

30 November 2022

Susan Price
Group Leader, Tax Counsel Office

By email: susan.price@ird.govt.nz

Tēnā koe Susan

Re: PUB00305 Income Tax – Review of Interpretation Statement IS 13/01 Tax avoidance and the interpretation of sections BG 1 and GA 1 of the Income Tax Act 2007

Thank you for your letter of 18 November 2022, setting out Inland Revenue’s approach to the Supreme Court’s decision in *Frucor Suntory New Zealand Ltd v CIR*,¹ and the implications of the decision for your review of Interpretation Statement IS 13/01.

As noted in your letter, Inland Revenue has reached the view that the decision in *Frucor* confirms the existing approach to tax avoidance, as set out by the Supreme Court in *Ben Nevis*² and applied in *Penny and Hooper*.³ Substantive changes are not proposed to IS 13/01, and the amendments aim primarily to insert reference to *Frucor* and certain comments made by the majority.

The Law Society has concerns about the majority decision in *Frucor*, both as it relates to substantive tax avoidance law and shortfall penalties. The latter are outside the scope of the interpretation statement and so for present purposes the Society takes them no further. Given Inland Revenue’s suggested approach to the substantive law, the Law Society has no further feedback on that commentary in the interpretation statement.

We remain of the view as set out in our [14 April 2021 response](#) to Inland Revenue’s initial consultation. While we appreciate Inland Revenue agreeing to wait for the decision in *Frucor* before finalising IS 13/01, ultimately this has not resulted in improvements to the clarity or interpretive assistance of the statement. There remains a need to explicitly consider the distinction between tax avoidance and acceptable tax planning.

As always, we remain available to discuss this with you further, if that would assist. You can contact me via Aimee Bryant, Manager Law Reform and Advocacy: aimee.bryant@lawsociety.org.nz.

Nāku iti noa, nā



Neil Russ
Convenor, Tax Law Committee

¹ [2022] NZSC 113.

² *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2008] NZSC 115.

³ *Penny and Hooper v Commissioner of Inland Revenue* [2011] NZSC 95.