circumstances. In other words, the basic point of section CB 3 is to catch capital gains in some, probably very tightly constrained, circumstances. This is true of most of the provisions in sections CB 3 to CB 13.[1]

8. It may be that Inland Revenue, in using the terms "the capital *use* of the land" (emphasis added) and "any capital *use* of the land" (emphasis added), means something other than merely holding the land; if so, it would be useful if Inland Revenue could explain the distinction more clearly.

The third proposition

9. Inland Revenue's third proposition is as follows:

> In most cases, where an exclusion to a land sale rule applies, s CB 3 will also not apply because the sale is simply the realisation of a capital asset. However, where the activity goes beyond mere realisation, such as the construction of one or more dwellings, s CB 3 may apply.

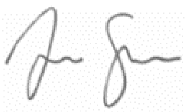
10. The first sentence is correct: "In most cases, where an exclusion to a land sale rule applies, s CB 3 will also not apply". The reason given here is also probably correct, but the manner in which it is expressed could be misleading: where "the sale is simply the realisation of a capital asset", section CB 3 likely does not apply. But if this is read as meaning that the proceeds of sale of land, if of a capital nature, are categorically outside the scope of section CB 3, then it is incorrect for the reason given above (that is, the basic point of section CB 3 is to catch capital receipts in some, probably very tightly constrained, circumstances).

11. The second sentence of this paragraph is likely correct. The Law Society adds, however, that section 3 might apply in some circumstances, where "the activity goes beyond realisation", even where the receipt would be regarded, but for section CB 3, as of a capital nature.

Next steps

12. We would be happy to meet with you to discuss this feedback, or to answer any questions, if that would be helpful. Please feel free to get in touch via the Acting Manager Law Reform and Advocacy, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz).

Nāku noa, nā



Jesse Savage
Vice President

[1] See generally *Commissioner of Inland Revenue v National Distributors Ltd* [1989] 3 NZLR 661 CA.