30 April 2019

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By email: Erica.Burke@ird.govt.nz

Dear Erica

Rental ring-fencing – revised draft provisions

Thank you for inviting the New Zealand Law Society to comment on a revised draft of the rental ring-fencing provisions in the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill.

The revised draft has been prepared in response to submitters (including the Law Society)[1] raising concerns about the complexity of the drafting of the rental ring-fencing provisions. We understand the redraft incorporates changes to the proposed rules that officials will be recommending to the Finance and Expenditure select committee, for the committee's consideration.

The Law Society's Tax Law Committee has considered the revised draft, and considers the redrafting is much clearer than the original provisions in the Bill. Some drafting comments are set out below.

Definition of residential income

The introductory words refer to "residential property" whereas paragraphs (a) – (d) are expressed on a portfolio basis. In paragraphs (a) and (b), we suggest deleting the words "which is the amount of income" and "which is the amount" respectively.

Section EL 1(5)

To remove any doubt that a property-by-property approach can be taken to one or more properties, it would be helpful if the subsection began: "A person may choose to apply the rules on a property-by-property basis for an income year to one or more properties …" (suggested additional wording underlined).

Section EL 4(1)

After the phrase "their residential portfolio", insert "or residential rental property, as applicable". The insert is to make it clear that, as section EL 6(1) provides, section EL 4 also applies to property

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[1] NZLS submission 28.2.19 on the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill, at [2.1]-[2.27]. Submission available at http://www.lawsociety.org.nz/__data/assets/pdf_file/0012/132312/Taxation-Annual-Rates-2019-20-Bill-28-2-19.pdf.

held outside a residential portfolio. It would also be helpful to insert a subsection, akin to section EL 4(2), which states "Section EL 6 modifies the application of this section to property for which a person chooses to apply the rules on a property-by-property basis."

Section EL 7(2)
It is confusing in providing, at the end of section EL 7(2), that it is overridden by section EL 8. Section EL 7(2) applies when there has been a taxable disposal of Property A, and that subsection releases any unused excess amount "relating to Property A". On its face, section EL 7(2) does not release any unused excess amount from another property that has been transferred to Property A, but this could be made clear by expressly providing in EL 7(2) that it releases "any unused excess amount relating to property A (but not any unused excess amount transferred from another property)" (suggested additional wording underlined).

If this amendment is made, the overriding language in EL 7(2) can be deleted. Such a deletion is preferable, so that the misleading impression is not created that any unused excess amount only relating to Property A is not released on a taxable disposal but is still subject to EL 8. Section EL 8(3) could then provide "The amount released under section EL 5(2) or EL 7(2) does not include any unused excess amount relating to another property or another residential portfolio that has been transferred under sections EL 5(3) or EL 7(3)."

Section EL 5(2)
The drafting comment made above concerning section EL 7(2) is repeated in relation to section EL 5(2).

We hope these brief comments are helpful. If you have any questions, please do not hesitate to contact the convenor of the New Zealand Law Society's Tax Law Committee, Neil Russ, via Law Reform Adviser Emily Sutton (emily.sutton@lawsociety. org. nz / 04 463 2978).

Yours sincerely

Tiana Epati
President