

ADLS/REINZ Agreement for Sale and Purchase of Real Estate, Eleventh Edition 2022 (3) – Tax Purchase Price Allocation Changes - Addendum

This addendum sets out further terms and a schedule concerning the allocation of the purchase price for tax purposes. As set out in further detail in this document, key aspects of this addendum are:

1. Up front instructions regarding use of the addendum.
2. An interpretation provision regarding terms used in the Income Tax Act 2007 and definitions of “Agreed allocation”, “Assets”, “Tax asset classes” and “Tax position”.
3. Clause 21.0 dealing with purchase price allocation (which may be relevant not only for income tax purposes but also for GST purposes).
4. Schedule 4 that can be used by the parties to record an agreed allocation of the purchase price, if such an allocation is agreed at the date of the agreement (and again this may be relevant not only for income tax purposes but also for GST purposes).

**ADDENDUM TO AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE
FURTHER TERMS OF SALE AND SCHEDULE – TAX PURCHASE PRICE ALLOCATION**

This addendum provides for the parties to deal with the allocation, for tax purposes, of the purchase price under the agreement to which this addendum relates. The addendum should be added to relevant agreements entered into on or after 1 July 2021.

This addendum does not need to be used where:

- (a) the sale is of residential land (as defined in the Income Tax Act 2007) and associated chattels only, and the purchase price (inclusive of GST, if any) is less than \$7,500,000; or
- (b) the sale is not, or is not limited to, residential land and associated chattels, and the purchase price (inclusive of GST, if any) is less than \$1,000,000;

and also does not need to be used in various other circumstances.

Before signing the agreement, the parties should seek professional advice regarding the tax treatment of the transaction.

VENDOR:

PURCHASER:

PROPERTY ADDRESS:

INSTRUCTIONS

If the parties have agreed an allocation of the purchase price to the assets or classes of asset included in the transaction, use Schedule 4 to record the agreed allocation. Clause 21.2 will then apply to the agreed allocation. This is the recommended and preferred approach.

If the parties do not agree an allocation on or before the date of the agreement and the default purchase price allocation rules under section GC 21 of the Income Tax Act 2007 would apply in the absence of an agreed allocation, then clause 21.3 will require an agreed allocation. That agreed allocation will need to be determined either by the parties or by a suitably qualified third party expert.

FURTHER TERMS OF SALE

The following Further Terms of Sale are added to, and form part of, the agreement to which this addendum relates:

21.0 Purchase Price Allocation

Definitions

21.1 In this clause 21 and in Schedule 4:

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined in the agreement have the same meanings ascribed to those words and phrases in the GST Act and the Income Tax Act 2007.

- (2) *“Agreed allocation” means an allocation of the purchase price to the assets, or to classes of asset included in the assets, that is agreed by the parties and recorded in writing, using Schedule 4 or otherwise, and includes an allocation agreed by the parties in accordance with clause 21.4.*
- (3) *“Assets” means the property or assets comprising the property and any chattels and other assets included in the transaction described in this agreement.*
- (4) *“Tax asset classes” means the following classes of purchased property referred to in sections GC 20(1)(a) and GC 21(1)(a) of the Income Tax Act 2007:*
- (a) *trading stock other than timber or the right to take timber (which includes land whose disposal would produce income for the relevant party under any of sections CB 6A to CB 15 and CZ 39 of the Income Tax Act 2007);*
 - (b) *timber or the right to take timber;*
 - (c) *depreciable property other than buildings;*
 - (d) *buildings that are depreciable property;*
 - (e) *financial arrangements; and*
 - (f) *property for which the disposal does not give rise to assessable income for the vendor or deductions for the purchaser or (if applicable) purchaser’s nominee.*
- (5) *“Tax position”, in relation to any person, includes the person’s tax position for income tax purposes and for GST purposes (as applicable) and their completion of any related tax returns and other documents.*

Effect of agreed allocation

21.2 In relation to any agreed allocation, each party confirms and agrees that:

- (1) *the agreed allocation allocates the purchase price, or is sufficient to determine the allocation of the purchase price, to each tax asset class included in the transaction for the party; and*
- (2) *the agreed allocation reflects the relative market value of each tax asset class included in the transaction, proportional to the other tax asset class or classes included in the transaction, as at the date of this agreement (but this clause 21.2(2) does not apply if and to the extent that the tax asset class is, or includes, low value depreciable property to which section GC 20(3) of the Income Tax Act 2007 applies); and*
- (3) *the party must determine their tax position in a manner consistent with the agreed allocation.*

Requirement to agree allocation

21.3 If:

- (1) *there is no agreed allocation as at the date of this agreement; and*
- (2) *without an agreed allocation, the purchase price allocation rules under section GC 21 of the Income Tax Act 2007 would apply; and*

- (3) *for the purposes of that section, in relation to each of the vendor and the purchaser (or, if applicable, purchaser's nominee), the transaction includes two or more tax asset classes for which the relevant party uses different income tax treatments,*

then the parties must agree an allocation of the purchase price in accordance with clause 21.4.

21.4 *If this clause 21.4 applies (in accordance with clause 21.3):*

- (1) *the parties must agree and record in writing an allocation of the purchase price, which shall be an agreed allocation to which clause 21.2 applies, by the settlement date or as soon as practicable after the settlement date, but no later than 60 working days after that date;*
- (2) *the parties must not notify any allocation of the purchase price to the Commissioner, and must not file any return of income in relation to their tax position for any of the assets included in the transaction, until there is an agreed allocation;*
- (3) *the agreed allocation will be determined either by the parties or by an experienced registered valuer or other suitably-qualified third party expert ("expert") appointed in accordance with clause 21.4(5);*
- (4) *to facilitate the parties' determination of the agreed allocation:*
- (a) *if neither party has proposed an allocation as at the date of this agreement, the vendor must propose an allocation to the purchaser by no later than 5 working days after the date of this agreement; and*
- (b) *following the proposal of an allocation by either party, the parties must use reasonable endeavours to determine the agreed allocation; and*
- (5) *if the agreed allocation has not been determined by the parties by the settlement date, or the parties have agreed to refer the matter to an expert:*
- (a) *the agreed allocation will be determined by an expert, and the parties will be deemed to have agreed to that allocation;*
- (b) *the parties must use all reasonable endeavours to appoint, and refer the matter to, an agreed expert by no later than 5 working days after the settlement date;*
- (c) *if no agreed expert has been appointed within that timeframe, the appointment will be made, on the application of both parties or either party no later than 10 working days after the settlement date, by the President for the time being of the Auckland District Law Society;*
- (d) *if an expert is appointed, the parties must co-operate with and promptly provide any information or documents required by the expert and the expert's costs will be met equally by the parties, unless the expert determines otherwise; and*
- (e) *where a determination is made by the expert, the expert shall not be liable to either party for costs or losses that either party may claim to have suffered in respect of that determination.*

**Adjustments and other matters**

21.5 *If there is any adjustment to the purchase price after the parties have an agreed allocation, that agreed allocation will be amended as follows and clause 21.2 will apply to the amended allocation:*

- (1) *if the adjustment relates to one asset or class of asset, the adjustment will be made to the amount allocated to that asset or class of asset; and*
- (2) *if the adjustment relates to all or any two or more assets or classes of asset, a pro rata adjustment will be made to the amounts allocated to the relevant assets or classes of asset.*

21.6 *For the purposes of this clause 21.0 and Schedule 4:*

- (1) *if the total consideration for the assets includes any consideration in addition to the purchase price, references to the purchase price are to be read as references to the total consideration; and*
- (2) *where the purchaser directs the vendor to transfer the assets to a nominee, the purchaser must ensure that the nominee complies with the provisions of this clause 21.0 as if the nominee were a party to this agreement.*

SCHEDULE

The following schedule is added to, and forms part of, the agreement to which this addendum relates:



SCHEDULE 4
(Agreed Purchase Price Allocation – see clause 21.2)

The table in this Schedule may be used by the parties for the purpose of recording an agreed allocation of the purchase price to the assets and/or classes of asset included in the transaction evidenced by the agreement, for income tax and/or GST purposes.

The asset/asset class description for allocating the purchase price (e.g. “land, building, fit out/chattels”, or “farm, farm equipment, dwelling/curtilage, chattels”, or “land, timber”) will depend upon the nature of the assets included in the transaction and the purpose(s) of the purchase price allocation. For income tax purposes, if the assets included in the transaction include two or more tax asset classes for either party, that party should ensure that the purchase price allocation in the table is sufficient to determine the amount of the purchase price allocated to each tax asset class.

If the purchase price on the front page of the agreement is “plus GST (if any)”, the amounts in the table are “plus GST (if any)” unless otherwise expressly stated. If the purchase price on the front page is “inclusive of GST (if any)”, the amounts in the table are “inclusive of GST (if any)” unless otherwise expressly stated.

Description of Asset/Asset Class	Amount Allocated
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
Total amount	\$

WARNING: If the parties do not agree an allocation of the purchase price to the assets and/or classes of asset included in the transaction on or before the date of the agreement, as provided for in this Schedule, an agreed allocation determined by the parties or a third party expert may be required under clauses 21.3 and 21.4.