

13 May 2020

Public Consultation
Inland Revenue
Wellington

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

Re: Draft Interpretation Statement – PUB00310: Income tax – Tax issues arising from ownership of overseas rental property

1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) makes the following brief comments on draft Interpretation Statement: *Income tax – Tax issues arising from ownership of overseas rental property? (draft IS)*.

Reference to double tax agreements in examples

2. Subpart LJ of the Income Tax Act 2007 (Tax credits for foreign income tax) is referred to in Examples 1 to 3. But the relevant double tax agreement (**DTA**) is only mentioned in relation to the availability of tax credits in Example 3, even though in Examples 1 and 2, the properties are situated in countries with which New Zealand has DTAs (namely, the United Kingdom and China). This could potentially confuse readers and we submit that Example 1 and Example 2 should refer to the UK and China DTAs.

Description of withholding obligations on money borrowed from foreign bank

3. The draft IS states that taxpayers "may" be required to return non-resident withholding tax (**NRWT**) in relation to interest paid to a foreign bank. It then notes the exception to this obligation to return NRWT where interest is paid to a non-associated non-resident bank with a fixed establishment in New Zealand. In our view it would be useful for taxpayers if the item also acknowledged the other significant exception to this obligation, where the New Zealand taxpayer has a fixed establishment outside New Zealand in relation to its rental property business, with which its borrowing is connected. In these circumstances, the interest would not have a New Zealand source under s YD 4(11)(b)(ii).

Conclusion

4. We trust Inland Revenue will find these comments helpful. If further discussion would assist, please contact the Tax Law Committee convenor Neil Russ, through the Law Society's Law Reform Adviser, Emily Sutton (Emily.Sutton@lawsociety.org.nz).

Yours faithfully



Herman Visagie
Vice President