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Residential Land Withholding Tax

An Issues Paper has been released by the Inland Revenue and the Treasury on the newly proposed Residential Land Withholding Tax (RLWT) which will be introduced on sales of residential property from 1 July 2016 where the vendor is a foreign investor (offshore person) who has owned the property for less than 2 years prior to the sale. The Government is proposing this regime as a mechanism for collecting the tax for the bright-line test to be effective.

This paper is available through this link: <http://taxpolicy.ird.govt.nz/sites/default/files/2015-ip-rlwt.pdf> It is proposed that RLWT would require solicitors and conveyancers to withhold and pay the required amount to the Commissioner of the Inland Revenue unless the seller is not an offshore person or the sale is not captured under the bright-line test. Other exceptions are:

- If the property is the owner's main home
- If the property is inherited or being transferred as part of a relationship property settlement.

The following may be of particular interest to you from this Issues Paper:

- The rate of RLWT is the lower of (a) 33% of the vendor's gain; and (b) 10% of the purchase price.
- The Government has formed the preliminary view that the withholding agent should be the conveyancer and lawyer (primarily the purchaser's) because they already have professional obligations to discharge in relation to the conveyance of property. But where there is no conveyancing agent, it is proposed that the withholding obligation falls on the purchaser primarily, and secondarily on "any agents who receive payment on behalf of the seller" (includes real estate agents).
- It is also proposed that the required amount be withheld before "any other amounts are disbursed" in relation to the sale of the property. Currently it is proposed that this means from the settlement monies rather than the deposit, although RLWT applies to the total purchase price.

Bright-Line Test

Below is a summary table prepared by REINZ Advisory Services on the policies introduced to date in relation to the bright-line test for your easy reference.

The Brightline Test Budget 2015 – (as at 3 September 2015)

Purpose	Name of the Bill	Where the Bill is at - as at 3 Septe	Commencement	Transactions affected by policy (exceptions apply)	Persons affected	Exemptions	Responsible persons for compliance
Collection of Tax Information	Taxation (Land Information & Offshore Persons Information) Bill	Awaiting 2 nd reading	1 October 2015	Transactions settled on or after 1 October 2015	Sellers and buyers of land	NZ resident's main home (exempted from providing IRD No. only)	Lawyers & conveyancers doing settlements, sellers and buyers.
Impose income tax on gains from sale of residential property bought and sold within 2 years	Taxation (Bright-line Test for Residential Land) Bill	Awaiting 1 st reading	1 October 2015	Agreement for sale and purchase signed on or after 1 October 2015	Sellers of residential land	Main home of the seller; Inherited property; Transfer under a relationship property agreement	Sellers
Collect withholding tax on sales of residential property	No Bill Yet – only discussion paper on Residential Land Withholding Tax (comments due by 2 October 2015)	To be drafted	1 July 2016	Transactions settled on or after 1 July 2016	Sellers of residential land who are offshore persons	Main home of the seller; Inherited property; Transfer under a relationship property agreement	Lawyers & Conveyancers doing settlements, sellers and buyers.

"offshore person" means: For an individual:

A NZ citizen who is outside NZ and has not been in NZ within the last 3 years;

A person who holds a residence class visa granted under the Immigration Act and who is outside NZ and has not been in NZ within the last 12 months;

A person who is not a NZ citizen and who does not hold a residence class visa granted under the Immigration Act

For a body corporate or an unincorporated body of persons, including a trust or a unit trust;

A person who would be an overseas person under s7(2)(b) to (f) of the Overseas Investment Act

<http://www.legislation.govt.nz/act/public/2005/0082/latest/DLM357794.html>

"residential land" means land that has a dwelling on it; land on which the seller is party to an arrangement to erect a dwelling; or bare land that because of its area and nature is capable of having a dwelling erected on it; but excludes land that is used predominantly as business premises or as farmland.

DISCLAIMER: The information contained in this document is not intended to form professional legal advice or legal opinion on any particular matter.

Cheers!
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Principal