



Tax Tonic Mar 2021

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Attribution and Penny & Hooper

Q: What about an insurance broker - trades out of a company - the income he earns ultimately comes from the underwriting companies, but the income flows through from the underwriter, passes through to brokerage company my client is associated with, they take their cut then pay my client - so IRD record 100% of his withholding income from one source (brokerage firm)

A: The customer is the Insurance company/underwriter, eg. say Tower, Sovereign etc. The broker is engaged by these companies and has a contract with them, not with the individuals who enter into insurance policies. The individuals are customers of the Insurance Co (Tower etc), not the broker.

Therefore if the Broker Company gets 80% or more from one customer (say Tower) the attribution rules will apply.

Q: If the losses were from previous years personal services and that the loss arose because of non-payment of invoices then I assume the losses can be offset against future services?

A: Agreed. This assumes that a deduction has been claimed for bad debt write-off (s DB 31) in an earlier year creating a loss to carry forward. This is a loss from the personal services business therefore it can be offset against the current year personal services profit, and the balance is attributed.

Q: Will the DWT rate change where the shareholder is an individual (5% when fully imputed) to take effective rate to 39%.

A: The DWT rate has not changed, it remains at 33%. Therefore the usual 5% DWT top-up will apply to fully imputed dividends. If the shareholder is an individual over \$180k, the square-up to 39% is paid as terminal tax.

NZer's returning homes – residency issues

Q: Under FATCA I believe his worldwide income would be taxed forever in the US. How does this affect your example?

A: The US/NZ DTA has an override to the tie break that the US taxes its citizens and green card holders indefinitely. For the purpose of the example, assume Dick is neither a citizen or a green card holder ie just like any other DTA country. If he did hold a green card, everything would ultimately be taxed in the US but he would get a credit for any NZ tax paid....eventually.

Bright-line rules

Q: I am picking at most settlement date is one in the same as LTO registration date - so one in the same - and this is when bright-line begins?

A: *Yes good point, the title registration is the start date. In close call cases best to check the title in case the solicitor completes that process late.*

Q: My client has a new build/subdivision and has been rented since January 2021. But he has not got title yet. When does the start date for the new bright-line test start.

A: *This is in the 5 year rule as the first interest in land is before the 27/3/21 remembering that for "off the plans" it's the date the binding contract is signed. It is important not to nominate at settlement if that is on or after 27/3/21, as that will mean the 10 years applies from settlement.*

Q: Could you move back in for 1 month and then out again to restart the 12-month count?

A: *Technically that would work.*

Q: So if Goldie Crunch moved back to the old house to avoid the 12 month continuous period she could avoid this?

A: *Yes and so long as her new home wasn't empty or rented for 12 months continuously then the Main home exclusion would apply fully to that house.*

Q: With a change in shares in LTC to recognise partner and under relationship property, as a LTC would it trigger depreciation recovered - would not be a deemed sale of 50%? Thanks

A: *Good point a relationship property agreement would provided complete rollover for dates for both the before and after shareholders. A bit of legal cost but would be worth it.*

Q: We are in the process of building a house and land package and signed the agreement in Nov 2020 but won't be finished till July 2021 and will be a rental. How will this work with the bright line and interest deductibility rules?

A: *Bright-line date as above. For interest deductibility we don't know yet. If they base it on the acquisition date you will have a phase out. If they base it on the CCC, then from what we are told now it will be not be subject to the non deductibility of interest rules but presumably the loss ring fencing will still apply.....maybe its not redundant after all!*

Q: Main home under 4500m², old house, it is subdivide to three sections, planned to build the more houses, RC and BC granted before 27/03/2021. Properties will be held for long term invests/renting. Is 5 year or 10-year BLT applied? When would be the starting date, after CCC issued?

A: *From the original date the home was purchased. Note the Main home exemption can apply to subdivision sections if they are sold within the bright-line period ie start date the same start date as the date of the original purchase of the undivided land.*

Q. If SPA is a draft on the 26th, accepted on 1/04/2021, settled on 20/04/2021, is this purchase a still 5-year BLT?

A: *10 years as no binding conditional contract (signed by both parties), on 26/3/21 or before .*

Q: If a company has 1 shareholder owning all 100 shares in the company and they die and their shares are transferred to their sons due to the death, does this restart bright-line?

A: *Specific death full roll over provisions for death of a shareholder in an LTC only apply if the spouse inherits. Would be different if parent owned in their own name and the son inherited ie full rollover*

Q: Short Term Accommodation - does this affect motels or boutique accommodation where the owners live on the property in a dwelling.

A: *Boutique: not if it is the main home. Motel: is not "residential land" as it is specifically excluded from the definition of "dwelling".*

Q: How does that definition of residential land impact on motels? Have one that has a villa as part of it!!

A: *If the Villa is part of the Motel business ie no one is living in at as their "home" it would be treated the same as the units ie excluded from the definition of residential land as above.*

Q. Slide 60, Scenario 5 - under the current rules (5 years bright-line), taxable?

A: *The "current rules" is only referring to the "main home" exemption changes and how that would apply under the new rules if that hadn't introduced the "change of use" formula at all ie time period increased but main home provisions remained the same.*

Q. For an LTC under personal name, can the shareholder change from personal to family trust instead or transfer 50% to partner, and if so, can we do that now? Would that trigger the bright line test?

A: *Exactly the same issues as transferring to a spouse*

Q. Can we set up another trust and transfer the commercial properties to that trust and borrow 100% on that?

A: *Technically that would work (subject to final legislation) but the usual tax avoidance provisions would apply and need to be considered.*

Q. If we have farm land with 2 private dwelling all rented out, and the grazing land is subject to GST, would all the rental including grazing income be subject to ring fencing rules?

A: *This is detail we simply don't know until we have more information ie after the government consultation. One would hope not though!*

Interest deductibility for residential rentals

Q: Will the change in interest deductibility affect home office claims for businesses?

A: Although we can't say definitively at this point, it seems unlikely that Govt will need to make changes here. This is not an issue which relates to the housing shortage (which is how Govt has prefaced the proposals). Watch this space!

Q: Companies get an automatic interest deduction, how will the change in interest deductibility affect companies that own rental properties?

A: It is almost certain that Govt will make changes to these rules, probably a bit similar to Mixed Use Asset rules for close companies. Perhaps something like an apportionment based on debt value to asset value. We will keep our eyes on this and cover the detail in a future webinar.

Q: Interest deductibility - are they going to try and apply it to farmers?! (To clarify thinking where farm cottages etc)

A: *Good question, again we won't know definitively until the legislation is drafted. However my gut feel is they won't apply it to employee accommodation. There is an exemption for employee accommodation in the rental ring-fencing rules, and one assumes this would also apply for the new interest deductibility rules.*

Q: Slide 67 you said Trust could borrow to repay advances to purchase income producing assets - is the income producing asset allowed to be an existing rental? I have a client who has a large current account in their trust due to rental property advanced to trust some years ago, and we were already in the process of borrowing to repay that debt - would we get the 4-year phasing out interest claim on these funds? Or not, because that income earning asset is a rental and funds advanced after 27 March?

A: *Based on the limited facts, the phase-out rules should apply in this scenario. The Trust had already acquired the rental property in an earlier year, ie. before 27 March 2021, therefore the phase-out rules are relevant. If the settlor/beneficiary loan is refinanced fairly quickly, the Trust will at least maximise deductibility until 2025.*

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