Fact sheet: Bright-line Test

Are you thinking of buying or selling property? You need to consider the tax implications and plan accordingly.

Bright-line test

<table>
<tr><td>What’s this?</td><td>The ‘bright-line test’ determines whether tax should be paid on capital gain from the sale of residential property (with some exemptions). The sale will be taxed unless the property is the seller’s main home, inherited from a deceased estate, or transferred as part of a relationship property settlement.</td></tr>
<tr><td>When it applies</td><td>The bright-line test was originally introduced to apply where a person purchased a residential property on or after 1 October 2015 and sold it within two years.
In 2018 this was extended to five years, with effect from 29 March 2018.
The two-year bright-line test will continue to apply to residential land if a taxpayer acquired an interest in the land on or after 1 October 2015, but before 29 March 2018.
If a taxpayer acquired an interest in residential land on or after 29 March 2018, and sells it within a five year period, the sale will be taxed (with the same exemptions noted above).</td></tr>
<tr><td>Except</td><td>The bright-line test does not apply to business premises or farmland.</td></tr>
<tr><td>Start / end dates</td><td>How the start and end date of the bright-line test is counted varies with what type of sale and purchase it is.
<table>
<tr><td>Standard purchases</td><td>Exceptions</td></tr>
<tr><td>The start date will be the date a person obtains registered title for the property</td><td>Start and end dates are calculated differently where the registration date may not take place immediately or be the definitive point of transfer.</td></tr>
<tr><td>The end date will be the date of entry into agreement for sale</td><td>Examples are sales off the plan, sales of subdivided land, mortgagee sales or where property is gifted to a trust.</td></tr>
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Bright-line test and the ‘main home’

The seller’s main home is exempt from the bright-line test.

What’s this?	Where the seller has more than one home, their ‘main home’ is the property with which they have the greatest connection.
Except	A vendor would not be able to use the main home exception if they have already used it twice in the previous two years.
What about Trusts?	If a trust owns the property being sold, the main home exception will apply when it’s the main home of a beneficiary of the trust.
Except	If the principal settlor of the trust has a main home that the trust doesn’t own, the main home exception cannot apply to any property owned by the trust.

Claiming tax deductions

Some deductions are allowable when a property subject to the bright-line test is sold. However, where losses arise as a result of the bright-line test they have been ring-fenced so they may only be offset against taxable gains arising on other land sales. It is not possible to claim a loss arising from a transfer of property to an associated person.

Inland Revenue will look at companies and trusts

Inland Revenue keeps a close eye out for where land-rich companies and trusts try to get round the bright-line test. They may view a transaction as subject to the bright-line test where:

- 50% or more of the shares within a 12-month period are sold
- there is a change in the trust deed
- a decision-maker under the trust deed changes

This applies where at least 50% of the value of the company or trust is attributable to residential land either directly or indirectly.

IRD numbers for property sales

All vendors and purchasers of property other than their main home must now provide an IRD number as part of the land transfer process.

Non-residents	Offshore buyers may be required to provide a New Zealand bank account number before they can obtain a New Zealand IRD number.
	All non-resident buyers and sellers must provide their tax identification number from their home country, along with current identification requirements such as a passport.
Family trusts	A family trust is not exempt from providing an IRD number where a family's main home is owned by the trust.
	Up till now family trusts haven't needed IRD numbers unless they operated a business or owned rental properties. Now, when the family home is transferred into the trust or when the trust buys or sells property, the trust needs an IRD number. Trustees' own personal IRD numbers aren't acceptable.
	The new requirements also affect changes of title. So, if a trustee dies or retires and the new trustee's name needs to be registered on the property title, the trust needs an IRD number to register the change.

Residential Land Withholding Tax (RLWT)

Where a vendor is an 'Offshore RLWT person', a withholding tax may be required to be deducted from the sales proceeds and paid to the IRD where property is sold within 5 years of acquisition. An offshore RLWT person is defined widely and captures owners of property that may appear to be in New Zealand, for example New Zealand registered companies whose majority directors are New Zealand based (but have 1 or more directors based overseas). A certificate of exemption may be applied for if certain criteria are met.

Our Recommendation

Please contact us if you are considering buying or selling residential property; if your company is thinking about a large scale share transfer; or there are any changes to your family trust's trust deed or trustees.

If you are arranging for the family trust to buy, sell or transfer property, and the trust does not already have an IRD number we can take care of this. Otherwise you could face costly and stressful delays while you sort out the paperwork.

You might also like to have a catch up with us on whether the changes affect your tax profile or investment strategy.

Last reviewed: 18 June 2018