

11 October 2022

Public Consultation
Inland Revenue

By email: public.consultation@ird.govt.nz

Re: PUB00351 – Income Tax – Application of the section CZ 39 bright-line test to certain family and close relationship transactions

1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa welcomes the opportunity to provide feedback on PUB00351, a draft interpretation statement on the ‘*Application of the section CZ 39 bright-line test to certain family and close relationship transactions*’ (the **Draft Interpretation Statement**).
2. This submission has been prepared with the assistance of the Law Society’s Tax Law Committee.¹

Draft interpretation statement

Scope of the draft interpretation statement: paragraphs 2, 3, 29 and 123

3. The Draft Interpretation Statement would be of greater utility if amended to also apply to section CB 6A of the Income Tax Act 2007 (**ITA**) (the bright-line test applying to residential land acquired on or after 27 March 2021). It is currently confined to section CZ 39 ITA, despite the same principles applying.
4. The Draft Interpretation Statement would be further improved by the consideration of the following arrangements, which are becoming more common, and on which the Commissioner’s view would be welcomed:
 - (a) the transfer of residential land by parents to a trust for the benefit of a child, including the application of rollover relief.
 - (b) the transfer of residential land by a trust that held residential land for the benefit of the parents to another trust set up for the benefit of the child, including the application of the proposed extension to rollover relief in the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (No 2).
 - (c) the change in the control of a trust that owns residential land (including a change in the trustees and/or a change in the person who holds the power to appoint and dismiss trustees) from the parents to the child, including the potential application of the specific anti-avoidance provision in section GB 53 of the ITA.

¹ More information on the Law Society’s Tax Law Committee is available on the Law Society’s website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/tax-law-committee/#:~:text=The%20Tax%20Law%20Committee%20makes,the%20Inland%20Revenue%20see%20feedback.>

References to other land taxation provisions: paragraph 40

5. At paragraph 40, the bullet-point concerning section CB 6 should refer to 'one or more purposes' and 'one or more intentions', rather than 'the purpose' and 'the intention', consistent with the wording of section CB 6.
6. In addition, the bullet-points concerning sections CB 9, CB 10, and CB 11 should also refer to persons associated with land dealers, land developers, and builders, respectively.

Loans, bare trusts, and nominees: paragraph 54

7. In respect of paragraph 54, there is no conceptual reason why a person could not borrow funds as nominee/bare trustee for someone else, particularly where the land used as security is held on bare trust. However, we expect the capacity in which the borrower is acting would generally need to be disclosed to the lender, so this may be of limited application in practice.

Transfers from an estate to a beneficiary 'beneficially entitled to receive the property under the will or the rules governing intestacy': paragraphs 119 to 122, 135 to 138

8. The third bullet-point of paragraph 122 notes that a transfer of residential land from an executor to a beneficiary under a will is excluded from the bright-line test. The fourth bullet-point notes the disposal of residential land by a person who received that land under a will is also excluded from the bright-line test. However, there is no analysis around whether this exclusion will apply in the following situations:
 - (a) there is a 'Deed of Distribution' setting out which beneficiary will get what property (but the beneficiaries' shares are not affected).
 - (b) there is a 'Deed of Family Arrangement' altering certain beneficiaries' share of the property.
 - (c) the will is contested, and a court decision or an out of court settlement alters certain beneficiaries' share of the property.
9. These are all common situations. The Commissioner's view on whether a transfer of property will be 'under the will' of the deceased in these circumstances would be appreciated.

Transfer of interest in residential land to a new partner: paragraphs 131 to 134

10. It would be helpful to reiterate at the end of paragraph 134 that the Interpretation Statement does not apply to transfers of residential land pursuant to a contracting out agreement, as often transfers of a share of residential land to a new partner will be made pursuant to a contracting out agreement, and rollover relief will apply.

Draft fact sheet

Scope of the draft fact sheet

11. As noted in respect of the Draft Interpretation Statement, above at paragraph 3, the Draft Fact Sheet would be of greater utility if it also applied to section CB 6A of the ITA.

Introduction

12. Paragraphs 2 to 4 would be best placed in a separate section under the heading 'Summary', as these paragraphs summarise the Commissioner's position, and are not introductory in nature.

Parent disposes of residential land to their child

13. Paragraph 5 refers to the purchase of land ‘... as a shareholder of a company’. This should refer to a company purchasing land, of which the parent is a shareholder.

Partner transfers a share of residential land to their new partner

14. The word ‘fully’ should be omitted from paragraph 14, as the subsequent sale of an interest in land is either taxable or not taxable.
15. It would also be helpful to reiterate, following paragraph 15, that the Interpretation Statement does not apply to transfers of residential land pursuant to a contracting out agreement, as often transfers of a share of residential land to a new partner will be made pursuant to a contracting out agreement, and rollover relief will apply to such transfers.

Beneficiaries sell inherited residential land

16. It would helpful if paragraph 17 noted the exemption applies only to the extent that the land was acquired ‘under the will’ of the deceased, and not from the executors of the estate by some other means (e.g. pursuant to a ‘Deed of Family Arrangement’).

Examples

17. It would be helpful if the examples included numeric calculations, and not just diagrams. This is particularly important for example 4, as it is not entirely clear on the face of the diagram what the reference to ‘one-third’ being taxable refers to.

Further comment

18. Thank you again for the opportunity to provide feedback on the Draft Interpretation Statement. If you have any questions or wish to discuss this feedback further, please contact aimee.bryant@lawsociety.org.nz.

Nāku iti noa, nā



Caroline Silk
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