NEW ZEALAND LAW SOCIETY
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25 June 2020

Public Consultation
Inland Revenue
Wellington

By email: kim.mcfarlane@ird.govt.nz; james.mckeown@ird.govt.nz

Re: Draft Interpretation Statement: Income Tax – When is development or division work "minor"? – revised examples

1. Thank you for your email of 11 June 2020 seeking the New Zealand Law Society's comments on revised examples in the draft IS, further to our original submission of 20 December 2020.

2. The New Zealand Law Society (**Law Society**) welcomes the opportunity to provide further comments on the revised examples in draft Interpretation Statement: *Income tax – when is development or division work minor?* (**draft IS**).

3. The Law Society's Tax Law Committee has reviewed the revised examples to be inserted in the draft IS and agrees with the changes made. The Law Society also agrees the inclusion of absolute cost and relative cost safe harbours is helpful, and that setting the absolute cost safe harbour at $50,000 and the relative cost safe harbour at 5% of the value of the land (which forms part of the development or division scheme) at the commencement of the development or division scheme is appropriate.

Application of safe harbours to GST registered taxpayers

4. In terms of your comments concerning the application of these safe harbours to GST registered taxpayers, the Law Society considers it is odd that development or division work which cost, say, $55,000 (including GST) could be treated as minor work where the taxpayer is GST registered (and able to claim back the GST on those costs) but not minor work where the taxpayer is not GST registered or is GST registered but unable to claim back the GST on those costs. The threshold test in section CB 12(1) of the Income Tax Act 2007 is whether the work itself is minor, not whether the net cost of that work to the taxpayer is minor. As such, if the work required to effect two identical development or division schemes carried on by two different taxpayers is the same, we would have expected that the same outcome would apply (i.e. that the work is either minor or not minor), irrespective of the taxpayers' GST registration status.

Amalgamations, unit titling and cross-leases

5. The Law Society agrees with the Commissioner's position that unit titling and cross leasing will constitute a "division of the land into lots" for the purpose of section CB 12(1) of the Income Tax Act 2007. We also agree that the amalgamation of two or more lots into one lot will not, in and of itself, constitute the "division of the land into lots", as the wording of section

CB 12(1) requires that the division work results in the creation of more than one lot. The Law Society agrees, however, that case law requires the cost of amalgamating titles to be included in the cost of the division work where the amalgamation forms part of a division scheme that falls within the ambit of section CB 12(1) of the Income Tax Act 2007.

Other matters

6. Finally, we note that your email does not refer to other matters set out in the Law Society's earlier submission. These include clarification of when an undertaking or scheme involves the development of the land or the division of the land into lots, and the application of section CB 12(1) where there is a change to an undertaking or scheme. We presume you are not seeking further feedback on these points, but if you would like to discuss these matters further we would be happy to do so.

7. We trust Inland Revenue will find these comments helpful. If you wish to discuss these comments further, 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