Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Income tax – proceeds of sale

Decision date | Rā o te Whakatau: 24 April 2026

Issue date | Rā Tuku: 1 October 2026

TDS 26/18

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This document is a summary of the original technical decision so it may not contain all the facts or assumptions relevant to that decision.

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Subjects | Kaupapa

This item summarises a private ruling that considered whether the proceeds from an insurance company's sale of properties are income to the company.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. The Applicant is an insurance company that is part of a group of companies.
2. It owns investment properties that it leases to the wider group to use for the group's business.
3. The purpose of acquiring the properties was to hold them for the group to use over the long term.
4. The Applicant proposes to sell the properties.

Issues | Take

5. The main issues considered in this ruling were whether the proceeds from the sale of the properties will be income to the Applicant under s CB 1 or s CB 6.

Decisions | Whakatau

6. The Tax Counsel Office (TCO) concluded that s CB 1 and s CB 6 do not apply to the proceeds from the sale of the properties.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Income under s CB 1

7. Section CB 1 provides that an amount that a person derives from a business is income of the person. However, this does not apply to an amount of a capital nature.

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8. To be income under s CB 1, an amount must be derived from the current operations of the business carried on by a taxpayer. The question is whether the proceeds from the sale of the properties are part of the carrying on of the Applicant's insurance business or are simply a realisation of an investment.

9. From case law,[1] TCO considered that the following factors are relevant to determining whether proceeds from the sale of an investment are income of a company that is an insurance company:

   - whether the company intended to hold the investment over the long term, where relevant factors to consider include the reasons for the original acquisition and the reasons for disposal;
   - the scale of operations and the volume of similar transactions that the company has undertaken;
   - the taxpayer's degree of involvement in actively monitoring the investment;
   - the degree of separation between the investment in question and the taxpayer's other business investments; and
   - the source of the funds that the taxpayer used to acquire the investment – and specifically for an insurance company, whether the funds are policyholder funds.

10. Based on the information provided in the ruling application, TCO determined that the Applicant held the properties as capital assets and not part of its insurance business for these reasons:

    - The group's board made the decisions to purchase the properties and to sell the properties. The Applicant had not made these decisions as part of running the insurance business.
    - The rationale for purchasing the properties was to support the wider group. It was never intended to cover policyholder claims and the properties never formed part of the Applicant's insurance business.
    - The Applicant did not acquire the properties using policyholder funds.
    - The Applicant held the properties for long-term use.

[1] *State Insurance Office v Commissioner of Inland Revenue* (1990) 12 NZTC 7,035; *The Chamber of Manufactures Insurance Ltd v FCT* 84 ATC 4,315; *National Insurance Company of New Zealand v CIR* (1997) 18 NZTC 13,489 (HC), (1999) 19 NZTC 15,135 (CA); *Rangatira Ltd v Commissioner of Inland Revenue* (1994) NZTC 11,197 (HC), (1995) 17 NZTC 12,182 (CA), (1996) 17 NZTC 12,727 (PC); *Canada Permanent Mortgage Corporation v MNR* 71 DTC 5,409 (FCTD); *AGC (Investments) Ltd v FCT* 92 ATC 4,239 (FC); *Colonial Mutual Life Assurance Society Ltd v FCT* (1946) 73 CLR 604.

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- The Applicant did not actively monitor properties in a way that would suggest that the properties were held on revenue account and that the Applicant was trading in the properties in a speculative manner.
- The Applicant had sufficient liquid assets to meet policyholder claims without relying on the properties.

11. Therefore, TCO concluded that the amount derived from the sale of the properties is capital in nature and not income under s CB 1.

Issue 2 | Take tuarua: Income under s CB 6

12. Section CB 6 provides that an amount from disposing of land is income of the person if they acquired the land for one or more purposes or intentions that included disposing of the land.

13. The purpose or intention of disposal in s CB 6 need not be the person's only purpose or intention. Nor does it need to be the person's dominant purpose or intention. Section CB 6 only requires that the person has a purpose or intention of disposal, even if the person also has other purposes or intentions.[2]

14. It is the taxpayer's purpose or intention at the time they acquired the land that is relevant in the application of s CB 6.[3]

15. The leading case on the courts' approach to determining a taxpayer's purpose or intention is *CIR v National Distributors* (1989) 11 NZTC 6,346 (CA). The purpose or intention is ascertained on a subjective basis through an inquiry as to the taxpayer's state of mind at the time of acquisition. However, they can test the taxpayer's statement as to their intention against the objective evidence. The following principles have been established to determine a taxpayer's intention or purpose:

- the nature of the asset;
- the vocation of the taxpayer;
- the circumstances of the purchase;
- the number of similar transactions; and
- the length of time that the taxpayer held the property and the circumstances in which they used and disposed of the asset.

[2] *CIR v Boanas* (2008) 23 NZTC 22,046 (HC) at [57].

[3] *Anzamco Limited (in Liquidation) v CIR* (1983) 6 NZTC 61,522 (HC); *Jurgens & Doyle v CIR* (1990) 12 NZTC 7,074 (HC) at 7,080–7,081.

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16. TCO considered the Applicant did not have a purpose or intention to dispose of the properties at the time of acquisition for these reasons:

    - The Applicant acquired the properties to deploy surplus capital within the wider group.
    - The Applicant's intention at the time of acquisition was to lease the properties to the wider group. It held the properties as capital assets and those properties formed part of the group's operating structure.
    - The Applicant carries on an insurance business and holds properties from which it derives rental income. There is no evidence to indicate that the Applicant is in the business of trading in land or has formed a pattern of trading in land.
    - The Applicant retained the properties for a number of years before proposing to sell them.

17. Therefore, TCO concluded that the proceeds from the sale of the properties will not be income under s CB 6.

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