

31 October 2018

Public Consultation
Office of the Chief Tax Counsel
Inland Revenue
PO Box 2198
Wellington
via email: PublicConsultation@ird.govt.nz

Dear Sir / Madam,

PUB00315: Income tax — bright line test — main home exclusion — sale of subdivided section

Thank you for the opportunity to comment on the draft item and provide feedback.

Overall, we found the draft well written and believe it will be helpful for members. Our specific comments are as follows:

“Main home” exclusion can apply to a subdivided section of land

The draft QWBA explains that the “main home” exclusion can apply more than once and can apply to a subdivided section of land.

Sale of subdivided land following building process

The draft QWBA examples cover only the land area test for the “main home” exclusion and do not consider the “timing” test. This could be particularly relevant for subdivision or building projects.

For example, John purchases land with the intention of building a main home. Shortly after purchase he consults an architect. It takes 14 months to obtain finalised architectural plans, the relevant building consents and engage a builder. Construction and final sign off take a further 16 months to complete. John moves into the house – 2 ½ years after purchase.

Due to variations and overruns in the build the cost of construction was more than John had anticipated and he decides to subdivide and sell off a small portion of his section to reduce debt. It takes a further year to subdivide and sell the excess parcel of land. At all times during this period the subdivided land component remains available and part of John’s back yard.

John has owned the land for 3 ½ years and has lived in the house for one year. Does this mean that sale of the subdivided section will be taxable because he has not lived there for more than half the time that he has owned the sections in it's entirely?

We believe that the QWBA would be enhanced by the inclusion of an example such as the above to explain the timing test.

Section CB 23B

We recommend that the QWBA additionally make reference to the application of section CB 23B.

Land on two titles

Another issue that is not explored in the draft QWBA is the issue of land purchased on two titles. What if for example, Simon acquired two adjoining lots in a subdivision? He acquires one section as his main home (Lot 1) and, at the same time, purchased the empty section next door (Lot 2). He decides to use the section next door as his back yard, creates a vegetable garden and builds a gazebo. In that situation, would both sections qualify as Simon's "main home"?

If Simon decided to subdivide and sell off part of Lot 2 would the main home exclusion apply or does the fact that his property is on separate titles make a difference? Would Inland Revenue's view differ if there was a more substantial connection/integration with the house on Lot 1 i.e. driveway, swimming pool and pool house constructed on Lot 2?

We recommend that the draft statement be updated to include application of the "main home" exclusion to a subdivision where land is held on two titles.

We would be happy to discuss our submission with you. Please contact Jolayne Trim.

Yours sincerely



John Cuthbertson CA
NZ Tax & Financial Services Leader
Chartered Accountants Australia
and New Zealand



Jolayne Trim
Senior Tax Advocate
Chartered Accountants Australia
and New Zealand