

21 March 2019

Public Rulings
Office of the Chief Tax Counsel
Inland Revenue
Wellington

By email: PublicConsultation@ird.govt.nz

Re: PUB00303a-g: Income tax and GST – tax implications of providing short-stay accommodation

1. Introduction

- 1.1 The New Zealand Law Society appreciates the opportunity to comment on draft determinations PUB00303/a and PUB00303/b (draft determinations) and Questions We've Been Asked PUB0003/c to PUB00303/g (QWBAs), all of which relate to the tax implications of providing short-stay accommodation.
- 1.2 The two draft determinations distinguish between renting a room in your home to a boarder (private boarding service) (PUB00303/a) and renting the whole home or providing accommodation in a separate property (PUB00303/b) (short-term accommodation). The purpose of the draft determinations is to simplify the tax obligations for taxpayers by distinguishing the tax obligations for taxpayers who provide short-stay accommodation from the tax obligations of taxpayers who provide a private boarding service.
- 1.3 The Law Society makes some minor comments below, followed by more general comments as to how the adoption of these rules by a taxpayer could ultimately result in that taxpayer being precluded from claiming the excluded home exemption under the proposed Capital Gains Tax regime¹ (if implemented).

2. Draft QWBAs

2.2 *PUB00303/g – GST*

- 2.2.1 PUB00303/g addresses the question of whether a person who supplies short-stay accommodation to guests in their home or holiday home can register for GST. The interpretation section of PUB00303/g provides a definition of what constitutes a taxable activity. It would be helpful if the Interpretation section of PUB00303/g made it clear that even though a person who provides short-term accommodation continuously or regularly for consideration will be carrying on a taxable activity, it is only those taxpayers who are GST registered (or liable to be GST registered) who will have GST obligations in relation to that taxable activity. The Law Society therefore

¹ *Future of Tax: Final Report*, 21 February 2019, <https://taxworkinggroup.govt.nz/resources/future-tax-final-report>.

recommends that it is made clear that even if a person's activity could constitute a taxable activity, the person only has a GST obligation if they register for GST or are liable to register for GST.

- 2.2.2 The second bullet point in paragraph 18 makes a reference to a holiday home being owned by a family trust and states that supplies made to beneficiaries for no or reduced consideration will be deemed to be made at market value. It is not clear however who in the example given is providing the short-term accommodation service. That is, it is not clear whether it is the trustees of the trust or the host that is providing the service. Presumably if the holiday home is owned by a trust and the trust is registered for GST, it is the trustees of the trust who are carrying on the taxable activity, not the host. It would be helpful if this was made clear.
- 2.3 Question We've Been Asked PUB00303/f contains an arithmetic error in Example 4. The first fraction should read 285/365 not 275/365. Therefore, the corresponding references to 75.34% should read 78.08%.

3. General comments

- 3.1 The Law Society also considers greater clarity is required in relation to how the draft determinations will apply to trusts. We note that the Commissioner has indicated a further draft item covering the issues that arise where the property is held in trust will be issued in the coming months.²
- 3.2 Taxpayers who provide private boarding services or short-term accommodation will need to be made aware of how the provision of those services could potentially impact on their ability to treat their home as an excluded home, in the event that a proposed capital gains tax in relation to property (among other things) is enacted.
- 3.3 The Tax Working Group's Final Report proposes a capital gains tax be extended in relation to property other than the excluded home.³ The excluded home is intended to be defined as the place a person owns, where they choose to make their home by reason of family or personal relations or for other domestic or personal reasons. Where the home is partially used for income-earning purposes while the person is living in the property it is proposed that the person will have two choices, being:
- a. Provided the property is used more than 50% as the person's home, the person can choose to treat the entire property as their excluded home. However, the person will be denied any deductions for costs relating to the property, but they will still be required to return their income from the income-earning use.
 - b. Alternatively, if the person wants to take deductions relating to their income-earning use of the property, the person can choose to apportion their capital gain when they

² *Overview – Consultation on accommodation items (PUB00303/a-g: Income Tax and GST – Tax implications of providing short stay accommodation)*, <https://www.ird.govt.nz/resources/6/e/6ee71ab2-fb30-4fb2-980b-50a9dc59d168/pub00303-overview.pdf>, at p1.

³ *Future of Tax Final Report Volume II: Design Details of the Proposed Extension of Capital Gains Taxation*, 21 February 2019, <https://taxworkinggroup.govt.nz/resources/future-tax-final-report-vol-ii>, at [18], [32].

sell the property and pay tax on the portion that represents their income-earning use.

- 3.4 If the Tax Working Group's proposals are accepted and legislation is enacted on the basis of the proposed recommendations, it will be necessary to amend the proposed draft determinations to ensure it is explicitly clear to taxpayers that any choice they make to follow the proposed income tax treatment of income derived from offering private boarding services and/or short term accommodation may have the result of excluding that person from claiming their home as an excluded home on a disposal event.
- 3.5 It is unclear if the proposed definition of what constitutes an excluded home will operate retrospectively, so that a taxpayer who has at any time used their property for income-earning purposes will be limited to the two options above, or whether it will only apply to persons who from the date the proposed capital gains tax will apply to elect from that day forward to use their property for income-generating purposes.
- 3.6 Given many taxpayers offer private boarding services and/or short-term accommodation as a means of supplementing their income to meet the costs of owning a home, this is a significant choice that they will be required to make.

4. Conclusion

- 4.1 We hope you find these comments helpful. If you have any questions or wish to discuss the comments, the convenor of the Law Society's Tax Law Committee, Neil Russ, can be contacted via the Law Society's Law Reform Adviser, Emily Sutton (Emily.Sutton@lawsociety.org.nz / 04 463 2978).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tim Jones', with a horizontal line underneath.

Tim Jones
Vice President