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Public Consultation
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PUB0219: Income Tax – Whether the cost of acquiring an option is part of the cost of acquiring revenue account land

Introduction

1. The New Zealand Law Society (Law Society) appreciates the opportunity to comment on draft Public Ruling PUB0219: *Income Tax – Whether the cost of acquiring an option is part of the cost of acquiring revenue account land* (Exposure Draft).

Comments

2. The Law Society agrees with the conclusion in the Exposure Draft (i.e. that where revenue account land is acquired through the exercise of an option, provided certain criteria are met, the cost of acquiring the option is deductible as expenditure incurred as part of the cost), and considers the analysis that leads to this conclusion to be sound. However, the Law Society considers that the Exposure Draft would benefit from some further clarification.
3. The Law Society suggests including in the “Answer” (paragraph 2) the fact that the outcome still depends on the satisfaction of the general permission in section DA 1(1). This is dealt with later in the Exposure Draft at paragraphs 22 – 27, but it should be made clear at the outset to prevent any confusion about all the requirements that must be met before a deduction for the cost will be allowed.
4. In terms of the timing of the deduction and the application of section DA 1(1), paragraph 9 of the Exposure Draft makes a general statement about the timing of the deduction and paragraph 25 discusses the application of section DA (1). The Exposure Draft would be easier to understand and follow if a clearer statement were made at the beginning about the actual timing of deductions and the applicable test. For example, the correct technical position is that deductibility depends on being able to satisfy the general permission requirements at the time the land or option is disposed of. If a taxpayer purchased an option a year ago with the intention of selling it, but simply let that option lapse / expire, then no deduction would be


allowed for the cost of acquiring that option because at the time it lapsed / expired (or was "disposed of") there was no income derived, so the first limb of s DA 1(1) would not be satisfied. Of course if the "business" limb of section DA 1(1) applied then the situation would be different. The Law Society considers that a clear statement explaining this nearer to the beginning of the draft would be desirable.

5. The definition of "revenue account property" in section YA 1 includes property that **if** disposed of for valuable consideration **would** produce income for the person. This is very wide and basically includes all property that could be sold. The Law Society therefore questions the accuracy of the comment in paragraph 27 that "there simply was no revenue account property".

Conclusion

6. 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's 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 initial 'C' followed by a long horizontal line.

Chris Moore
President