

21 September 2016

Public Consultation
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PUB00231: Income Tax – Timing – When is income from professional services derived?

Introduction

1. The Law Society welcomes the opportunity to comment on *Draft Interpretation Statement: Income Tax – Timing – When is income from professional services derived?* (Draft Interpretation Statement).

Comments

2. The Law Society generally supports the approach and reasoning in the Draft Interpretation Statement, but considers that more guidance could usefully be given on whether (assuming that the accruals approach is adopted) a professional's unbilled work in progress (WIP) should be recognised for tax purposes.
3. In the absence of specific contractual terms that render the client unconditionally liable to pay on a time recorded basis, the Law Society submits that unbilled WIP does not create an automatic entitlement to bill a quantifiable amount.¹
4. In relation to lawyers, for example, in the Rules of Conduct and Client Care for Lawyers, "time and labour expended" is only one of 13 factors to be taken into account in setting a lawyer's fees, and the final assessment of the amount to be billed will only be undertaken at the time of billing.²
5. Accordingly, the Law Society suggests that after paragraph 63 of the Draft Interpretation Statement, the following be added:

Whether unbilled work in progress ("WIP") can be regarded as "derived" when the work is undertaken will depend on the terms of the professional and contractual relationship with the client. In general terms, lawyers, accountants and other professionals who charge in whole or in part on a time and labour basis will be required to accrue unbilled WIP only where:

¹ This is in contrast to the position in *Hawkes Bay Power Distribution Ltd v CIR* (1999) 19 NZTC 15,226 (CA) where consumed but unbilled electricity created a definite, quantifiable liability on the customer.

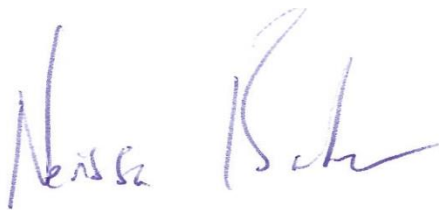
² Rule 9.1, Rules of Conduct and Client Care for Lawyers (Schedule to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008).

- *An entitlement to bill has arisen, given the work performed, the contract (written or otherwise) between the parties, the relevant professional obligations concerning rendering an invoice, and general commercial practice; and*
- *the amount is able to be reasonably quantified at that time.*

Conclusion

6. This submission was prepared with the assistance of 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 faithfully

A handwritten signature in blue ink, appearing to read "Nerissa Barber". The signature is written in a cursive style with a large initial 'N' and 'B'.

Nerissa Barber
Vice President