From:	s9(2)(a)
To:	Policy Webmaster
Cc:	Melissa Siegel; Jen Deben; xxxxxx.xxxxxx@xxxxxxxx.xx.xx
Subject:	Design of the interest limitation rule and additional bright-line rules
Date:	Friday, 16 July 2021 3:04:16 PM
Attachments:	Te Ahuru Mowai Submission - Submission.docx v3 (002).docx

---

Kia ora

Please find attached the Te Ahuru Mowai submission on the Government discussion document on housing - Design of the interest limitation rule and additional bright-line rules

Nga mihi

s9(2)(a)

w: www.teahurumowai.co.nz

Homes for Whānau

Government Discussion Document
Design of the interest limitation rule and additional bright-line rules

Submission

from
Te Āhuru Mōwai

A. Te Āhuru Mōwai:

- is a registered Community Housing Provider with charitable status.
- Is the largest Iwi-owned and lead Community Housing Provider in the country.
- currently qualifies for tax "exempt income" under CW 42B of the Income Tax Act 2007.
- is a wholly-owned subsidiary of Te Runanga o Toa Rangatira Inc (TROTR) – which is Ngāti Toa's charitable entity.
- manages over 900 housing units in West Porirua which are used as rental public housing, with tenants placed from the government's public housing register.
- has a 25-year term Capacity Services Agreement with Ministry of Housing and Urban Development (HUD) for placements from public housing register with income-related rent subsidies (IRRS).
- has a 25-year term lease of all properties from Housing New Zealand Ltd (and its operating arm, Kāinga Ora), which took effect in October 2020. This resulted in a change of landlord for all existing tenants at the time.
- is a key component of the partnership between the Crown and Ngāti Toa which recognises relinquishment of RFR rights on Kāinga Ora properties in East Porirua in exchange for the right to lease, manage, acquire, and redevelop Kāinga Ora properties in West Porirua as well as first rights to redevelop super lots in East Porirua that are released by Housing New Zealand Building Ltd.

B. POINTS OF SUBMISSION:

1. Extend Kāinga Ora Exemption to CHP's:

Refer: Chapter 3 (3.17 to 3.19) – also 1.18 Chapter 1.

These sections propose specific exemption of Kāinga Ora from interest deductibility as it is not a registered community housing provider covered under section CW 42B of the Income Tax Act and is not a charity. 3.18 rightfully identifies that many registered community housing providers are charities and therefore exempt from income tax. Also, that other community housing providers may be exempt under section CW 42B of the Income Tax Act 2007.

Te Āhuru Mōwai agrees with the exemption of Kāinga Ora and its wholly owned subsidiaries from the interest limitation rules and submits that this exemption also applies to registered community housing providers. This is for the following reasons:

- Registered community housing providers (CHP's)currently supply the same services as Kāinga Ora – primarily placement of applicants from the government's Public Housing Register as tenants. They also provide newly developed properties for use as rental public housing. As is the case for Kāinga Ora, CHPs are bound by agreements with government for the provision of these services. It is highly desirable to align treatment of entities undertaking the same role.
- Both Kāinga Ora and CHP's want to create harmonious iwi/hapu and communities that are free of detrimental social impacts resulting from concentration of deprivation. This can result in some acquisition, development, and provision of housing for people at slightly higher levels of income to create mixed tenure communities. Mixed tenure communities help establish better education and services infrastructure to those that most need them and set examples of independent and contributory living for all to aspire to. The income resulting from such arrangements may breach the current thresholds for eligibility for Exempt Income in CW 42B of the tax act. It is desirable to at least enable interest deductibility to not further disincentivise these initiatives to improve social cohesion.
- Overseas, and potentially in New Zealand in the future, mixed tenure housing has also been financially beneficial as an enabler of more social housing through deliberate cost subsidy (either from market sales or market rentals to subsidise discounted rentals for disadvantaged household). There are good examples of this in Australia and Britain. An arrangement of cross subsidy to foster social benefit could also potentially place a CHP more than CW 42B thresholds. Again, it is desirable to at least enable interest deductibility to not further disincentivise innovative approaches to making more social housing financially viable.

The last two points are particularly relevant to ensuring the regulatory changes proposed will be future proofed.

2. Short Stay Accommodation Carve-Outs to Include Emergency & Transitional Housing:

Refer: Chapter 2: 2.82

Section 2.82 and the question box below it, prompt for feedback on desirability for carve-outs for short term housing and on categories of short-term housing that are not likely to subsequently become long term housing.

Te Āhuru Mōwai submits that it is desirable to treat short term housing separately from long term housing and agrees that this should only occur when substitutability is unlikely. In this context, it would seem reasonable to include emergency and transitional housing as it is intrinsically different to long term housing, typically being of smaller floor area and/or more temporary construction. These homes are intended to provide temporary accommodation (typically 6-week stints) for households with few possessions. Examples of housing types are cabins, tiny houses, and former motel units.

It is acknowledged that, currently, CW 42B will likely provide tax-free status for providers of emergency and transitional housing. However, the market may shift faster than the adjustment of thresholds applying to CW 42B, and making this provision helps in future-proof against the unfortunate consequences if this happened.

3. **New Build to Include Upgrade of Homes to Make Habitable:**
   Refer: Chapter 7: Questions for submitters (p76)

   The discussions document asks whether there is some tool that could be used to identify when a dwelling that is completely uninhabitable has been improved significantly, such that it has added to housing supply?

   Te Āhuru Mōwai submits that it is desirable to include upgrade of homes to make habitable as part of the definition of new build, as it is effectively new supply. A suggested tool for this is compliance with the Housing Improvements Regulations which set some fundamental minimum standards for a dwelling. These include minimum room sizes, essential plumbing fittings etc.

C. CLARIFICATION AND FURTHER FEEDBACK:

Te Āhuru Mōwai would welcome the opportunity to make a verbal submission in support of the above.

For information on, or clarification of, the above please contact:

s9(2)(a)

PUB-0473

From:	s9(2)(a)
To:	Policy Webmaster; s9(2)(a)
Date:	Friday, 16 July 2021 3:49:28 PM
Attachments:	Marutuahu Ropu Submission.pdf

Tena koe

Submission attached.

Nga mihi

s9(2)(a)

INTEREST DEDUCTIBILITY CONSULTATION – MARUTŪĀHU RŌPŪ SUBMISSION

The Marutūāhu Rōpū makes this submission:

- As mana whenua of Tāmaki Makaurau, where housing pressures are acute and home ownership is now a distant prospect for many whānau who rent.
- As an established investor in build-to-rent (among other scale housing development projects), where it is apparent that much more can and should be done to attract patient capital and establish the sector as a bulwark against the current fragmented and hobbyist 'mum and dad' rental market, to alleviate pressures through supply and to provide an attractive alternative to home ownership.

The government needs to deliberately 'tilt' the playing field towards investment in build-to-rent. It should introduce a general exemption for these properties, and seek to apply that exemption as broadly as possible. The risk that there will be some seeking interest deductions whose projects do not squarely meet the policy intent, are well outweighed by the benefits of providing confidence and certainty to the sector. The challenges in adequately defining this asset class justifies any reluctance to implement this as an exemption. There are useable international examples.

These exemptions should be permanent for initial and subsequent owners, given the importance of maintaining value in these properties to make them attractive to investors. To state the obvious, even if the properties are never sold, their saleability will have a significant impact on their ability to attract finance.

The rationale that should be applied, given the current crisis in housing, is that the government should be making the decisions that will do the most to increase investment in this sector and asset class. Further, there is no fair rationale to treat the "main home" which is exempted from the new rules, differently from build-to-rent properties. Build-to-rent properties provide the same benefits as a homeowner's "main home", by functioning as a permanent dwelling for a person or family, and so should receive the same tax treatment. To argue otherwise, is to lock in a further disadvantage for tenants, who are among those who will bear the higher cost of rental properties.

We also support a permanent exemption from the proposed interest limitation rules for new builds, and for any subsequent owners, as well as the proposed exemption for property developers.

s9(2)(b)(ii)
but the government needs to get its settings right.

The Crown is obliged to consider the Treaty implications of tax policies that have the potential to create new obstacles to iwi seeking to exercise their rights – provided in Treaty settlements - to acquire exorbitantly priced Crown properties. The cents in the dollar the Crown provides in redress are a drop in the ocean in our urban areas. However, these proposals mean that whenever iwi must borrow to acquire land – including land the Crown has acknowledged was improperly taken – we are, once again, disadvantaged compared with those who have an established asset base.

We also support depreciation and GST 'carve outs' in this context for Marutūāhu as Treaty Partner and Treaty settlement PSGE.

PUB-0474

From:	s9(2)(a)
To:	Policy Webmaster
Subject:	Design of the interest limitation rule and additional bright- line rules
Date:	Friday, 16 July 2021 3:53:34 PM

To whom this may concern,

- I disagree with the propose interest limitation rules
- Capital account property holders who are caught with the taxable sale should be able to deduct interest for the whole period of ownership in the year of sale
- Date of commencement for new build should be the earliest date possible in the process of developing, and I suggest from date the existing tenant moves out.
- Rollover relief should be included and should be broadened to include LTC elections and all related party transfers, including share transfers. This should also be back dated to 29/3/18

OVERALL – I disagree with the proposed interest limitation rules. It does nothing to help with the supply of housing, and does nothing to achieve one of the governments key housing objectives, which is to ensure "affordable home to call their own". I believe rents will increase over time as more existing rentals are sold to personal house owners.

CAPITAL ACCOUNT PROPERTY HOLDERS – If a long term hold rental property is sold, and is caught by the brightline rules or other taxing provisions, then interest should be fully deductible in the year of sale. The long term hold investor is already paying a large amount of tax if the sale is taxable, and if interest was not an allowable deduction, tax would then be at an unreasonable level and would severely penalize the property owner. If interest was not deductible for a taxable sale, it could see an owner paying more tax then the gain they made.

DATE OF COMMENCEMENT FOR NEW BUILDS– Interest deductions should be allowed from when the tenant moves out from the old property. This should be the first stage in an older rental property becoming a new build. Or the interest should be allowable from when the older property is demolished.

ROLLOVER RELIEF I agree that there needs to be rollover relief now that Brightline has been extended to 5 and then 10 years. This should cover all related party transactions, and the following should receive rollover relief
- Becoming an LTC should also be excluded from a brightline sale, as becoming an LTC can simplify ownership for a Company and reduce unnecessary compliance costs.
- Sole trader or partnership to LTC, Trust, Company or LP
- LTC share changes, between related parties, including to Trusts and between individuals

Roll over relief should also be back dated to 29/3/18 as there are a lot of rental property owners who unintentional have been caught by these very complicated rules

MAKE IT SIMPLE – 143 page of discussion document, shows that these rules are already too complicated and will be an unfair burden on taxpayers to comply with the rules. The new rules need to be simple and easy for all to follow.

From: s9(2)(a)
To: Policy Webmaster
Cc: s9(2)(a)
Subject: s9(2)(a) - Interest deductibility submission
Date: Friday, 16 July 2021 5:26:39 PM
Attachments: TROTR Submission - draft copy.docx

Please see attached.

Sent from my iPad

Government Discussion Document
Design of the interest limitation rule and additional bright-line rules

Submission

from
Te Rūnanga o Toa Rangatira

Ngāti Toa Rangatira

A. Te Rūnanga o Toa Rangatira:

Te Rūnanga O Toa Rangatira Incorporated (the Rūnanga) is a non-profit incorporated society with charitable status and was established in 1990, when the Government of the day sought to disestablish The Ministry of Māori Affairs and devolve responsibility to tribal entities and iwi.

The Rūnanga is the mandated iwi authority for Ngāti Toa Rangatira and is the administrative body of iwi estates and assets. To this end, as an organisation, it manages all political and public interests on behalf of Ngāti Toa Rangatira and it is the Corporate Trustee of the Treaty settlement entity, the Toa Rangatira Trust (a tax paying Maori Authority).

The Toa Rangatira Trust holds all assets eminating from Treaty settlements with the Crown.

The Rūnanga deals with the political and public issues of national interest such as Treaty of Waitangi claims, commercial and customary fisheries, health services including primary mental health and residential care services, local government relationships and resource and environmental management.

The Rūnanga thanks the Government for the opportunity to review and comment on this Discussion Paper, and for extending the time to provide a submission.

B. POINTS OF SUBMISSION:

1. Exempt All Mandated Iwi Entities:

Refer: Chapter 2, Maori collectively-owned land (p31).

Chapter 2 of the Discussion Paper seeks feedback on whether and how Maori housing should be carved-out and exempted from the removal of interest deductions from taxable income.

The Rununga submits that the carve out should apply to the housing interests of all Mandated Iwi Entities including Maori Authorities, that are recognised in the Crown Treaty

Settlement process, rather than simply selecting out specific housing types on Maori collectively-owned land. The reasons for this are:

- It otherwise compromises the financial settlement arrangements reached with iwi during Waitangi Treaty settlement processes. If implemented, it would be a punitive measure that would cast a shadow on the Crown's (belated) measures to address the issues of associated with iwi entities loss of economic sovereignty.
- The proposed changes are to address an issue that is not relevant to the provision of housing by Mandated Iwi Entities, who have minimal, or no, influence or involvement in tax shelter arrangements in the housing investment market.
- In Ngati Toa Rangatira's (and possibly other Iwi entities case) the overwhelming nature of land held is in normal freehold title, not in Maori Freehold, or collectively-owned land.

The Mandated Iwi Entities, must include Maori Authorities, who do pay tax. Maori Authorites should be included among the exempted entities nominated in Chapter 3 of the Discussion Paper.

We further note that seeking to extend the deductiblity benefits of interest that Kaianga Ora Housing NZ have, solely to registered CHP's like Te Āhuru Mōwai, or Charities, limits the sovereign decisions of Iwi on how they wish to receive and hold assets, including Residential Properties or Residential Land.

Forcing Iwi and other entities to shift assets to Charities or CHP's may therefore exclude the reasonable private ownership aspirations of individual Iwi members with the assistance of their Iwi organisations.

2. Support for Submission from Te Āhuru Mōwai:

The Rununga supports the submission made on the Discussion Paper by Te Āhuru Mōwai, which is a Registered Community Housing Provider wholly owned by Te Rūnanga O Toa Rangatira Incorporated.

However, we note that Te Āhuru Mōwai and CHP's can only offer solutions to a subset of Iwi members: those that meet the MHUD IRRS affordability tests.

This is why from a tino Rangatira tanga and mana motuhake perspective, Mandated Iwi entities, including Iwi Authorities, must be broadened in the entity definition, otherwise the Crown is simply prescribing to sovereign democratic entities how they must structure themselves, or in the alternate, it must accept that some Iwi members must be discriminated against if they aspire to shared equity homeownership with their Maori Authority. Simply stated neither option is acceptable.

C. CLARIFICATION AND FURTHER FEEDBACK:

The Rununga would welcome the opportunity to make a verbal submission in support of the above.

For information on, or clarification of, the above please contact:

s9(2)(a)

From: s9(2)(a)
To: Policy Webmaster
Subject: Deduction of interest on residential property investments.
Date: Sunday, 18 July 2021 12:22:54 PM

Deduction of interest is a legitimate business expense ! It is wrong that this government should single out residential property investors to not allow this. I also believe it is against the Bill of Rights Act to single out & persecute any group of people.
The problem with housing is lack of supply, which Labour has failed miserably to fix having only built a fraction of the houses promised.
This government continues to bring in ad hoc laws without any idea of the result or cost.
We have seen so many resets which have achieved nothing. House prices are still rising.
Property investors should be encouraged not persecuted, who else is going to provide all the necessary housing needed?
Labour because they have the numbers are making this country like a police state,pushing through laws for which they have no mandate & sometimes have been illegal.
This has got to stop.
Regards
s9(2)(a)

From: s9(2)(a) | BVO
To: Policy Webmaster
Subject: DESIGN OF THE INTEREST LIMITATION RULE AND ADDITIONAL " BRIGHT-LINE RULES"
Date: Tuesday, 13 July 2021 2:08:39 PM

Dear Sir

We are not convinced that the implementation of the interest deductibility rules in respect to residential property will assist in relation to the New Zealand housing market. It is our opinion that the market is under supplied and given that there is an availability of cheap money the cost of housing in New Zealand will continue to increase in the short term.

These measures will add to the compliance costs of small investors and also add extreme complexity to an area that should be relatively simple to administer. Records will need to now be kept for at least ten years in respect of residential property and given the interaction of these rules and the brightline test, small investors will more than likely be edged out of the market and replaced by developers. It is also our opinion that it is unlikely that first home buyers will be able to buy new plots of land to purchase and utilise for their first home. It is more than likely that the developers will be buy these and develop these properties and sell them as part of their business activity. The new rules of course will not impact on these persons.

Given the complexity of these rules and that they apply from 1st October and that there is no legislation and the time limit for reviewing a lengthy discussion document, we suggest that these rules are delayed and implemented from the 1st April 2022.

We are concerned that these rules effectively make residential property investment taxed at what is effectively turnover, being the only type of investment that are, and also taxing any capital gain if in the worst case scenario are sold within ten years. We do not see that either of these measures will improve housing affordability in New Zealand. As we have stated above given that these rules are more than likely to be implemented as set out in the discussion document, our comments are made to make the application of these rules more clear and easier for compliance purposes.

It is good to see land outside New Zealand has been excluded and the list of exclusions seems to be reasonable. We do note that short term accommodation is to be included. We believe that there should be an availability where someone is providing short term accommodation to have any interest costs apportioned. We are pleased to see that all type of developers will be exempted from the proposed interest limitation rules and these will include one off developments.

The new build definition does appear to be particularly complex and if this was a real concession in respect of making housing affordable and to increase the stock of properties the five year brightline test should not apply in any case.

In respect of new builds, early owners rules could be extended to an 18 month period instead of 12 months to give a further concession to help increase the stock of new housing. We are pleased to see the consideration of the roll over relief for brightline test and interest deductibility could be part of “cost” of the property and relief may be given in respect of all trusts where there is no significant change in ownership. These rules need to be made simple and clear.

In respect of properties sold under the brightline test, we believe that interest should be allowed as a deduction against any profit made. We feel that having an interest deduction allowable in full is appropriate however do understand the government’s concern that where a loss would incur it may be simpler to just allow the situation if a loss does incur, a break even position.

In respect of the loss ring fencing rules, we consider that these should be removed and given that it is unlikely that losses will incur in respect of residential property, although we do concede the possibility that this could occur in respect of new builds, however consider that these losses should be made available as these new builds will increase the stocks of housing in New Zealand.

In addition dual purpose properties residential/commercial should be subject to a simple apportionment of interest, if a interest deduction is to be denied in this circumstance, it should not be an all or nothing test.

We are happy to discuss any of these matters further.

Kind regards,
s9(2)(a)

From 1 October 2018 the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 will apply to accounting firms. This will require us to confirm our clients' identities and to ask certain questions about the source of funds used in transactions. More information can be obtained from the Ministry of Justice website.

This email and any attachments are confidential and intended exclusively for the person to whom the email is addressed. The contents of this email may be subject to legal privilege or copyright. Further, this email may contain tax advice subject to non-disclosure rights under the Tax Administration Act 1994. Accordingly, this email must remain confidential. Please do not disclose it to any other parties, including the Inland Revenue Department.If you are not the intended recipient, do not read, copy, disclose or use the contents in any way. Please notify us immediately by return email and destroy the email and attachments. Blackmore, Virtue & Owens does not accept any liability for any changes made to this email or attachments after sending by Blackmore, Virtue & Owens. You must scan this email and attachments for viruses. The opinions expressed are not necessarily those of Blackmore, Virtue & Owens.Blackmore, Virtue & Owens accepts no liability for any loss, damage or consequence, whether caused by our own negligence or not, resulting directly or indirectly from the use of this email and attachments.

From: s9(
To: Policy Webmaster
Subject: Design of the interest limitation rule and additional bright-line rules
Date: Tuesday, 13 July 2021 2:42:11 PM

Dear IRD,

My wife and I are long term property investors who started investing s9(2)(a) .

We have purchased every one of our properties off the plan, not competing with first home buyers, with the intention of running a rental business and provide vital accommodation for the people that the Government cannot fulfil.

We have carried the financial risks by paying and servicing the deposit, occasionally for up to three years due to construction delays, hoping we would not lose a job to be able to settle the property.

We have paid mortgages on vacant properties until they were rented and always did timely maintenance as part of running our rental business and being a good landlord. Most people do not realise what is involved in property investment and the financial risks and stress that landlords carry.

Then the Labour Government announces that the loan interest will no longer be considered an expense. This is not fair and short-sighted.

The following points are for your consideration:

- the proposed changes go against Treasure and your own (IRD) advice
- the proposed changes should not apply retrospectively
- the proposed changes should apply only to any existing properties purchased from March 2021
- the proposed changes should not apply to any new builds purchased in the last 15 years if the original owner still owns (new build definition)
- the proposed changes should account for investor types (i.e. new build investors, existing property investors, speculators)
- investors, like us, who invested exclusively into new builds should be exempt from the proposed changes
- rental business category should introduced and any landlord registered as a business should be able to claim interest as an expense as it is available for any other business.
- Brightline test for new builds (from March 2021) reduced to 2 years so the properties can be released into the market sooner
- Brightline test for existing rental properties reduced to 5 years so the properties can be released into the market sooner

Thank you for your consideration.

s9(2)(a)

From: s9(2)(a)
To: Policy Webmaster
Cc: s9(2)(a)
Subject: Design of the interest limitation rule and additional bright-line rules
Date: Saturday, 10 July 2021 11:54:21 PM

Dear bureaucrats,

My name is s9(2)(a) I'm a s9(2)(a) who owns a rental property but at the same time sharing a flat s9(2)(a). I have been a tenant for a long time. I've worked hard and had some support from my family to get a first home in 2006. I rent this house out last year as I move to s9(2)(a) flat. As a tenant for a long time my self. I see this rental property as a home for someone to feel healthy to live in. I'm excited to see the law of healthy home for all rental properties. I've experienced in living in a poor insulated home and getting sick from it. Therefore, I ensure my rental property meet the healthy home rules and charge affordable rents. The current tenant is s9(2)(a)

I would like to suggest to remain the ability to claim mortgage interests as a cost for all rental properties. Reasons are below:

1. All other businesses are able to deduct mortgage interests as a cost. Rental property should be treated the same.

2. As the change of deductibility for interest cost, landlord can only interest rental fee or sale the property as no business can survive on a negative income.

3. Most people rent before they buy their first home. High rental fee will only put first home buyer at a disadvantage to save up money.

I'm not a expert in tax or investment. I can only speak for myself. If I can't claim the mortgage interest as a cost for my rental property. I have to increase rent for my tenant which I'm really reluctant to do so for my tenants. The other option will be to sell this house as I cannot afford to keep this rental property with negative cash flow. This will also increase the rents for rental properties as less rental houses available. I have this rental property to hope that I can save up some retirement funds for myself and s9 s9(2)(a) which will require less help from the government when we are s9(2)(a)

Thank for reading this and I hope that you would reconsider of allowing mortgage interest cost as a cost for rental properties which is same as other business.

Warm Regards

s9(2)(a)

From: s9(2)(a)
To: Policy Webmaster
Subject: RE: Possibility for extension: Interest limitation rule submissions
Date: Monday, 19 July 2021 4:16:54 PM
Attachments: s 9(2)(b)(ii)

Kia ora Wendy

Thanks very much. Please find **attached** our brief submissions.

Noho ora mai
s9(2)(a)

Chapman Tripp

s9(2)(a)

www.chapmantripp.com

From: Policy Webmaster <xxxxxx.xxxxxxxxx@xxx.xxxx.xx>
Sent: Friday, 16 July 2021 1:43 PM
To: s9(2)(a)
Subject: RE: Possibility for extension: Interest limitation rule submissions

[IN CONFIDENCE RELEASE EXTERNAL]

Hi s9(2)(a)

Apologies for the delay in replying. Yes it has been very busy and now we are having to work from home due to the building being closed!
We are still processing the submissions received therefore Monday should be fine.

Have a good weekend.

Regards

Wendy Watkin | *Policy Webmaster* | Kaitiaki pae tukutuku kaupapa
Policy and Regulatory Stewardship | Kaupapa me te Tiaki i ngā Ture
Inland Revenue | Te Tari Taake
s9(2)(a) www.taxpolicy.ird.govt.nz

From: s9(2)(a)
Sent: Friday, 16 July 2021 11:24 AM
To: Policy Webmaster <xxxxxx.xxxxxxxxx@xxx.xxxx.xx>
Subject: RE: Possibility for extension: Interest limitation rule submissions

Kia ora anō

Appreciate you're busy! I haven't had a reply yet but can confirm our submissions will be very brief, and expect this should be fine by Monday (although we'll aim to get them across ASAP).

Thanks
s9(2)(a)

From: s9(2)(a)
Sent: Wednesday, 14 July 2021 4:20 PM
To: Policy Webmaster <xxxxxx.xxxxxxxxx@xxx.xxxx.xx>
Subject: RE: Possibility for extension: Interest limitation rule submissions

Tēnā koe

Would it be possible for us to provide a very short submission by next Monday 19 July and have it considered?

Apologies, I realise that the team working on the interest limitation proposals will already be working through submissions.

Thanks
s9(2)(a)

From: Policy Webmaster <xxxxxx.xxxxxxxxx@xxx.xxxx.xx>
Sent: Saturday, 10 July 2021 5:14 PM
To: s9(2)(a)
Subject: RE: Possibility for extension: Interest limitation rule submissions

[IN CONFIDENCE RELEASE EXTERNAL]

Hi s9(2)(a)

We are happy to advise that we can extend the submission deadline to Friday 16 July 2021.

Regards.

Policy Webmaster
Policy and Regulatory Stewardship
Inland Revenue

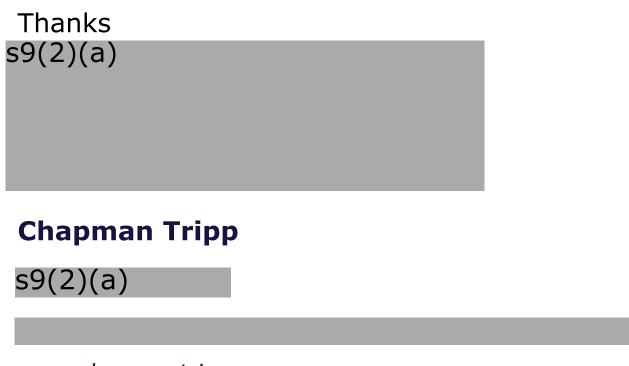
From: s9(2)(a)
Sent: Friday, 9 July 2021 7:44 AM
To: Policy Webmaster <xxxxxx.xxxxxxxxx@xxx.xxxx.xx>
Subject: Possibility for extension: Interest limitation rule submissions

Kia ora

We are in the process of preparing a brief set of submissions on the discussion document: "Design of the interest limitation rule and additional bright-line rules".

It's possible we won't be able to provide our submissions by 12 July 2021. Could I please check whether our submissions could still be considered if they were provided **after** 12 July?

Thanks



s9(2)(a)

Chapman Tripp

s9(2)(a)

www.chapmantripp.com

Disclaimer

This email is intended solely for the use of the addressee and may contain information that is confidential or subject to legal professional privilege. If you receive this email in error please immediately notify the sender and delete the email.

This email and any attachment may contain confidential information. If you have received this email or any attachment in error, please delete the email / attachment, and notify the sender. Please do not copy, disclose or use the email, any attachment, or any information contained in them. Consider the environment before deciding to print: avoid printing if you can, or consider printing double-sided. Visit us online at ird.govt.nz

Disclaimer

This email is intended solely for the use of the addressee and may contain information that is confidential or subject to legal professional privilege. If you receive this email in error please immediately notify the sender and delete the email.

This email and any attachment may contain confidential information. If you have received this email or any attachment in error, please delete the email / attachment, and notify the sender. Please do not copy, disclose or use the email, any attachment, or any information contained in them. Consider the environment before deciding to print: avoid printing if you can, or consider printing double-sided. Visit us online at ird.govt.nz

Disclaimer

This email is intended solely for the use of the addressee and may contain information that is confidential or subject to legal professional privilege. If you receive this email in error please immediately notify the sender and delete the email.

Submissions on design of the interest limitation rule

19/07/2021

Hei Wāhi – Introduction

We welcome the opportunity to submit on the Government discussion document "Design of the interest limitation rule and additional bright-line rules" (the *Discussion Document*). We have particular concerns about how the design of the interest limitation rules could impact Māori collectively-owned land, and set out our submissions briefly below.

Ngā tāpaetanga — Submissions

In summary:

- We suggest that papakāinga housing and similar activities should have a carveout from the proposed interest denial rules, on the basis these activities do not compete with general owner-occupied housing (particularly when the papakāinga housing is on Māori land).
- Any entity that is eligible to be a Māori authority for income tax purposes (and their wholly-owned subsidiaries) should receive the same concessions currently proposed for widely-held companies, on the basis these entities will represent collective groups, whether or not they technically meet the definition of a close company. Companies and trusts are broadly eligible to be Māori authorities where they:
  - are established by, or hold land that is subject to, Te Ture Whenua Māori Act 1993;
  - are recognised as a mandated iwi organisation under the Māori Fisheries Act 2004, or are themselves established by a mandated iwi organisation; or
  - they receive assets from the Crown as part of a settlement of a claim under the Treaty of Waitangi (and are contemplated by the relevant deed of settlement as doing so).
- Interest denials should not apply to the owners of freehold property who make ground leases where:
  - there is a ground lease for a sufficiently long term; and
  - there is a registered leasehold interest that can be bought/sold by leaseholders (to whom the interest limitation rules may apply, if applicable).
- Land which is not subject to interest denial rules (e.g. papakāinga housing and excluded ground leases) should not be included when determining whether a widely-held entity holds more than 50% residential investment property.

Please do not hesitate to contact us if you wish to discuss any aspect of our submissions. Our contacts are:

s9(2)(a)

www.chapmantripp.com

From: s9(2)(a)
To: Policy Webmaster
Cc: s9(2)(a)
Subject: Design of the interest limitation rule and additional bright-line rules
Date: Monday, 19 July 2021 2:45:47 PM
Attachments: Submission_Interest deductibility_FINAL.pdf

Hello,

I hope this finds you well, and thank you for the brief extension provided in relation to our submission.

Please find attached our submission on the design of the interest limitation rule and additional bright-line rules.

If you have any questions in relation to our submission, please feel free to contact myself, or s9(2)(a) (cc'd above).

Kind regards,
s9(2)(a)

s9(2)(a)

Ernst & Young Limited
100 Willis Street, Wellington 6140, New Zealand
s9(2)(a)
Website: http://www.ey.com

This email and any attachments are confidential and the copyright of Ernst & Young or a third party. This email is intended exclusively for the person to whom the email is addressed. If you are not the intended recipient, do not read, copy, disclose or use the contents in any way. Please notify us immediately by return email and destroy the email and attachments. Any views expressed in this communication are those of the individual sender, except where the sender specifically states them to be the views of Ernst & Young. Except as required by law, Ernst & Young does not represent, warrant and/or guarantee that the integrity of this communication has been maintained nor that the communication is free of errors, virus, interception or interference.

Ernst & Young Limited
100 Willis Street
Wellington 6011 New Zealand
PO Box 490 Wellington 6140

Tel: +64 9 377 4790
Fax: +64 9 309 8137
ey.com/nz

Design of the interest limitation rule and additional bright-line tests
C/- Deputy Commissioner, Policy and Regulatory Stewardship
Inland Revenue Department
P O Box 2198
Wellington 6140

19 July 2021

By email: policy.webmaster@ird.govt.nz

Dear Sir / Madam

Design of the interest limitation rule and additional bright-line rules: EY submission

We refer to the Government discussion document *Design of the interest limitation rule and additional bright-line rules* ("the document"). We are grateful for the opportunity to comment and set out our submission below.

All legislative references are to the Income Tax Act 2007, unless otherwise stated.

Overall comments

In our view, the proposed interest limitation rules are a significant departure from the established norms of the New Zealand tax policy framework and should not be adopted. The document refers to the proposals being necessary to reduce a tax advantage for property investors who can claim full interest deductions, while income from capital gains is often not taxed. However, currently property investors are treated the same as other taxpayers in business who are generally entitled to deductions for interest expenses relating to their business. We consider that the proposals go against long-held principles of our tax system and that the better approach would be to focus on increasing the supply of housing stock in New Zealand.

Notwithstanding this, we accept that the Government has made the decision to proceed with the interest limitation rules. In designing the rules, some arbitrary boundaries will need to be drawn. For example, it will be necessary to decide what does and does not amount to a "new build", and for how long a property should remain a new build. On that basis, our submission seeks to balance the difficult task of designing rules that do not fit well within New Zealand's tax system, against the need for clear boundaries. Ultimately, we consider that the proposals should aim to design clear rules which provide certainty for taxpayers and minimise complexity and compliance costs.

Rather than answering each of the questions posed in the document, we have focused our submission on what we consider to be the key issues in the design of the rules. The fact that we have not commented on certain aspects of the document should not be taken to mean that we agree/disagree with what is being proposed.

Executive summary

We set out a brief summary of our key recommendations below:

Application of the rules to property acquired before 27 March 2021

- We recommend caution in changing tax rules that fundamentally and deliberately alter the economics of transactions that have already occurred. The Government may wish to consider limiting the application of the proposed interest limitation rules to future transactions only, as this is the commonly adopted approach in cases where a specific intervention is made in respect of existing transactions.

Interest allocation

- We agree with the proposed approach of relying on tracing to determine which interest expenses are deductible, except in cases where it would be impractical (such as loans that transition between the old and new regimes).
- In relation to pre-27 March loans that cannot be traced, we submit that stacking should be adopted.
- For the issues posed by commonly offered loan products such as revolving credit facilities, we submit that the high water mark proposal is overly complex and is likely to result in high compliance costs.

Disposal of property subject to interest limitation

- We strongly oppose Option A in respect of property disposals; under which interest deductions would be permanently denied in all circumstances. Disallowing a deduction for interest at the time of sale in cases where the gain on sale is taxed on revenue account would be a fundamental departure from well settled tax concepts and negatively impact the integrity of the tax system.
- Accordingly, for revenue account sales we submit that interest deductions should be allowed in full at the time of sale (Option B).
- Alternatively, should the risk of arbitrage be considered too great to allow Option B to be adopted, our next preference is for interest deductions to be allowed at the time of sale, with any loss on sale ring-fenced to other residential property income (Option D). However, should Option D be adopted, we also submit that in order to ensure consistency, real property gains would also need to be ringfenced and taxed at their own lower marginal tax rate.
- In cases where property is sold on capital account, we submit that interest deductions should be allowed to the extent that the amount of interest incurred exceeds the non-taxable capital gain on sale (Option F). In other words, interest deductions are first applied against the non-taxable capital gain.

- We submit that introducing anti-arbitrage rules alongside the interest deductibility proposals is unnecessary when the impact of the rules on taxpayer behaviour is not yet known. Should it be considered necessary to address arbitrage issues in the future, we submit that this should be done via the use of section EL 20.

New builds

- The definition of "new build" should include uninhabitable homes that have been brought up to a habitable standard, with specific conditions.
- The Government should consider whether the proposed definition of "new build" unintentionally results in a disincentive to increase the residential capacity of existing properties by way of adding additional bedrooms to the property.
- The new build period should apply in perpetuity for the builder/developer of the new build, and for the first subsequent purchaser of the new build. This approach balances the need to ensure the proposed interest limitation rules do not disincentive new builds, with the likely evidential and compliance cost issues which would arise should no limit be placed on the number of subsequent purchasers a new build property can have. Allowing multiple subsequent purchasers to retain new build status would result in the risk of creating a dual market.
- Our proposed approach for the new build period noted above would also ensure stability in the build-to-rent market.

Rollover relief

- The rollover relief proposed in Chapter 10 of the discussion document, both for the bright-line test and proposed interest limitation rules, is too narrow and needs to be reconsidered in favour of more expansive relief.
- We consider that more effective rollover relief could be designed in a way that is coherent, principled, administratively workable and which preserves the integrity of the tax system.

Rental loss ring-fencing rules

- The current rental loss ring-fencing rules should be repealed as the policy rationale for these rules is superseded by the proposed interest limitation rules.

Mixed-use residential property

- We submit that it would be inappropriate for the mixed-use residential property rules to apply in cases where the interest limitation rules also apply. Requiring taxpayers to apply both regimes will result in errors and is inconsistent with Inland Revenue's approach of helping taxpayers "get it right from the start".

Our full analysis can be found in the Appendix below.

We welcome the opportunity for a more detailed discussion with you on any of the matters raised in our submission. Please contact s9(2)(a) in the first instance in that regard.

s9(2)(a)

s9(2)(a)

Appendix

1 **Chapter 1 – Overview of proposals and process**

1.1 In relation to residential investment property acquired before 27 March 2021, we accept that the Government has made the decision to apply the proposed interest limitation rules to such property subject to phasing. However, we recommend caution when changing tax rules that fundamentally and deliberately alter the economics of transactions that have already occurred. Such changes create uncertainties in the market and may drive undesirable behaviours in the tax system.

1.2 The Government may wish to consider limiting the application of the proposed interest limitation rules to future transactions only, as this is the commonly adopted approach in cases where a specific intervention is made in respect of existing transactions.

2 **Chapter 4 – Interest allocation: how to identify which interest expenses are subject to limitation**

Pre-27 March loans that cannot be traced

2.1 As noted in the document, various issues may arise with tracing pre-27 March loans used to finance both residential and non-residential assets. As it was not necessary for borrowers to trace their borrowings when such loans were taken out, it is likely to be difficult or impossible for them to trace their borrowed funds retrospectively.

2.2 The document sets out two options for addressing this issue: apportionment and stacking. In our view, stacking is preferable over apportionment. Allowing taxpayers to allocate their pre-27 March loans first to assets that are not residential investment properties removes the incentive for taxpayers to simply restructure their affairs to achieve the same outcome. We expect that if stacking is not adopted, many taxpayers will seek to restructure their affairs to achieve the same outcome. Adopting stacking will reduce unnecessary compliance costs and ensure that taxpayers without access to professional advice are not disadvantaged.

2.3 For completeness, we agree with the suggestion that stacking should be optional. In other words, where taxpayers have the ability to trace their pre-27 March loans, they should be free to apply tracing as opposed to stacking if they wish.

Issues caused by specific types of loans and high water mark proposal

2.4 We consider the high water mark proposal described from [4.33] – [4.40] of the document to be overly complex. We disagree with the proposition that the high water mark proposal would significantly lower compliance costs. The high water mark proposal is difficult to understand and may result in taxpayers needing to seek professional advice in order to understand and interpret the rules. As a result, we expect the complexity of the proposal is likely to result in high compliance costs on net.

2.5 The high water mark proposal seeks to address a temporary complexity arising from the proposed interest limitation rules during the phasing period for pre-27 March loans. The need for such a rule demonstrates the fact that the proposed interest limitation rules do not fit well with the rest of New Zealand's tax system.

3 **Chapter 5 – Disposal of property subject to interest limitation**

Revenue account sales

3.1 In our view, it is essential to allow a deduction for interest at the time of sale in cases where the sale is on revenue account. We strongly oppose Option A, under which interest deductions would be permanently denied in all circumstances (subject to the developer or new build exemptions).

3.2 Full denial would be a simplistic option and taxing all of the income from investing in a property without allowing an interest deduction would result in distortions under which property investors may be unfairly subject to higher effective tax rates. This may result in property investors being over-taxed relative to their income from the property. The tax system should not be used to create such a situation. Accordingly, we consider that interest deductions should be allowed in full at the point of sale and submit that Option B, outlined at [5.17] – [5.19] of the document, should be adopted.

3.3 Alternatively, should the Government consider that the risk of arbitrage is too great to allow for Option B, our next preference is for Option D at [5.26] of the document. In other words, we consider it would be appropriate to allow deductions at the point of sale, with any loss on sale ringfenced to other real property gains derived in the same or a later income year through the use of section EL 20. This option reduces the risk of arbitrage, while ensuring that any loss on sale is able to be offset against other real property gains under section EL 20.

3.4 However, we also submit that in order to ensure consistency, real property gains would also need to be ringfenced and taxed at their own lower marginal tax rate. Taxing capital gains that have accrued over time at the prevailing marginal tax rate while ringfencing losses on sale is inappropriate and results in horizontal inequity between different asset classes.

Capital account sales

3.5 The document outlines options for interest deductions where property is sold on capital account. Of the options proposed, we prefer Option F which would allow a deduction of interest in excess of the untaxed capital gain on sale. In other words, interest deductions are first applied against the non-taxable capital gain. Adopting Option F for capital account sales is the least distortionary option and would be consistent with our preferred approach outlined above for revenue account sales.

Arbitrage issues

3.6 We submit that it is not necessary to introduce anti-arbitrage rules alongside the interest deductibility proposals. The impact of the rules on taxpayer behaviour will not be known until the rules have been in place for a period of time and it should not be assumed that taxpayers will sell property within the bright-line period simply to obtain an interest deduction at the time of sale. The better option would be to revisit the need for anti-arbitrage measures after the new rules have been in effect for a period of time.

3.7 Should it be considered necessary to address arbitrage issues in the future once taxpayer behaviour is known, we submit that this should be done via the use of section EL 20. The document suggests either amending the bright-line anti-arbitrage rule (section EL 20) to treat the interest deductible on sale as if it were part of the cost of the property, or alternatively modifying the residential loss ring-fencing rules to incorporate anti-arbitrage provisions. Given our comments

on the residential loss ring-fencing rules below, our preference is for the former option (the use of section EL 20).

4 Chapter 7 – Definition of new build

4.1 The definition of "new build" should include uninhabitable properties that have been brought up to a habitable standard, resulting in an increase to total available dwellings ("newly habitable dwellings").

Newly habitable dwellings

4.1.1 We submit that the document incorrectly weighs priorities on this particular issue. Practically, each uninhabitable dwelling occupies land that a habitable dwelling could otherwise occupy. To the extent that a developer wished to own a new build on that land, that developer would need to demolish the existing dwelling. This may represent an increased cost, and therefore a disincentive for the productive use of land. Demolition of the building is also likely to result in additional waste going to landfill relative to a renovation.

4.1.2 To the extent that the interest deduction rules are being introduced in recognition of the societal costs of low housing supply, it is necessary to weigh the cost of each un-renovated uninhabitable property against the cost of each permitted edge case. In our view, it is preferable that no disincentives exist for the re-development of under-utilised land.

4.1.3 In our view, a renovated building should be entitled to new build status where:

- It has not been occupied within a specified number of years; or
- Where it had received official notice of its uninhabitability (for example, the property had been declared below earthquake safety requirements).

4.1.4 These requirements should be relatively easy for Inland Revenue to verify and will capture almost all presently uninhabitable dwellings.

4.1.5 In relation to the second requirement noted above, this should apply only where the property is presently uninhabitable. In other words, it should not apply to properties that are currently habitable, but which may become uninhabitable if work such as leaky building remediation or earthquake strengthening is not carried out.

Other impacts of the definition of "new build"

4.1.6 We note that the proposed definition of "new build" does not include habitable properties that are renovated to add further bedrooms to the same property. We suggest that the Government may wish to consider whether the proposals are framed in a way that unintentionally results in a disincentive to increase the residential capacity of existing properties by way of adding further bedrooms.

5 Chapter 8 – Options for the length of the new build exemption

Who should the exemption apply to and how long for?

5.1 We have considered the options for the length of the new build exemption and recognise that there are trade-offs in making this decision. On balance, we submit that the best option is for new build status to be limited to the builder/developer of the new build, and the first subsequent purchaser of the new build only. We believe that both the original builder/developer and the first subsequent purchaser should be entitled to retain new build status in perpetuity.

5.2 This approach balances the need to ensure that the proposed interest limitation rules do not disincentive new builds, with the likely evidential and compliance cost issues which would arise should no limit be placed on the number of subsequent purchasers a new build property can have. Allowing multiple subsequent purchasers to retain new build status would result in the risk of creating a dual market.

Behavioural impact of these changes

5.3 We expect that these changes will result in a behavioural shift of taxpayers towards setting up separate legal entities to hold “new builds”. Officials should monitor the behaviour of taxpayers as this may create issues surrounding the use of losses of companies by owners who, if the sale were only the underlying property, would not be eligible to claim deductions.

Impact on build-to-rent developers

5.4 Our suggested approach for the length of the new build exemption outlined above will also ensure stability in the build-to-rent market. If our suggested approach is not adopted, there could be a significant impact on the build-to-rent market. We anticipate that the price and economics of build-to-rent transactions may change significantly, causing housing supply to decrease rather than increase.

6 Chapter 10 – Rollover relief

The proposed rollover relief needs to be expanded

6.1 Chapter 10 of the document sets out proposed rollover relief for certain disposals that would otherwise result in the denial of interest deductions or the bright-line test applying. The document states that relief is intended to be provided where there is largely no change in the economic ownership of the land; it does not seek to address all possible structures.

6.2 We strongly agree with the need to provide rollover relief and appreciate the effort the document makes in trying to define when such relief will be available. However, we submit that the proposed relief needs to be reconsidered with the view to allowing more expansive relief. The rollover relief currently proposed will in reality provide very limited relief as it will not encompass a large number of transactions. Many situations in which the economic ownership of the land remains largely the same will not be covered by the currently proposed relief.

6.3 The need for more expansive relief is particularly necessary in relation to the bright-line test. As noted in the document, the rollover relief that is currently available under the bright-line test was designed at a time when the bright-line period was significantly shorter. Accordingly, the need for extensive rollover relief was not as pertinent when the rules were first designed. The fact that the bright-line period has been extended from the original two-year period to five years and now ten years, has significantly increased the need for further rollover relief.

6.4 Our key concerns include:

- The document proposes to limit rollover relief for the bright-line test to situations where there is no consideration. This requirement is discussed briefly at [10.31] of the document, but few details are provided as to what is meant by a situation involving no consideration. In our view, very few situations will involve no consideration. We consider that the requirement of zero consideration should be removed, or at the very least that further guidance should be provided as to what is meant by this requirement.

- Paragraphs [10.7] – [10.9] of the document note that the Government is aware of other transactions in the context of family arrangements where rollover relief may be appropriate. However, the Government is not proposing work in this area until an undisclosed later date. We consider it is important to get the design of the rollover relief rules correct now. Failing to deal with all known issues now will exacerbate issues in the future.

- We also have a number of concerns in relation to the proposed rollover relief for trusts, set out below.

Proposed rollover relief for trusts needs to be revisited

6.5 Paragraph [10.55] of the document states that the Government "…*proposes full rollover relief for family trusts in relation to settlements of residential land on trust*". However, [10.57] goes on to impose three conditions that must be satisfied before relief is available. In our view, the condition requiring every settlor of the land to also be a beneficiary is excessive. For example, what about a family trust where two parents are the settlors, but the sole beneficiaries are their children? If it is considered necessary to limit relief to trusts set up for the benefit of the family of the principal settlor, we consider this could be achieved without requiring every settlor of the land to also be a beneficiary.

6.6 The document recognises the requirements for obtaining rollover relief for settlements of residential land on trust may not be able to be satisfied by all family trusts in New Zealand. Paragraph [10.63] suggests that relief could instead be obtained by amending the trust deed prior to acquisition of the property, or by setting up a new (second) trust for the purposes of the disposal of residential property (provided the second trust is not set up for any tax avoidance purpose). In our view, this approach is flawed and would create unnecessary compliance costs. The better option is to allow more extensive rollover relief for trusts.

6.7 We note the Government is considering rollover relief where land is disposed of from one trust to a different trust. Such relief is important, but [10.65] of the document states that the beneficiaries of the two trusts would need to be identical. We submit that the beneficiaries of the two trusts should not need to be identical for rollover relief to apply. Requiring the beneficiaries to be identical would limit relief to very few circumstances. For example, what about land disposed of from one trust to another, where the second trust has one or two additional beneficiaries to reflect further children of the trustees? Rollover relief should be available in such situations.

6.8 Finally, we understand there may be cases where the new Trusts Act 2019 requires a new trust to be established as opposed to being able to amend an existing trust. Where there are minor changes to beneficiaries (and potentially also trustees), the current proposals would not provide rollover relief. In our view, the implications of the new trust legislation should not result in tax issues. We understand there may be a subsequent project to look into this issue, however we consider this issue needs to be dealt with now rather than being deferred to a later date.

6.9 At a practical level, it is also necessary to consider whether Inland Revenue will need to change its current approach to issuing bright-line campaign letters. There are likely to be a number of cases where Inland Revenue is unaware that the disposal of property is one to which rollover relief applies.

Rollover relief - conclusion

6.10 For the reasons outlined above, the scope of the rollover relief provisions proposed in the document needs to be reconsidered. In our view, the relief needs to be significantly more expansive to have any real impact. One option could be to provide relief for all disposals to associated persons. While we appreciate officials' may be concerned with avoidance, in our view any avoidance concerns could be appropriately dealt with under the general anti-avoidance provision in section BG 1, along with other currently existing specific anti-avoidance rules.

6.11 We consider it is possible to design more effective rollover relief rules without negating the perceived benefits of the bright-line test and interest limitation proposals. In addition, more expansive relief could be designed in a way that is coherent, principled, administratively workable and which preserves the integrity of the tax system. As noted at [10.19] of the document, rollover relief also has the added benefit of promoting efficiency by reducing the "lock in" effects of tax.

7 Chapter 12 – Implications for the rental loss ring-fencing ("RLR") rules

7.1 In our view, the various complexities caused by the interface of the RLR rules and the proposals, combined with the disincentives caused by the residual coverage of the RLR rules, justifies the repeal of the RLR rules altogether.

7.2 As per [1.6] of *Ring-fencing rental losses – an officials' issues paper* (March 2018), the RLR rules were introduced to reduce the advantage investors received by having part of their mortgage costs subsidised by the reduced tax on their other taxable income. To the extent that the purpose of the RLR rules is to limit the benefit of deductions for interest payments, the current proposals extend that limitation further and interfere with the stated policy intentions of the document:

- Where a residential property investor owns a dwelling that is not subject to the new build exemption, they lose the ability to deduct interest, preventing them from generating any losses that would otherwise need to be ring-fenced per the above rationale for the RLR rules. Here, the RLR rules serve no function.

- Where a residential property investor owns a dwelling that is subject to the new build exemption, the RLR rules reduce the benefits of the new build rules. Here, the RLR rules function to limit the marginal benefit of purchasing that new build over an existing property, decreasing the demand for new builds.

7.3 We note that the RLR rules do not just apply to losses generated by interest expenses. The rules also apply to other expenses, such as needed improvements to rental properties. In the absence of interest deductions for property investors, the RLR rules only function to limit losses generated by those additional expenses. As a result, the residual operation of the RLR rules operate only to disincentivise costs that should not be disincentivised in the context of New Zealand's property market.

8 Chapter 13 – Interest limitation and mixed-use residential property

8.1 The interaction of the proposed interest limitation rules with the existing mixed-use asset rules and the related complexities that arise are another clear example of why the proposed interest limitation rules do not fit well within the current tax system.

8.2 We consider it would be inappropriate for the mixed-use residential property rules to apply in cases where the interest limitation rules also apply. Requiring taxpayers to apply both regimes and deal with the resulting complexities is likely to drive errors and is inconsistent with Inland Revenue's approach of helping taxpayers "get it right from the start".

From: s9(2)(a)
To: Policy Webmaster
Subject: Design of the interest limitation rule and additional bright- line rules
Date: Tuesday, 20 July 2021 9:18:38 AM

SUMMARY

- I disagree with the propose interest limitation rules

- Capital account property holders who are caught with the taxable sale should be able to deduct interest for the whole period of ownership in the year of sale

- Date of commencement for new build should be the earliest date possible in the process of developing, and I suggest from date the existing tenant moves out.

- Rollover relief should be included and should be broadened to include LTC elections and all related party transfers, including share transfers. This should also be back dated to 29/3/18

OVERALL – I disagree with the proposed interest limitation rules. It does nothing to help with the supply of housing, and does nothing to achieve one of the governments key housing objectives, which is to ensure "affordable home to call their own". I believe rents will increase over time as more existing rentals are sold to personal house owners.

CAPITAL ACCOUNT PROPERTY HOLDERS – If a long term hold rental property is sold, and is caught by the brightline rules or other taxing provisions, then interest should be fully deductible in the year of sale. The long term hold investor is already paying a large amount of tax if the sale is taxable, and if interest was not an allowable deduction, tax would then be at an unreasonable level and would severely penalize the property owner. If interest was not deductible for a taxable sale, it could see an owner paying more tax then the gain they made.

DATE OF COMMENCEMENT FOR NEW BUILDS– Interest deductions should be allowed from when the tenant moves out from the old property. This should be the first stage in an older rental property becoming a new build. Or the interest should be allowable from when the older property is demolished.

ROLLOVER RELIEF I agree that there needs to be rollover relief now that Brightline has been extended to 5 and then 10 years. This should cover all related party transactions, and the following should receive rollover relief

- Becoming an LTC should also be excluded from a brightline sale, as becoming an LTC can simplify ownership for a Company and reduce unnecessary compliance costs.

- Sole trader or partnership to LTC, Trust, Company or LP

- LTC share changes, between related parties, including to Trusts and between individuals

Roll over relief should also be back dated to 29/3/18 as there are a lot of rental property owners who unintentional have been caught by these very complicated rules

MAKE IT SIMPLE – 143 page of discussion document, shows that these rules are already too complicated and will be an unfair burden on taxpayers to comply with the rules. The new rules need to be simple and easy for all to follow.

From: s9(2)(a)
To: Policy Webmaster
Cc: s9(2)(a)
Subject: Design of the interest limitation rule and additional bright-line rules
Date: Wednesday, 21 July 2021 10:18:52 PM
Attachments: F3A6F387A84944A3A1719AE65F9D3763[73221114].png
Interest limitation Submission - Hāpai Housing & Ka Uruora.pdf

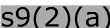
---

Kia ora,

Please the attached submission.

Ngā mihi,

s9(2)(a)



This electronic message, including its attachments, is COMPANY CONFIDENTIAL and may contain PROPRIETARY or LEGALLY PRIVILEGED information. If you are not the intended recipient, you are hereby notified that any use, disclosure, copying, or distribution of this message or any of the information included in it is unauthorized and strictly prohibited. If you have received this message in error, please immediately notify the sender by reply e-mail and permanently delete this message and its attachments, along with any copies thereof.

Submission on the Government discussion document on the design of the interest limitation rule and additional bright-line rules

Recommendation Summary

s9(2)(b)(ii) we are concerned that any changes to interest deductibility and bright-line rules may impact the viability of long-term BTR in New Zealand, and in particular whether there are the necessary incentives for sustainable Māori affordable housing outcomes.

Discussed below, we make the following recommendations to help grow BTR in New Zealand – with a particular focus on the growth of a fair, efficient and transparent community and affordable housing sector, and better outcomes for Māori:

- The Government create an asset class that considers BTR as a commercial asset rather than residential.
- Existing overseas investment restrictions remain. It is our submission that there is more than sufficient iwi, institutional, and KiwiSaver capital available within New Zealand and no need to encourage international investment.
- Tax incentives for defined Māori BTR entities delivering affordable rentals.
- Specific exemptions apply to defined Māori BTR entities.

Introduction – Hāpai Housing and Ka Uruora

Hāpai Housing welcomes the opportunity to submit on the Government's consultation document regarding the design of interest limitation rule and additional bright-line rules.

Hāpai Housing is a collective iwi inter-generational build to rent housing investor. Hāpai believes there is a growing issue of affordability in the rental market and thinks this is where the governments focus should be when considering legislative changes.

Māori home ownership rates have declined to 26%, trailing non-Māori at 41%. Māori are therefore disproportionately impacted by the poor quality and high cost of rental housing in Aotearoa – exacerbated by the relative lower incomes of Māori. Furthermore, there is a significant gap in affordability for Māori if you assume the accepted metrix that no more than 30% of household income should go towards housing costs. Nationally the median Māori Household income (for households that do not own their own home) can only afford 69% of the median rent, ie there is a 31% gap. We think the government should use this opportunity to attempt to correct some of the inequality gap.

Hāpai Housing is a limited partnership that is 100% owned, and controlled and invested in by iwi, whom all have Māori Authority or Charitable status. Investors are directly connected and accountable to their communities and focused on delivering solutions that produce strong social, cultural, and environmental outcomes.

Hāpai Housing is established and resourced to deliver a significant pipeline of rental houses for the affordable market, focusing on priority of outcomes for whānau. However, the uncertainty of the interest limitation rule (particularly how long the exemption applies) and bright-line test (particularly where sold to Māori) will have a significant impact on our ability to successfully deliver new, safe, warm, dry, and affordable homes at pace and scale over the long-term.

Ka Uruora Foundation is a collective iwi charitable housing trust that focuses on delivering a programme of funded housing solutions and services to support iwi whānau members achieve financial independence. Ka Uruora works with Hāpai and iwi commercial vehicles to facilitate the delivery of affordable housing continuum solutions to whānau. Ka Uruora supports this submission.

It is our view that any policy setting aimed at curbing investors toward existing stock, should be tactically designed to promote new builds, and further incentivised to deliver Māori affordable housing outcomes. The below outlines proposals on how this can be achieved.

Build-to-Rent Definition

Hāpai Housing recommends a specific carve out for BTR developments that would ensure certainty to developers and future owners. We recognise that currently there is no formal definition of BTR but believe this is important so policies can be structured around that definition. We generally support the proposed Property Council New Zealand's definition of BTR, but we believe there is strong validation for a carve-out for Māori BTR entities with regard to the required number of dwellings. There are several initiatives we are aware of, on both general title and Māori land, where the number of dwellings may be less than 10 and these should not be penalised.

We propose that Māori BTR entities are defined as entities who have Māori Authority status or are Charitable Māori Trusts and includes entitities that look-through 100% to such entities for tax purposes (e.g. limited partnerships).

We also share the view of the Property Council that BTR is more akin to a commercial asset or like student accommodation and retirement villages.

Build-to-Rent GST & Depreciation Treatment

Although, it is not directly mentioned in the Government's discussion document we believe it is a good opportunity to consider the treatment of GST and depreciation in relation to BTR.

We believe tax incentives for Māori affordable housing solutions, particularly GST and depreciation, should be explored. For Māori there is a significant gap in affordability, as outlined above, and we propose that one way of assisting to close the gap would be for Māori BTR entities providing affordable rentals to be able to claim GST on the development cost and operating costs (when GST registered counter-parties) while the rental income would continue to be exempt. If the housing was either sold or the purpose changed from affordable then GST would be required to returned on the value of the housing. We also note the Government recently restored depreciation for commercial and industrial buildings as a response to the economic impact of COVID-19. We propose that BTR receives the same response.

New Build Exemption

In general, we support the Government's proposed exemption for new builds. Although, there are several areas that need to be clarified.

The discussion document states the Government is considering three options regarding who the exemption applies to, and for how long (clause 8.20). These are:

1. In perpetuity for early owners;

2. In perpetuity for early owners and a fixed period for subsequent purchasers; and
3. For a fixed period for both early owners and subsequent purchasers

We support Option 2 and think a 50-year fixed period on subsequent purchasers should apply.

However, the subsequent purchaser restriction should be waived where the subsequent purchaser is Māori BTR entity. There can be situations where ownership may initially be in a collective vehicle but at a point down the track ownership is transferred to the mana whenua Iwi. This should not be penalised.

New Build Bright-Line Test

We support the Government's proposed five-year bright-line test for new builds, as opposed to the general ten-year period. To further support Māori housing we suggest the Government waive the bright-line test completely on new build sales to Māori. This is particularly important to actively encourage progressive home ownership options to whānau. The government should be doing all it can to remove housing barriers for Māori right across the housing continuum – including the pathway to home ownership. The Hāpai strategy is for a whānau to have the choice of staying in the same home if they are ready to progress to ownership (partial or full).

Conclusion

Hāpai Housing supports the Government's intentions to increase housing supply. However, we are concerned that the proposed changes do not focus enough on Māori affordable housing outcomes.

We support the governments initiatives, but with the following amendments:

1. A separate asset class be created for BTR that treats BTR as a commercial asset rather than residential.
2. Interest deductibility exemption to apply in perpetuity if same ownership.
3. Interest deductibility exemption to apply for 50 years to subsequent owners, but specifically waived if the subsequent owner is a Māori BTR entity.
4. Change in GST treatment for Māori BTR entities delivering affordable rentals.
5. Depreciation for BTR to match restored treatment of commercial property.
6. Waive the bright-line test for Māori BTR entities selling homes to Māori whānau

For any further queries contact s9(2)(a)

From: s9(2)(a)
To: Policy Webmaster
Subject: Fwd: Submission from Thao Nguyen of Auckland
Date: Thursday, 22 July 2021 11:35:40 PM

Hi
I have had no acknowledgment that my submission was received and accepted. Please confirm

Thanks

Sent from my iPhone

Begin forwarded message:

> **From:** s9(2)(a)
> **Date:** 11 July 2021 at 10:38:22 PM NZST
> **To:** xxxxxx.xxxxxxxxx@xxx.xxxx.xx
> **Subject: Submission from** s9(2)(a)
>
> Hello IRD
> Please contact me on s9(2)(a) if you have any questions.
>
> Please find below my submission on various aspects of the discussion document.
>
> **STUDENT RENTALS**
> Any accommodation that has only housed students since purchased and is within 1.5km (walking distance) of any educational institution should be exempt. Owners should provide proof that the property has only ever been rented to students. This would ensure students have available accommodation near universities and rents can be kept at an affordable level for them. Student accommodations are generally already shabby, increasing tax on landlords is only going to result in less R&M and higher rents.
> The risk of everyone rushing out and turning their rentals into student accommodation would be low in my opinion. If the government considers the risk high then consider the same could happen with boarding houses.
>
> **SHORT TERM ACCOMODATION**
> Airbnb is a business and dwellings used for full time Airbnb's should be exempt. Under Auckland Council a full time Airbnb is subject to 100% business rates. It is unreasonable of the government and local authority to call something a business for the purposes of

charging rates, but not a business for the purposes of tax. It should be one or the other. Double taxing Airbnb operators as both a business and as a residential rental is grossly unfair and would destroy the ability of Airbnb operators to bring tourism into the suburbs and other places not serviced by hotels. Airbnb is a business and all expenses including interest should be deductible.

DEFINITION OF NEW BUILDS, and SUBSEQUENT PURCHASERS

This really depends. If the government decide to allow a new build to be a new build for 20 years for example, then every house historically should be allowed to be a new build for 20 years whether purchased after the 27/3 or before the 27/3. People who built prior to 27/3 and added to the housing stock should not be penalised because of an arbitrary date.

If the governments want more houses built then it would make more sense to remove interest deductibility to subsequent owners if purchased outside the CCC period of 12 months. Otherwise, we would be back to the situation that we are in now with 'greedy' investors hoarding all new build properties for 20 odd years and not allowing FHB a look in.

Also, how silly would be if 15 years down the track my neighbour who purchased on the 27/3/21 can still claim interest on his 'new build' and I who purchased on the 26/3/21 cannot, even though our properties are the same age.

Whatever the government decide to do the tax system needs to be fair, and currently its looking far from being fair. Removing a legitimate business expense for only one group of investors is shocking. Now the government is looking to create sub groups within this one group to allow deductibility for some and not for others. This adds unnecessary complexity and undermines the integrity of the whole tax system. If it is indeed a loophole, why allow it to continue at all?

INTEREST DEDUCTIBILITY ON SALE

I firmly believe that mortgage interest that wasn't able to be deducted should be deductible on sale when subject to the brightline tax. Otherwise, there is the likely scenario that people will be paying huge taxes even if they have made no profit. (Which is the case now for some existing property investors!)

NZ would not be a very nice place to live and invest in where there is a good chance you are forced to pay tax on economic loss.

CHANGES TO BRIGHTLINE – SAME ECONOMIC

OWNERSHIP

I firmly believe that roll over relief should be permitted particularly where owners are wanting to provide asset protection through the transfer of property to family trusts.

MAIN HOME EXEMPTION

It is positive to see an exemption for interest to be claimed against flatmate/boarder income in the main home. It does need to be clarified whether this "main home" exemption follows the same definition as the residential ringfencing exemption of 50% private usage. If an individual has two flatmates in their home creating a position in which the property is only 45% private, is the interest exemption still available? Generally, I believe it should be apportioned as in home office usage. Also, in the case of a family trust where there are multiple beneficiaries. Can each of these beneficiaries live in a rental property (owned by the trust) and take in flatmates/boarders and have interest deductible? What about families with uni age kids – can I put one of my kids in my rental property in another city, have them take in flatmates and still have interest deductible – can't see why not if it is my child's main home. (See my opinion on student rentals also above)

RELOCATABLES and ADDING TO EXISTING LAND.

I think this is positive. Allowing people to reuse what would otherwise be tossed aside for accommodation is a positive step. The question would be, if I relocate my old house from the front of the site to the rear and sell it, does it become a new build? This would be no different to someone else moving my house to another site, or me buying someone else's relocatable and putting it in my rear yard.

If I sell or demolish my house and build a new house and minor dwelling (home and income) – is the interest on all my mortgages (original to buy original house & land, and new to build the new house and flat) deductible? Or just the portion to build the new home and income? What about the portion for the land?

If I sell or demolish my house and build 3 new townhouses – is the original mortgage interest (to buy the existing house) deductible or just the new mortgage to build the new houses, even though the original house is gone and my new borrowings can be used to pay off the original loan?

If the original mortgage interest is not deductible, can a portion of it for the land that the new houses are being built on deductible? Eg. I have a large old house on a large section that I bought for 1mil 100% mortgaged. If I borrow another 1mil to build a new house in the rear of my section obviously the new 1mil borrowing has deductible

interest but what about a portion of the original borrowing of 1mil that was for front house and land. Assuming the house is old and worth $0, can half the original mortgage for the land be attributed to the new build and have interest deductible? Ie. 1.5mil is interest deductible? And 0.5mil is not interest deductible?

What a headache!

Conclusion, I respect that changes needed to be done to curb house prices. However, the strategy of this government (whom I have generally supported) was to impose sudden death on those that have invested in property to provide for themselves in retirement, to better their family situation, to help their kids - or for a lot of FHB - who bought a rental property in the provinces as a way to owning their own home in the city. The no warning announcement was not appreciated and has forced many (recent) investors to sell their investments under a huge amount of stress.

For the investors with 10+ properties, they are unaffected. “I’ll just sell one and clear all my mortgages” is a common response.

All this is doing is hurting small time investors with one or two properties (often just breaking even) and tenants.

I support the government in many of their policies, but this one is just plain awful.

Regards,

From: Public Consultation
To: Policy Webmaster
Cc: Wendy Watkin; David Nind; Public Consultation
Subject: FW: [SUSPECT SPAM]Interest Deductability
Date: Wednesday, 28 July 2021 2:10:40 PM

[IN CONFIDENCE RELEASE EXTERNAL]

One for you I think??

From: s9(2)(a)
Sent: Wednesday, 28 July 2021 1:17 pm
To: Public Consultation <xxxxxxxxxxxxxxxxxx@xxx.xxxx.xx>
Subject: [SUSPECT SPAM]Interest Deductability

I am totally against this proposal as I believe this is an unfair tax treatment on individuals or families who invested in properties to cover retirement.

As Individuals you are no longer able to claim rental losses against other income, thus increasing your personal tax, and this will increase tax rates further.

I do not believe that investors should be punished and used as an excuse for increase in house prices, when demand far outweighs supply.

If everyone was to sell investment properties tomorrow, the government does not have the stock available for all those renting, or the other effect would be increasing rent prices, which would be beyond some peoples affordability.

All other things the government has tried to cool house prices, has had no effect and do not believe by introducing this, will have the outcome they predict.

Regards
s9(2)(a)
Christchurch Accountancy & Tax Services Ltd
2/480 Selwyn Street, Christchurch 8011
Mail to: PO Box 8219, Riccarton, Christchurch, 8440
s9(2)(a)
Please check out our Facebook page for updates etc

If you have received this email in error, we would appreciate it if you could notify us immediately by return email, facsimile and delete this email message. This email contains information that is confidential. If you are not the intended recipient you must not read, use, distribute or copy the contents of the email.

From: s9(2)(a)
To: Policy Webmaster
Cc: s9(2)(a)
Subject: Design of the interest limitation rule and additional bright-line rules
Date: Monday, 12 July 2021 3:55:09 PM
Attachments: Opes Partners Submission on the Interest Deductibility Tax Changes.pdf
ATT00001.txt

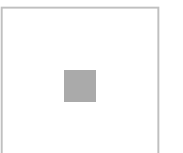
Good afternoon,

Please find attached our submission in regards to the design of the interest limitation rule and additional bright line rules.

This includes our main submission (PDF) and then a supporting Excel document.

We welcome any additional dialogue with the IRD, whether over email, phone or face to face. Please do not hesitate to contact me on s9(2)(a)

Thanks,

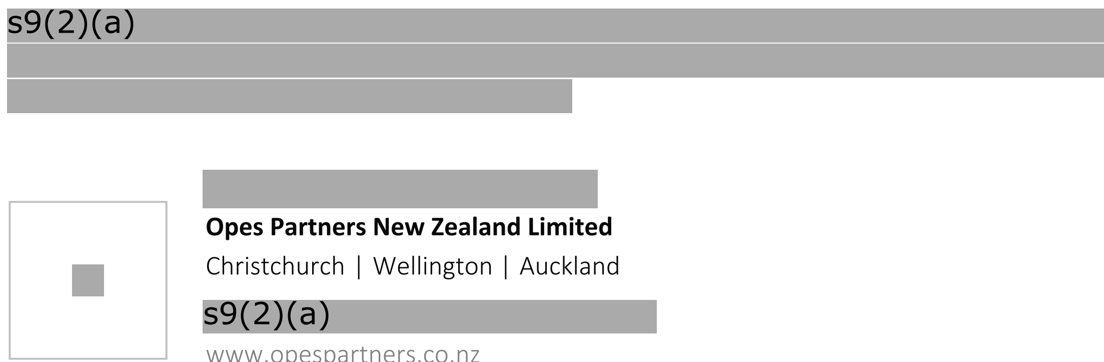


s9(2)(a)
Opes Partners New Zealand Limited
Christchurch | Wellington | Auckland
s9(2)(a)
www.opespartners.co.nz

This email and any attachments may contain confidential material and is subject to legal privilege. If you have received this email in error, please notify the sender immediately and delete this email. If you are not the intended recipient(s), you must not use, retain or disclose any information contained in this email. Any views or opinions are solely those of the sender and do not necessarily represent those of Opes Partners. Opes Partners does not guarantee that this email or any attachments are free from viruses or 100% secure.

From: s9(2)(a)
To: Policy Webmaster
Cc: s9(2)(a)
Subject: [RELEASED FROM QUARANTINE]Re: Design of the interest limitation rule and additional bright-line rules
Date: Monday, 19 July 2021 3:06:46 PM
Attachments: Opes Return on Investment Calculator V2.8.2.xlsm

Apologies, please find the updated spreadsheet attached with the correct figures.



This email and any attachments may contain confidential material and is subject to legal privilege. If you have received this email in error, please notify the sender immediately and delete this email. If you are not the intended recipient(s), you must not use, retain or disclose any information contained in this email. Any views or opinions are solely those of the sender and do not necessarily represent those of Opes Partners. Opes Partners does not guarantee that this email or any attachments are free from viruses or 100% secure.

> On 12/07/2021, at 3:51 PM, s9(2)(a) wrote:
>
> Good afternoon,
>
> Please find attached our submission in regards to the design of the interest limitation rule and additional bright line rules.
>
> This includes our main submission (PDF) and then a supporting Excel document.
>
> We welcome any additional dialogue with the IRD, whether over email, phone or face to face. Please do not hesitate to contact me on s9(2)(a)
>
> Thanks,
>

s9(2)(a)

Submission on the design of the interest limitation rule and additional bright-line rules

Submitted By Opes Partners

Introduction and Context

Opes Partners is a property investment advisory firm, which helps investors purchase New-Build properties from developers. Our submission is on both our behalf and the investors we work with who purchase New-Builds for investment purposes.

As part of this submission, we have surveyed these investors and built a cashflow model to show the impact of the government's changes on investors. This Excel spreadsheet is attached to our submission.

Key Points

- We are opposed to the proposed changes in their entirety and believe the proposals:
    - Lead to a less efficient property market
    - Unnecessarily complicate the tax system
    - Will create unintended consequences, some of which we can anticipate, such as rising rents. Others we are yet to discover.
- However, should the changes come into effect, we recommend the following:
- **[Our strongest recommendation]** 8.8 – That the IRD extends the transitional definition of a New-Build to include properties that investors bought directly from a developer and where the Code Compliance Certificate (CCC) was issued on or after **27th March 2016**
- 1.14 – That the IRD clarifies the definition of a boarding house
- 7.10 – That an uninhabitable property that an investor has renovated such that it becomes habitable is considered a New-Build
- 8.20 – That Option #2 is implemented: Early owners of New-Builds carry the exemption in perpetuity, and subsequent purchases have the exemption for a fixed period.

- 8.20 – That the IRD clarifies whether an investor whose CCC was issued before 27th March 2021 can restructure ownership to fall under the transitional New-Build definition
- 8.21 – That the length of the fixed period be 20 years
- 8.22 – That the Continued Investment Rule be abandoned
- 10.72 – That Rollover relief is implemented.

The Submission

8.8 – The Definition of Transitionary New Builds

- 1.5 of the discussion document states: *"Housing supply: The interest limitation and bright-line extension should not discourage new additions to the stock of housing."*
- Properties purchased directly from a developer that received CCC before 27th March 2021 will not be defined as New-Builds (unless classed as transitionary) as the policy currently stands.
- **This definition is likely to hinder the government's objective** of increasing the housing stock.
- At Opes Partners, all our clients have purchased New-Build properties directly from developers, which has grown New Zealand's housing supply.
- Because these investors already incorporate New-Builds in their strategy, they are the investors who are most likely to purchase New-Builds repeatedly in the future.
- However, the current definition of a New-Build means that these investors will pay more tax on the properties they already own.
- The effect is that some will not be in the financial position to purchase the same number of New-Builds they otherwise would have.
- This decreases the demand for New-Builds and means that the country's housing stock will grow more slowly than would otherwise be the case, counter to the government's objective.
- To quantify this, at a recent webinar, we asked investors the following questions:
    - Have you bought a New-Build investment property before?

- Based on these definitions, will your properties still be considered a New-Build?
- If all your properties were still considered New-Builds, how would that impact your investment decisions?

- The responses to these questions have allowed us to understand whether a change in the New-Build definition would increase the housing supply or not.

Table: Investor response to – *"Based on These Definitions Will Your Properties Still Be Considered a New-Build?"*

- This shows that the interest-deductibility change will negatively impact about half of the investors in our sample who previously purchased New-Builds.
- However, the most important statistic is whether that additional tax will discourage New-Build investment in the future:

Table: Investor response to – *"If All Your Properties Were Still Considered New Builds, How Would That Impact Your Investment Decisions?"*

s9(2)(b)(ii)

- The table shows that 54.05% of the investors who both a) purchased a New-Build before and who b) now can't claim the New-Build exemption would buy more New-Builds if the IRD granted these investor's properties the New-Build exemption.
- That's why the government should implement a broader definition of a transitionary New-Build. We suggest that any property that received its CCC after 27th March 2016 should receive the New-Build exemption.

8.8 – The Effect Of The Tax Case Study

- s9(2)(b)(ii)

s9(2)(b)(ii)

s9(2)(b)(ii)

The above graphs show the annual and cumulative cashflows for the same property before (left) and after (right) the government's tax change. The bar graph shows the yearly after-tax cashflow. The orange line shows the cumulative cashflow over time.

1.14 – The Definition of Boarding Houses

- The discussion document plans to exempt boarding houses from the tax changes. A move that we support.
- However, the discussion document does not define what a boarding house is.
- Section 66B of the Residential Tenancies Act (RTA) defines a boarding house as:

  - One or more boarding rooms along with facilities for communal use by the tenants of the boarding house; and occupied, or intended by the landlord to be occupied, by six or more tenants at a time.
- This provides broad scope for investors to claim their properties are boarding houses.
- To avoid doubt, the IRD should explicitly state the definition of a boarding house. If that is the definition used in the RTA, that should be stated. If there is another definition to be used, this needs to be clarified too.
- We believe that the definition of a Boarding House should not be so tightly defined as to discourage their formation. This is especially true since they tend to provide relatively affordable accommodation for lower-income renters.
- If the RTA definition is not used, an alternative definition could read: a residential; property that contains four bedrooms or more, where each room has a separate agreement with the landlord and tenants share communal kitchen facilities.

7.10 – Uninhabitable Properties That Have Been Renovated To Become Habitable To Be Defined As New-Builds

- We agree that the IRD should include renovated properties within the definition of New-Builds where an investor has made an uninhabitable dwelling habitable.
- If this is not included, the government runs the risk that resources are wasted. There are instances where it takes fewer resources to renovate an uninhabitable dwelling to bring it into a habitable state, rather than tearing the building down and a new one.
- For instance, building a New-Build property on a vacant site may cost $250,000 - $350,000. However, a renovation may only cost $50,000 - $100,000.
- This is important because one of the biggest inhibitors to housing supply growth are:
  - Cost and availability of building materials
  - Availability of labour
- It is not in the government’s interests to have this labour and materials ties up unnecessarily.
- Therefore, encouraging investors to remediate uninhabitable properties allows scarce labour and building materials to build new houses.

    - This efficiency helps achieve the government's priorities in both 1.5 (housing supply) and in 1.2 (a competitive housing market that can respond to changes).
- It is unacceptable that the government could introduce low-quality regulation because they could not find a convenient administrative method to track the policy.
- Because of this, we propose an approach where before embarking on a renovation, an investor must engage two professionals to confirm the property is uninhabitable.
    - First, a healthy homes assessor, showing that the property does not currently meet the government's Healthy Homes Standards.
    - Secondly, a registered valuer (or similar) to make a qualitative assessment of the property.
    - The investor would re-engage both professionals once renovations have finished, confirming that the property now meets Healthy Homes Standards and that the dwelling is now habitable.
- This would not be a perfect solution, and the IRD would need to complete further consultation. But, there is more to be lost by not implementing the policy than implementing an imperfect solution.

8.20 – That Option #2 be implemented: Early owners of New-Builds carry the exemption in perpetuity and subsequent purchasers to have the exemption for a fixed period.

- For investors to have the confidence to purchase a New-Build investment property, they need to believe they could sell it if required.
- One critical concern investors raised with Opes Partners' financial advisers before the discussion document was released was whether investors could pass interest deductibility on to another investor. And if not, whether this would compromise their ability to sell the property in future.
- To quantify this, at a recent webinar, we asked investors the following question:

Table: Investor response to – *"If you couldn't pass on interest deductibility to the next buyer, how would that impact your property investment decisions?"*

s9(2)(b)(ii)

- The poll clearly shows that more than half of investors stated that they'd buy fewer New-Builds if they could not pass on interest deductibility to the next buyer.
- The government's goal (1.5) is that the policy *"should not discourage new additions to the stock of housing".* With this in mind, the best option to achieve this aim is the second bullet point in 8.20. Early owners receive the exemption in perpetuity, and Subsequent purchasers may claim the exemption for a fixed period.
- Increasing demand for New-Builds in this way would ensure that more properties are added to the housing stock than would otherwise be the case.

8.20 – That the IRD clarifies whether an investor whose CCC was issued before 27th March 2021 can restructure ownership to fall under the definition of a transitionary New-Build

- The investors we work with almost always purchase properties off-the-plans, which may be 6-24 months before the property is built, CCC is issued, and the property settles.
- Many investors that we work with signed contracts for properties that received CCC within the six months to 27th March 2021. Therefore, these properties will not be captured under the definition of a New-Build as currently stated within the discussion document. This is because the contracts were also signed before 27th March 2021.
- However, if they had signed a sale and purchase agreement after 27th March 2021 for the same property, the IRD would capture them under the transitionary New-Build definition.

- Under the current definitions, the investors can currently sell the property to another investor who could then claim the New-Build exemption. However, these investors aren't able to claim the exemption themselves.
- This is a distortion created by the policy that doesn't make sense.
- These investors have queried whether they can transfer the property via a Sale and Purchase agreement to an entity they control, e.g. a trust or Look-Through-Company. In this case, if they transfer the property's ownership, they would potentially come under the definition of a transitionary New-Build.
- We seek clarification from the IRD whether this is a legitimate way an investor can be captured under the definition, or whether this would be considered tax avoidance.
    - If our suggestion to 8.8 – where transitionary New-Builds are defined as properties with CCC issuance after **27th March 2016**– is accepted, this clarification would not be necessary.

8.21 – That the length of the fixed period be 20 years

- To achieve the government's goal to ensure there aren't disincentives to grow the housing supply, we believe that the fixed period for a New-Build should be 20 years.
    - This is in addition to our preferred option of Early owners receiving the exemption in perpetuity.

8.22 – That the Continued Investment Rule be abandoned

- In 1.5, the government states that *"the rules should not be unduly complex so that they raise unnecessary administrative and compliance costs."*
- We understand the academic reasons for the Continued-Investment-Rule. However, believe that the rule is unnecessarily complex and creates unintended negative consequences.
- For instance, an investor would be unable to purchase a New-Build to rent, live in it for a period and then rent it again.
- Therefore, investors would have an incentive not to live in their own houses even if it made sense for their personal situation for a time.

- The rule also negatively impacts First Home Buyers. Many first home buyers are unable to purchase a property where they prefer to live. A legitimate path to first home ownership is to buy an affordable New-Build using their KiwiSaver and the First Home Grant. They may then live in the property for a time and then turn it into a rental once minimum occupancy times (for KiwiSaver and the First Home Grant) have lapsed.
- In the absence of the Continued Investment Rule, the tax rules incentivise first home buyers to purchase new builds, growing the housing stock. With the Continued Investment Rule, first home buyers are disadvantaged compared to investors, who don't have the need to live in their properties.
- Because of this, we believe there is both a *Housing Supply* and *Complexity of the Tax System* argument for abandoning the rule.

10 – That Rollover Relief Is Implemented.

- We support Rollover relief and believe it fixes the problem that properties settled into inappropriate structures can't be appropriately restructured without triggering the Bright Line Test.

Conclusion

Although we remain opposed to the overarching change being suggested, we believe the above amendments will improve the effectiveness of the tax changes in achieving the government's goals.

We welcome any additional dialogue with the IRD, whether to discuss how the tax changes affect individual property investors or the details of the attached Excel model. We would also be willing to provide an unlocked version for the IRD's inspection.

About Opes Partners

This submission has been prepared by s9(2)(a) from Opes Partners.

s9(2)(b)(ii)

We are the proud publishers of the Property Academy Podcast, NZ's #1 business podcast, and the producers of The Deal – NZ's first reality TV-style show dedicated to property investment. The company also publishes Informed Investor magazine (formerly JUNO Investing Magazine), NZ's only magazine covering a broad investment topics.