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PUB00220: Income Tax – Date of acquisition of land

Introduction

The New Zealand Law Society (Law Society) appreciates the opportunity to comment on *Draft Question We've Been Asked PUB00220: Income Tax – Date of acquisition of land* (draft QWBA).

Comments

Section CB 15B(3) of the Income Tax Act 2007 was inserted by the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill (as recommended by the Finance and Expenditure Select Committee) to cover:

“... a situation where the nature of a person’s interest in land changed (for example from leasehold to freehold) as the result of the exercise of an option. In this situation, they would be treated as having made a new acquisition.”

In its report to the Select Committee,¹ officials recommended that:

“... a new provision be included in the bill that provides where a person has a previous (first) interest in land, and exercises an option that is related to that land, the person has entered into a new acquisition and the [sic] section CB 6 and proposed section CB 15B should be applied, as if the previous interest did not exist.”

The draft QWBA interprets subsection CB 15B(3) of the Income Tax Act 2007 to narrow the circumstances in which the exception in that subsection applies, and appears to be inconsistent with the Select Committee’s reasons for recommending the introduction of subsection CB 15B(3). It is also inconsistent with the guidance provided in TIB Vol 26, No 7, August 2014 on when section CB 15B(3) would apply.

¹ *Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Officials’ Report to the Finance and Expenditure Committee on Submissions on the Bill* (Inland Revenue and the Treasury, March 2014).

TIB Vol 26, No 7, August 2014 states that:

Another exception to the general rule provides that where a person has a previous (first) interest in land, and exercises an option that is related to that land, the person has entered into a new acquisition and sections CB 6 and CB 15B should be applied, as if the previous interest did not exist. This situation is only likely to occur when there is an option to exercise a right to acquire another estate or interest in land ...

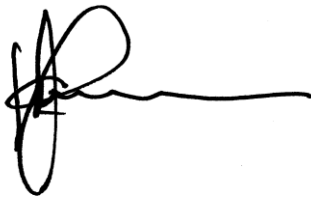
*As stated in the officials' issues paper [Clarifying the acquisition date of land at paragraph 3.5, <http://taxpolicy.ird.govt.nz/publications/2013-ip-acquisition-date-land/overview>]: ... the policy intent of section CB 6 is to capture property speculators, arguably the most appropriate time to assess a taxpayer's intention and purpose should be when a person decides to enter into a sale and purchase agreement. **It is the initial decision-making that informs how a person intends to use the property.** It would be unusual for a property speculator to enter into a sale and purchase agreement unless they thought it very likely that the purchase and its subsequent disposal would be profitable. [Emphasis added]*

In addition, the Law Society notes that the draft QWBA does not contain any examples of the type of condition (for example, a due diligence condition) that might prevent there being a "binding agreement". Further analysis of this issue would be beneficial.

Conclusion

This submission was prepared with assistance from the Law Society's Tax Law Committee. If you wish to discuss this further, please do not hesitate to contact the committee convenor Neil Russ, through the committee secretary Jo Holland (04 463 2967 / jo.holland@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, consisting of a stylized, cursive 'C' followed by a horizontal line extending to the right.

Chris Moore
President