Another pin added to pop the purported “Property Bubble”

Arrival of Residential Land Withholding Tax

From 1 July 2016 the Residential Land Withholding Tax (RLWT) will come into force. However before you start worrying that part of your property sale proceeds will disappear to the IRD, read the following to see how it will affect you.

Who will RLWT affect?

If you are a property conveyancer then this will affect you considerably. As the vendor’s conveyancer it is your responsibility to check if RLWT is required, to provide the RWLT returns to the IRD and ensure payment of RLWT is made. If you are the purchaser’s conveyancer don’t think you’re off the hook, if the vendor does not have a conveyancer, then it is up to you to do this.

Although the conveyancer is required to withhold and ensure payment of RLWT, in the end it does come out of the vendors sale proceeds. However this does not apply to all vendors. RLWT will only apply if;

- The residential property is located in New Zealand, and
- The property was purchased after 1 October 2015 and sold within 2 years. (Be wary of the definition and timing of purchased and sold), and
- The vendor is an offshore RLWT person, and
- No exemption certificate is held.

Seemingly therefore this only applies to offshore people. However this isn’t quite as simple as it sounds.

Who is an Offshore RLWT Person

A “natural” offshore RLWT person is someone who meets the following conditions;

- A NZ Citizen who is offshore and has not been back to NZ in the last 3 years,

- A person who holds a NZ residence class visa, who is outside NZ and has not been back for the last 12 months,
- A person who is neither a NZ Citizen nor holds a NZ residence class visa.

This sounds fairly straight forward, however if you have a trust, company or limited partnership that holds property then it gets tricky.

- A trust that has an offshore trustee, an offshore person who holds the power of appointment or, an offshore beneficiary could be considered an offshore RLWT person. This means your simple NZ trust may be an RLWT person if beneficiaries like your kids move overseas.
- An RLWT company is one that is incorporated offshore, is registered offshore, or is constituted under foreign law.
- A Limited Partnership or company that has 25% of directors, general partners, or the shareholders with decision making rights are offshore then the Limited partnership or company could be considered an RLWT person.

RLWT Exemption

An RLWT exemption can be obtained. However this will require either a history of property trading where tax obligations were met for the last 2 years or a security is provided to the IRD to ensure any tax can be recovered. An exemption can also be sought if the property was the main home; however there are requirements to meet this main home exemption.

How much will RLWT cost?

The Government have “generously” allowed RLWT to be paid based on the lower of these 3 options, which are detailed in brief;

- **Gain**
  (Current Sale Price less Acquisition Cost) x 33% or (28% for companies)

  This calculation does not allow for any development costs, improvements or expenses related to the property.

- **Sale Price**
  Sale price x 10%
  Straight forward but likely will result in the highest amount payable.

- **Settlement**
  Current Sale Price less discharge of securities and outstanding rates

  If you have a highly leveraged property then this method may result in the least amount payable, as it ensures that the RLWT does not take preference over loan or rates repayments.

Payment of RLWT does not mean that there are no further tax calculations or payments required. A final return needs to be completed to calculate the actual income tax payable on the sale of the property, which could result in a further payment or refund.

Lastly, if you are going to be taxed on the sale of your property, be sure which taxing provision you are caught under, as not all are equal.

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