

15 July, 2015

Scott Figenshow
Director
Community Housing Aotearoa
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Dear Scott

CURRENT LEGISLATION - INCOME TAX ISSUES

You have asked us to provide you with a brief summary of the current income tax legislation that applies to the community housing sector.

You have requested this summary because there have been various changes that have been proposed that effect your members. However, the application of the changes has been substantially delayed and in some cases further amending legislation has been introduced to defer the application.

Brief Background

Following the Queenstown Lakes Community Housing Trust ("*QLCHT*") High Court decision the application of the income tax exemption for charitable entities in the community housing sector was restricted.

At the same time legislation was being introduced to tax the net assets of entities that were de-registered by Charities Services where those assets were not distributed within 12 months of de-registration.

Both of these matters presented significant issues for the community housing sector.

As part of providing a solution to these issues for the community housing sector we understand that it was intended by officials that a new income tax exemption be implemented for Community Housing Entities and that Charities Services would deregister community housing providers before the application date of the new tax rules for de-registered charities (being 1 April, 2015).

The regulations needed to support the Community Housing Entity income tax exemption were significantly delayed meaning that community housing providers could not assess their ability to apply the new exemption. The government has announced that these regulations will be replaced by a new test.

The delay in being able to apply the Community Housing Entity exemption has also resulted in Charities Services' project being delayed and the application date of the new tax on retained assets of de-registered charities being deferred for community housing providers.



Existing Legislation – currently in force

Income tax exemption

Section CW 42B of the Income Tax Act 2007 – Community Housing Entity exemption (see attached)

Enacted by section 32 of the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014

Effective 14 April 2014

Section CW 42B(3) excludes application of the Community Housing Entity exemption to organisations where less than 85% of clients / beneficiaries are described in regulations. These regulations have not been made by Cabinet.

Tax on retained assets of deregistered charities

Section HR 12 of the Income Tax Act 2007 - Non-Exempt Charities: Taxation of Tax-Exempt Accumulation (see attached)

Enacted by section 129(1) of the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014

Effective 14 April 2014 for voluntary deregistrations and 1 April 2015 for deregistrations made by Charities Services

Bills – proposed changes currently before parliament

Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill 2015

Clause 264 of the bill amends section 129 of the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 to provide for the deferral of the application of the new tax on net assets for deregistered charities who provide housing as their main or primary purpose. The deferral is to 1 April 2017.

CHA made a submission to the Finance and Expenditure select committee earlier this year on this clause.

Other Announcements – media release only, no draft legislation currently available

As discussed with you, the media release by the Ministers for Social Housing and Revenue on 1 July, 2015 announces changes to the criteria for income tax exemption.

There has only been limited details released. The media statement mentions Kiwisaver Home Start criteria being applied for the income tax exemption for entities involved in providing community housing (i.e. income threshold of \$80,000 for an individual and \$120,000 for a couple with no asset test for first home buyers).

The media statement confirms that “amending legislation will be introduced soon” and will apply from 14 April 2014.

It is possible that the amending legislation will be included in a Supplementary Order Paper relating to the Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill 2015. We anticipate that the changes will be made by amending section CW 42B(3) and replacing the criteria based on regulations (that have not been forthcoming) with the Kiwisaver Home Start criteria.



Please contact myself or Aran Bailey on (03) 474-2822 if you would like to discuss anything further. As discussed with Aran, once the draft amending legislation is released we will contact you to discuss any issues with the legislation and the preparation of a paper for your membership to consider in relation to their structuring options.

Yours sincerely
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A handwritten signature in black ink, appearing to read "S R Thompson".

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