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9 November 2018

Tim Shearer
Public Rulings
Office of the Chief Tax Counsel
Inland Revenue

By email: Tim.Shearer@ird.govt.nz

Dear Tim

Re: PUB00299: Draft Interpretation Statement: Goods and services tax – zero-rating of services related to land

1. Thank you for the Public Rulings Unit's invitation by email of 19 October 2018, for the New Zealand Law Society (Law Society) to comment on *PUB00299: Draft Interpretation Statement: Goods and services tax – zero-rating of services related to land* (exposure draft).

2. The comments below relate to Example 2 of the exposure draft. For the reasons set out below, the Law Society recommends that the Example 2 from page 7 of the exposure draft is clarified and redrafted to reflect that a person can be considered both resident and non-resident for GST purposes.

Example 2

3. Example 2 of the exposure draft is intended to illustrate a scenario where an individual can be considered a resident and a non-resident, under the Goods and Services Tax Act 1985 (the Act) applying the definitions of the terms "resident" and "non-resident".

4. Example 2 reads as follows:

> **Example 2: A person may be both resident and non-resident**
>
> This example follows on from example 1. James is happy with his Wellington rental property. In 2017, he decides to look into acquiring a second residential rental property, but this time in Auckland. James has not yet settled on a property, but thinks three suburbs present good buying opportunities. He phones a property valuation firm to ask it to provide him with general valuation reports in relation to the three suburbs.
>
> Although James is a resident for GST purposes under para (a) of the definition of "resident" in s 2, he is resident only "to the extent that" he carries on, in New Zealand, a relevant activity, while having any fixed or permanent place in New Zealand relating to that activity.
>
> **The Auckland rental activity is likely to constitute a separate activity from the Wellington rental activity** [emphasis added]**.** Since James has not yet acquired a property in respect of the Auckland rental activity, he cannot be said to have a fixed or permanent place in New Zealand relating to the Auckland rental activity. Therefore, to the extent of the Auckland rental activity, James will be a non-resident for the purposes of the GSTA.

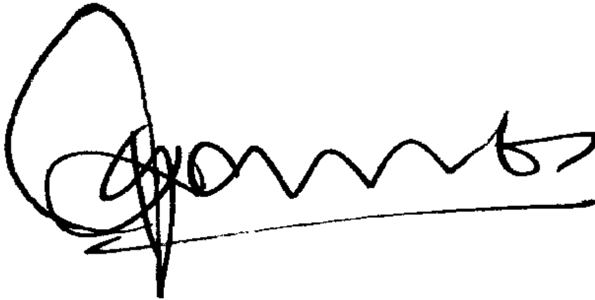
Since the valuation services supplied to James relate to his preliminary Auckland activities, those services are supplied to him in his non-resident capacity.

6. We query whether this example is technically correct. To the extent the example proposes that James needs to have a separate fixed or permanent place for each rental in order for him to be considered "resident" with respect to any rental property expenditure is, in our view, an incorrect application of the definitions of "resident" and "non-resident" under the Act.

7. If James undertook an activity (in relation to rental property) that was more than preliminary in nature, but did not relate to the Wellington rental property, James still has a fixed or permanent place in New Zealand with respect to his rental activity in order for him to be considered "resident" (despite the fact James does not have a separate and specific fixed or permanent place in relation to that particular activity). We therefore recommend a review of this example.

8. These comments were prepared by the Law Society's Tax Law Committee. If further discussions would assist, please contact the committee convenor Neil Russ via Emily Sutton (emily.sutton@lawsociety.org.nz 04 463 2978).

Yours faithfully



Tim Jones
Vice President