

Income tax – When is development or division work “minor”?

Exposure Draft PUB 00326

19 December 2019



19 December 2019

Team Manager, Technical Services
Office of the Chief Tax Counsel
National Office
Inland Revenue Department
PO Box 2198
Wellington

Dear Rob

PUB00326 When is development or division work minor?

Chartered Accountants Australia and New Zealand (CA ANZ) appreciates the opportunity to provide feedback on the draft Interpretation Statement which is a replacement statement for the 2005 Interpretation Guideline IG0010, "Work of a minor nature". The statement has been updated to reflect changes to wording and section references in the legislation. The conclusions in the statement are broadly unchanged from the earlier IG0010.

CA ANZ supports the publication of this very comprehensive statement. It will be a useful resource for many practitioners. This statement is also intended for taxpayers, who in most cases, will have limited technical knowledge. It is appropriate that an interpretation statement should include detailed legal analysis. However, we are concerned that the Statement may be overly complex for many taxpayers to understand due to its legalistic and technical nature. Therefore, we recommend that the statement be published in conjunction with a simplified fact sheet. The fact sheet would alert taxpayers to the possibility that development or division work may be taxable and the need to seek tax advice where appropriate.

The purpose of the statement is to provide guidance to help readers establish whether development or division work on land is minor. When the work is minor, the disposal of land is not taxable under section CB 12. The statement includes examples with facts that lead to definitive positions. However, in practice fact patterns are often not as clear cut, leading to uncertain positions for taxpayers.

Furthermore, there has been a significant change in regulations and resource consent standards since cases relating to the predecessors to section CB 12 were decided. These cases are between 25 to 40 years old. It would be helpful if the statement acknowledge that due to increased regulations and resource consent standards a simple subdivision today is likely to require more work.

Given section CB 12 contemplates that development or division work can be minor, the statement would benefit from the inclusion of more examples of what is minor in the current regulatory environment.

Paragraph 72 explicitly states the process of obtaining resource consent does not represent development or division work for the purposes of section CB 12. It would be helpful if the statement clarified what types of council work, if any, would represent “development or division work”.

We also recommend the inclusion of an example where the land value is much more significant and where modest physical work is required.

To accurately compare the amounts incurred with those in the court decisions the statement acknowledges it will be necessary to adjust the amounts incurred in the cases for inflation.¹ It also confirms that a cost comparison may not be determinative and other bases of comparison might be more appropriate.² We commend Inland Revenue for the inclusion of inflation adjusted costs in Table 1. Despite this we are still concerned that the statement does not provide sufficient guidance to allow taxpayers to confidently establish whether development or division work is more than minor.

We would be happy to discuss our submission with you.

Yours sincerely



John Cuthbertson FCA
New Zealand Tax Leader



Teri Welham CA
Senior Tax Advocate

¹ Paragraph 87

² Paragraph 97