THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELCS:EEsh1707431

13 May 2019

Mr Michael Pini
Tax Counsel Network
Australian Taxation Office
GPO Box 9990
SYDNEY NSW 2001

By email: Michael.Pini@ato.gov.au

Dear Mr Pini,

Practical Compliance Guideline 2019/D1 – Retirement villages

Thank you for the opportunity to comment on this draft Practical Compliance Guideline. The Law Society supports the proposed approach taken in the draft Guideline.

The draft Guideline applies to the head company of a group of retirement village operators when a subsidiary is leaving the group ("leaving entity"). In that event, subsection 711-45 of the *Income Tax Assessment Act 1997* requires the head company to calculate the capital gain or loss that applies upon the leaving entity's disposal, using the exit allocable cost amount ("ACA") process.

Payments made by the leaving entity to discharge a lease surrender liability or an increase entry price liability to an exiting resident can represent a future tax deduction for the leaving entity. If these liabilities are considered to be accounting liabilities (in accordance with the entity's accounting principles for tax cost setting) they must be taken into account by the head company for the purpose of the exit ACA process.[1]

The draft Guideline confirms that in this context subsection 711-45(5) applies and, for the purpose of the ACA process, adjustments should be made concerning the change in value of the lease surrender liability or increase entry price liability at a later time than under accounting principles. In our view, this is a suitable approach.

If you have any further questions in relation to this letter, please contact Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,

Elizabeth Espinosa
President

[1] *Income Tax Assessment Act 1997* subs 711-45(1).

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