



12 February 2021

Technical Leadership and Advice
Supporting Individuals and Small Business
Individuals and Intermediaries
Australian Taxation Office
By email to: michelle.gainford@ato.gov.au

Dear Michelle,

Draft Law Companion Ruling (LCR) Income tax: expense associated with holding vacant land

On behalf of the Institute of Public Accountants I submit our comments on the *Draft Law Companion Ruling – Income Tax: expenses associated with holding vacant land*.

In the 2018-19 Budget, the Government announced that it would improve the integrity of the tax system by denying certain deductions for expenses associated with holding vacant land. This is to address integrity concerns that deductions are being improperly claimed for holding vacant land where the land is not genuinely held for the purpose of earning assessable income.

The legislation to enact the new integrity measures associated with holding vacant land were introduced by Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.1) Bill 2019 which received Royal Assent on 28 October 2019. What is clear is the breadth and width of the legislation goes way beyond what most tax professionals would have expected, and therefore it is important that any guidance developed explains the broader implications of the new rules in a succinct way, to assist tax professionals understanding of how to navigate these new provisions.

Anecdotally we believe a lot of professionals have not fully understood these new provisions as the term “vacant land” congers an image that it will only apply to land without any structures on it, which is unfortunately not the case. The new law is likely to have far-reaching consequences and catches taxpayers and circumstances which were not the obvious target when the changes were initially announced.

We therefore welcome the opportunity to provide feedback and make the following comments for consideration in developing guidance:

- The guidance does not specifically address what happens to any disallowed deductions. Some reference to capital gains tax cost base provisions would be useful. Disallowed deductions will form part of the cost base of the vacant land for capital gains tax (“CGT”) purposes. There is also an issue if you acquired the

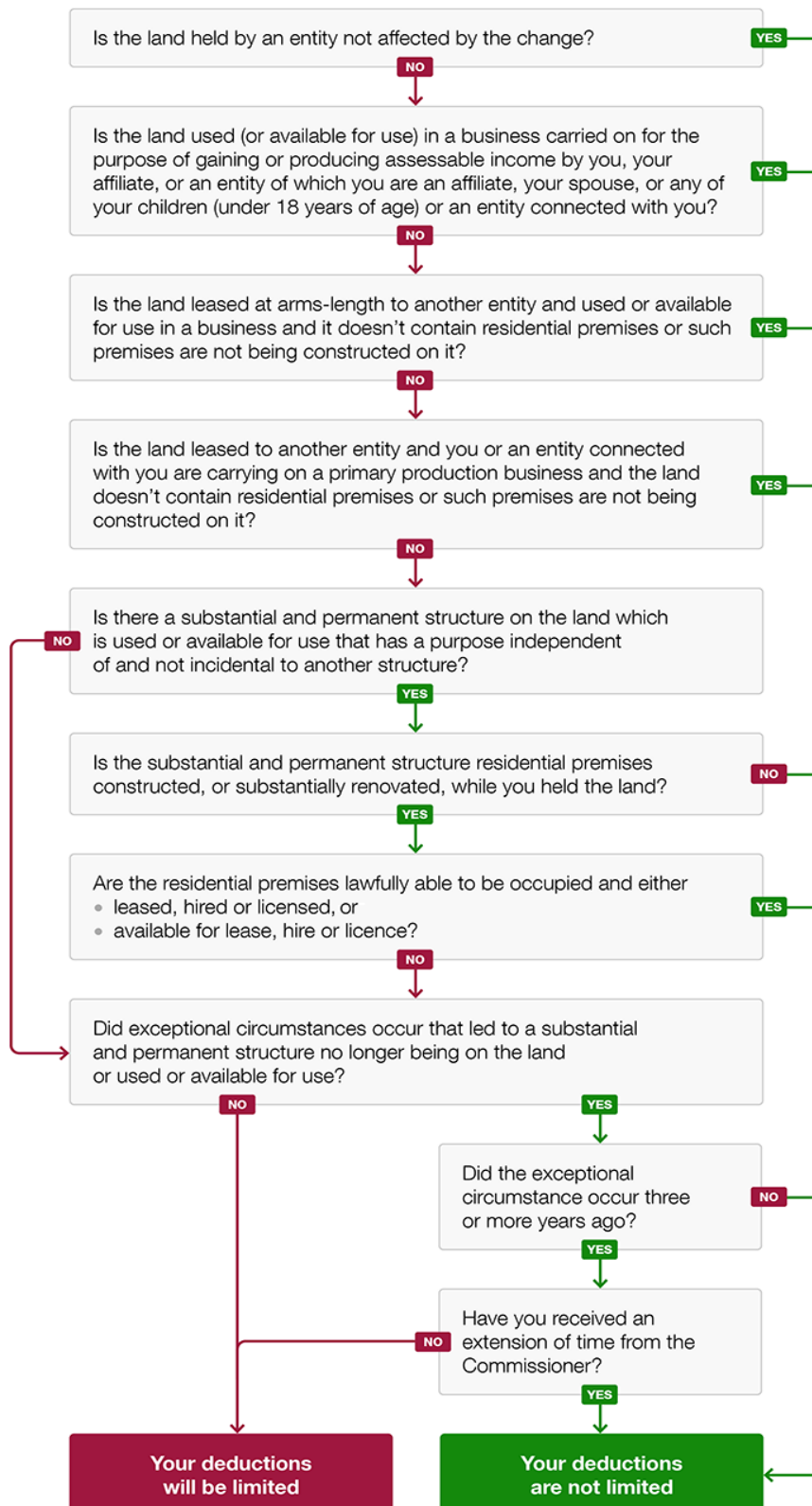


property under a contract entered into before 20 August 1991. Given that these provisions apply to all properties regardless of acquisition date, reference to this is considered important.

The ATO website guidance on CGT states the following:

“Third element: costs of owning the CGT asset - The costs of owning an asset include rates, land taxes, repairs and insurance premiums. You also include any non-deductible interest on loans used to finance. You don't include these costs if you acquired the asset before 21 August 1991”.

- The ATO website guidance on deductions for vacant land has an excellent flowchart which is reproduced below. By including this within the Law Companion Ruling, we believe it will benefit the interpretation and understanding of these provisions. There are many layers in the vacant land measures that require a stepped approach. The flowchart in a succinct way guides the reader through some of these layers. Variables such as: which entities are affected? Is the land used in the carrying on of a business? Is there a substantial and permanent structure on the land? Are we dealing with residential premises and exceptional circumstances? Its inclusion will serve as a holistic overview of the application of section 26-102 and a roadmap to navigate to the appropriate aspect of the rules depending on specific circumstances.





- The ATO's practical compliance approach dealing with "in use or available for use" is appreciated. The acceptance that for established premises they would generally be considered to be "in use or available for use" if they are able to be occupied, unless there has been a notice issued by the council or other relevant body deeming the premises unsafe to occupy, is comforting. This recognises that there will naturally be short periods of time when residential premises are unavailable because it is necessary for the owner to undertake minor maintenance and repairs or for short breaks between tenancies etc. Confirmation that normal short absences will not trigger the application of subsection 26-102(1) is reassuring as it be otherwise be considered an overreach of the integrity measure.
- With respect to the interaction of Taxation Ruling TR 2004/4 and this Ruling, para 21 confirms that subsection 26-102(1) will not limit or deny interest deductions following the sale of land if the interest was deductible immediately prior to the sale. Some examples of when subsection 26-102 will and will not limit or deny deductions is warranted for guidance and interpretation purposes.
- The ATO's practical compliance approach dealing with land that is held under separate multiple titles, is also comforting. This recognises that it is 'possible that the land under some titles will be used in carrying on a business while others are not'.
- There are scenarios where vacant land derives assessable income, but Section 26-102 will deny holding cost deductions. Instances where there is no permanent and substantial structure or where the vacant land is made available to an entity not carrying on a business for example. The inclusion of a few examples illustrating this point would be helpful.

If you would like to discuss our comments, please do not hesitate to contact me.

Yours sincerely

Tony Greco

General Manager, Technical Policy

Institute of Public Accountants

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