New Zealand Law Society
Te Kāhui Ture o Aotearoa

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Tax Technical
Inland Revenue Department

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

Tēnā koe,

PUB00500: Shortfall penalties – s 141A, 141B and 141C of the Tax Administration Act 1994

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on *PUB00500: Shortfall penalties – s 141A, 141B and 141C of the Tax Administration Act 1994*, which seeks feedback on changes to the existing interpretation statements on the shortfall penalties for not taking reasonable care, taking an unacceptable tax position and gross carelessness.

2. This submission has been prepared with input from the Law Society's Tax Law Committee.

General comments

3. It could be helpful for these interpretation statements to include cross-references to relevant paragraphs or parts of other interpretation statements.

4. For example, PUB00500b could refer to PUB00500c (the interpretation statement on reductions) when discussing reductions at [40] and [41] to indicate that there are other circumstances in which shortfall penalties could be reduced. While some paragraphs in PUB00500b refer to PUB00500c,[1] these cross-references are absent from [40] and [41].

Feedback on PUB00500b: Shortfall penalties – requirements for a "tax position" and a "tax shortfall"

Calculation error in Example 1

5. There appears to be a calculation error in the variation in Example 1 (on page 11 of the statement).

6. This variation purports to calculate the tax shortfall if a taxpayer, instead of returning their entire income of $95,000 (made of up $40,000 PAYE income and $55,000 self-employed income), returns only the PAYE income. The variation correctly states that the tax shortfall is the difference between the tax effect of the individual's position (i.e., that only the $40,000 PAYE income is taxable), and the correct tax position that all income earned is taxable (i.e., $40,000 of PAYE income as well as $55,000 lawnmowing income).

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1 At [4] and [25].

This means the tax shortfall should be the tax on the $55,000 that was not returned, based on the marginal rates.

7. The variation calculates this tax shortfall incorrectly and states the tax shortfall should be $22,270. In our view the tax shortfall should be $16,250, calculated as follows:

$1,400 ($8,000 at 17.5%) + $6,600 ($22,000 at 30%) + $8,250 ($25,000 at 33%)

8. The $22,270 figure is what the tax shortfall would be if *none* of the $95,000 income had been returned.

Typographical error in Example 4

9. We have identified a small typographical error in Example 4 (on page 16): the word "of" in the third line of this example should be deleted (“reviewing ~~of~~ the company’s”).

Next steps

10. Should you wish to discuss any aspect of this feedback, please contact Aimee Bryant, Manager Law Reform and Advocacy (aimee.bryant@lawsociety.org.nz).

Nāku noa, nā

Jesse Savage
Vice-President