Withers Tsang… on property & tax

Amidst the various tax pronouncements throughout 2015, the most notable one has to be the introduction of the “tax reform trio” that targets and affects all residential property owners.

Tax reform trio includes:

- Part 1 – introducing the Land Transfer Tax Statement
- Part 2 – introducing the new Bright Line Test rules
- Part 3 – introducing the new Residential Land Withholding Tax regime

First two parts were rushed through and have already been enacted recently. It took effect retrospectively from 1 October 2015. Last part (introducing Residential Land Withholding Tax) has been drafted and passed its first reading in Parliament. It will take effect from 1 July 2016.

As no two situations are the same, we strongly recommend that you contact us for advice before signing any sales agreement. In the meantime, we have summarised the following key points of interest to help you understand how these new rules will affect you.

5 points of interest you need to know about the Land Transfer Tax Statement

1. Both buyers and sellers (Kiwis, non-residents, individual trustee) of a residential property must complete this Tax Statement prior to settlement unless the property is their main home.
2. You can opt for Non-notifiable transfer by claiming “main home” exemption if you are living in the property. You can only claim this exemption twice in 2 years.
3. All buyers and sellers have to provide their NZ IRD number (trust and partnership need to apply for its own IRD number).
4. If you are an offshore person and a tax resident of an overseas jurisdiction, in addition to providing a New Zealand IRD number, you also need to provide your overseas taxpayer identification number and country code for each overseas jurisdiction.
5. All offshore persons would need to have a NZ bank account before IRD would issue a NZ IRD number.

10 points of interest you need to know about the Bright Line Test

1. Date creep. Profit from residential properties bought and sold within two years post 1 October 2015 will be taxed at their marginal income tax rate. Acquisition is counted form the date the title is registered on the purchase and sale is counted at the date a contract for sale is entered into.
2. Existing rules taxing land acquired with the intention to dispose remain and can be taxed beyond the two year bright line test.
3. Exemption is available to taxpayers selling their man home but this exemption can only be claimed twice in a two year period.
4. Where a trust owns the family home, it can only be the exempt “main house” of the settlor, not the beneficiaries who may live there.
5. Property acquired through inheritance is exempt.
6. Property acquired through a relationship property agreement is counted from the “original” date of acquisition.
7. Gains are taxable but losses are ring fenced and cannot be offset against other income. Such losses can only offset future gains from sale of property.
8. Farmland is excluded but only if it is capable of being farmed as an economic unit ie hobby farms and lifestyle blocks are potentially caught.
9. Any sale to an associated person within two years is caught.
10. Holding costs (loan interest, rates, etc) will only be deductible if they satisfy the normal nexus test under existing tax law.

What we know so far about the Residential Land Withholding Tax (RLWT) regime.

1. It is a form of withholding tax rather than a final tax. Vendors need to include the gains in their yearend income tax return as well as the RLWT deducted. Depends on the vendor's income tax rate, there may be further income tax payable or equally some of the RLWT could be refunded at year end.
2. It applies to residential land sale (includes bare land as well as house & land) situated in New Zealand that are caught under the new two year Bright Line test.
3. Only offshore person vendor is liable to have RLWT deducted from sale proceeds on settlement day. The lawyers or conveyancers will pay the RLWT to Inland Revenue by the 20th of the following month.
4. Expatriates living abroad and possibly new migrants are also caught as offshore persons definition include NZ citizens who have not been in NZ for the last 3 years and NZ permanent residents who have not been in NZ for the last 12 months.
5. Main home exemption will not apply because offshore persons would not be living in NZ. Other exemption such as transfers upon death and transfers made pursuant to a property relationship agreement as in the Bright Line Test could still apply.
6. RLWT is calculated based on the lesser of 33% x (sale price less vendor's acquisition cost) OR10% x sale price

Withers Tsang & Co Ltd.

This email has been authorised by:
Withers Tsang & Co Ltd
24-26 Pollen Street
PO Box 47-145
Ponsonby
Auckland