Property Update

Bright-line Test for Sales of Residential Property Summary

As a result of the 2015 Budget, a new regime will apply to residential properties that imposes income tax on any gains made from the sale of residential property, regardless of its location, when the property was acquired and disposed of within two years by a New Zealand tax resident.

This new regime has been defined as a "bright-line test for sales of residential property" and is expected to become law prior to 1 October 2015.

The key elements of the new regime are outlined below. A detailed analysis has been prepared and is available on request.

The New Regime:

Will apply for all residential property where:

- An estate or interest in residential land was acquired on or after 1 October 2015; or
- For acquisition's made, other than by way of a sale and purchase agreement, when the registration of title occurs on or after 1 October 2015

Imposes new information and compliance requirements

- Both parties will need to provide LINZ with an IRD number prior to settlement
- Non-residents will also need to provide their tax identification number from their home country
- Non-residents will require a NZ bank account to obtain an IRD number

Imposes income tax on any gains made when property acquired and disposed of within two years.

- Acquisition Date is the date title is registered to purchaser (via LINZ system) or for a sale of right to buy, the date an agreement was entered into for the disposal of the right to buy
- Disposal Date is the date a person enters into an agreement for the disposal or date of gift, compulsory acquisition, mortgagee sale

Will only apply to "residential land", where there is

- A dwelling on the land; or
- An agreement to erect a dwelling on the land; or
- Is bare land capable of having a dwelling erected on it

Excludes business premises and farmland that produce an economical return from the definition of residential land. Certain small farms or lifestyle blocks will fall into the definition of residential land as they will not produce an economical return.

Includes a number of exemptions:

- Excludes a dwelling that was used predominantly and, for most of the time, as the main home of a person or a beneficiary of the trust that owns the dwelling
- Excludes inherited property
- Excludes the transfer of property under a relationship property agreement

In certain circumstances, removes the main home exemption when the residential property is owned by a trust.

Allows deductions for holding costs based on ordinary tax rules.

Ring fences any losses incurred so they can only be offset against taxable gains arising under the land sale rules.

Includes specific anti-avoidance rules for land rich companies and trusts to prevent avoidance through the use of trusts and companies rather than direct transfers of residential property.

Land and property transactions are complex and the above information is a high level overview of the new regime only. If you would like further information or advice on a specific land, property transaction or scenario please contact your usual McCulloch + Partners advisor.

Invercargill Office
128 Spey Street, Invercargill 9810
PO Box 844, Invercargill 9840
P: 03 218 6179 **F:** 03 218 2238

Queenstown Office
Level 2, 11-17 Church Street, Queenstown 9300
PO Box 64, Queenstown 9348
P: 03 442 7020 **F:** 03 442 7032