

New Tax Legislation and The Bright-Line Test

As you may be aware new tax laws (**New Tax Legislation**) came into force on 1 October 2015 which will affect contracts for the sale and purchase of land entered into on or after 1 October 2015.

The object of the New Tax Legislation is initially to obtain information for the Inland Revenue Department on the persons/entities buying and selling property and their tax status and in the future to capture tax on gains made from the disposal of residential land within two years of purchase by applying what will be a “bright-line test”.

Bright-Line Test

The result of the bright-line test is that income tax may be required to be paid on any gains made from the disposal of land acquired within the preceding two year period (subject to some exemptions). The tax required to be paid will be at the seller’s marginal tax rate.

The two year period will be determined by the date the transfer of the title to the land is **registered** into the name of the purchaser (**Acquisition Date**) and the date the agreement for sale and purchase for the sale of the land is entered into (**Disposal Date**).

If an agreement is entered into for the sale of the land by the purchaser before the title to the land has been registered into the name of the purchaser (meaning the Disposal Date is before the Acquisition Date) then the acquisition date in that situation will be the date of the agreement for sale and purchase for the purchase of the land.

If the period between the Acquisition Date and Disposal Date is less than two years and you do not qualify under one of the exemptions, you will be required to pay income tax on any gains made.

Residential land will be defined as land that has a dwelling on it, land which the owner has an arrangement to erect a dwelling on or bare land that is capable of having a dwelling erected on it.

Exemptions are proposed to be:

- disposal of land that is the main home of the seller
- disposal of inherited property, and
- a transfer under a relationship property agreement

by individuals.

Note: you can only use the “main home” exemption twice within the two year period.

Tax Statement

A Tax Statement will need to be completed by buyers and sellers of **all** land where the agreement for sale and purchase is entered into on or after 1 October 2015.

Although the New Tax Legislation does not apply to commercial property, it appears from the Tax Statement that buyers and sellers of commercial property will also need to complete the Tax Statement.

You do not need to complete the Tax Statement if the transaction relates to Maori Land (as defined in the Te Ture Whenua Maori Act) or is part of a Treaty of Waitangi settlement process or in respect of any contract for the sale and purchase of land entered into before 1 October 2015 **if the transfer of the title to the property will be registered on or before 1 April 2016.**

All buyers and sellers of land must provide their IRD number except if they qualify for one of the exemptions, details of which are set out in the Notes attached to the Tax Statement.

Note: The exemptions do not apply to Trusts or Companies and these entities must provide their IRD numbers.

If you are a tax resident in another jurisdiction, you will, in addition to providing a New Zealand IRD number, be required to provide the equivalent of your IRD number in that country (except if you are able to claim the main home exemption).

If you do not have a New Zealand IRD number you will need to apply for and obtain one **before settlement** of the transaction. If you are an offshore person and you need to apply for a New Zealand IRD number, you will need to also have an operational New Zealand Bank account as a pre-requisite of obtaining a New Zealand IRD number.

For both buyers and sellers the Tax Statement is required to be completed, signed and returned to your Solicitor **prior to settlement**. The information from that Tax Statement is then inputted into the Landonline dealing before that dealing can be signed off and the transfer of the property registered. As a consequence, if your solicitor is not holding the signed Tax Statement as at the settlement date, registration of the transfer of the property will not be able to be effected which could result in either or both of the buyer or seller being in default of the agreement.

What information will you be required to provide in the Tax Statement? (The list is not exhaustive):

- proof of your New Zealand Citizenship or Residency
- your New Zealand IRD Number
- if a Trust or Company, the IRD number for your Trust or Company
- whether the transfer involves land that has a home on it.

These new tax laws are in addition to the Income Tax Act and other existing tax legislation (**Existing Tax Legislation**) and any tax obligations incurred by the New Tax Legislation are in addition to tax obligations that exist under Existing Tax Legislation.

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