

LAND SALES—WHETHER INCOME TAX EXEMPTIONS FOR FARM LAND APPLY TO NON-NATURAL PERSONS

PUBLIC RULING - BR Pub 04/04

Note (not part of ruling): This ruling is essentially the same as public ruling BR Pub 99/4, published in *Tax Information Bulletin* Vol 11, No 7 (August 1999), but this ruling is to apply for an indefinite period from 1 June 2004. BR Pub 99/4 expires on 31 May 2004.

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of section CD 1(4)(a)(i) and section CD 1(7)(a).

The Arrangement to which this Ruling applies

The Arrangement is the sale or other disposition of land by a non-natural person where the land had been acquired or used for the purposes of a farming or agricultural business carried on by that person and where the sale or disposition would otherwise be subject to section CD 1(2)(e), or section CD 1(2)(f) and (g).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The words “the taxpayer’s spouse” in section CD 1(4)(a)(i) and section CD 1(7)(a) do not restrict the meaning of “taxpayer” to natural persons. “Taxpayer” in section CD 1(4)(a)(i) and section CD 1(7)(a) includes non-natural persons such as companies and trusts. Accordingly, the exemptions provided by section CD 1(4)(a)(i) and section CD 1(7)(a) apply to a taxpayer that is a non-natural person if the other requirements of the exemptions are met.

The period for which this Ruling applies

This Ruling will apply from 1 June 2004 for an indefinite period.

This Ruling is signed by me on the 10th day of May 2004.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 04/04

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in public ruling BR Pub 04/04 (“the Ruling”).

Background

Amounts derived from certain sales or other dispositions of land that would otherwise be gross income under section CD 1(2), are subject to a number of exemptions.

This Ruling considers whether the exemptions contained in section CD 1(4)(a)(i) and section CD 1(7)(a), that are available in respect of sales of farm or agricultural land in certain circumstances, apply where the taxpayer disposing of the land is not a natural person.

Legislation

Section CD 1(4) states:

Subsection (2)(e) shall not apply to any amount derived from the sale or other disposition of any land in any case where—

- (a) The land was acquired by the taxpayer, and used or intended to be used—
 - (i) By the taxpayer, or by the taxpayer’s spouse, or by both of them, primarily and principally for the purposes of a farming or agricultural business carried on by the taxpayer, or the taxpayer’s spouse, or both of them; or....

Section CD 1(7) states:

Subsection (2)(f) and (g) shall not apply to any amount derived from the sale or other disposition of any land in any case where—

- (a) That land is a lot resulting from the division into 2 or more lots of a larger area of land which, immediately before that division, was occupied or used by the taxpayer, or by the taxpayer’s spouse, or by both of them, primarily and principally for the purposes of a farming or agricultural business carried on by the taxpayer, or the taxpayer’s spouse, or both of them; and
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Application of the Legislation

The meaning of the words “by the taxpayer, or by the taxpayer’s spouse, or by both of them” in section CD 1(4)(a)(i) and section CD 1(7)(a) does not require the taxpayer to be a natural person. On a literal interpretation, by considering each alternative in section CD 1(4)(a) separately, a non-natural person taxpayer, e.g. a company, could

clearly come within the words: “The land was acquired by the *taxpayer*, and used ... by the *taxpayer*... principally for the purposes of a farming or agricultural business carried on by the *taxpayer*”.

Alternatively however, it is possible for the reference to the “taxpayer’s spouse” to be interpreted as colouring the word “taxpayer” and limiting its meaning to natural persons.

It is the Commissioner’s view that “taxpayer” as used in the exemptions is not restricted to natural persons. This interpretation is supported by the ordinary meaning of the words, and the legislative history of the exemptions. Prior to 1983, the exemptions only referred to “taxpayer”, and it was clear that a company or other non-natural persons could come within the exemptions. In 1983, the exemptions were amended to include taxpayers’ spouses. The intention at that stage was to extend the exemptions, rather than to narrow them to natural persons.