Property tax/banking changes: are you ready?

Sep 18, 2015 Property editor of the NZ Herald

Big tax, banking changes from October 1. Photo / iStock

In less than a fortnight, some of the most sweeping changes this country has seen to the law on tax and property sales are due to come into force.

Lawyers, real estate agents and property investors are all preparing for big changes in the way they do business from the start of next month. Whether they have prepared enough remains to be seen.

The changes aim to clarify when profits from residential property sales are taxable, as well as capturing more information about overseas buyers.

While the changes all apply from October 1st, they result from two separate pieces of legislation.

One is aimed at foreigners buying houses, demanding they now have a New Zealand bank account and IRD number, as well as providing tax details from their home jurisdiction. There has been speculation that this could deter some buyers, who would prefer the tax authorities back home did not know what they are up to here.

That law change will also catch some people born in New Zealand, who may be classified as "offshore persons" in certain circumstances.

The second law change is aimed squarely at locals.

While it should have little to no effect on New Zealanders selling the family home to buy another - unless they make a habit of it - some sellers will get an unwelcome surprise. A new tax test - the "bright-line test" - will deem that profits from some real estate sales are automatically taxable, rather than relying solely on the more subjective tests that now decide that question.

Joanna Pidgeon, a partner at Pidgeon Law and a member of the Auckland District Law Society's property law committee, says the shift in the legal landscape will be massive. "Other than the abolition of stamp duty last century, these are the most significant changes in property tax law," she says.

Morrison Kent partner Bryce Town, who presented the society's select committee submission, compares the overhaul to the start of electronic property title registration and the end of stamp duty.

Pidgeon also predicts the changes will increase the time and cost of transactions. One may take an extra 15 to 20 minutes, she says, pushing up costs by $50 to $150 per sale. "In the case of offshore parties, more time will need to be put into assessing whether they are offshore, and then completing IRD and bank account details, ascertaining which country they are tax resident in and taxpayer identification number for the country they are tax resident in.

"The tax statement that vendors and purchasers will have to sign has not yet been released to the public, so while legal practitioners are becoming aware of the issues, the final details of implementation have yet to be disclosed.

"Most [lawyers] are already advising clients to obtain these if they know they are contemplating a transaction. Unfortunately, sometimes lawyers are not consulted by clients prior to entry into agreements, and we are concerned that there may be settlement dates which may not allow enough time for obtaining bank account and IRD numbers prior to settlement - which will put parties in default," Pidgeon says.

Real estate agents and banks have also expressed concern about enforcing the new property rules.

Geoff Barnett, New Zealand manager of Century 21, says little information has so far been distributed. "I think a lot of real estate companies are going, 'Hang on a minute, we haven't thought about what this involves,'" Barnett says.

But "it's not a major", argues Tom Kane, principal officer of Precision Real Estate on Auckland's North Shore, though he is still waiting for guidance he expects from either the Real Estate Institute or Real Estate Agents Authority. An authority representative says information will be sent out in the October newsletter.

Colleen Milne, chief executive of the Real Estate Institute, believes the heat will go more on lawyers, and less on agents.

"It would appear the collection of personal information and IRD numbers will fall to the conveyance lawyer," Milne says. For Labour housing spokesman Phil Twyford, some of the changes don't go anywhere near far enough; his party wants to ban foreigners speculating on our houses.

But in an improbable turn, the changes have been widely welcomed by some parties who might not be expected to embrace the extra work.

The Real Estate Institute backed the new law, expressing support in a select committee submission that says "the broad policy of the bill is to improve compliance with the Income Tax Act 2007 with the focus on gathering better information for tax compliance.

REINZ agrees that the required information should be collected by conveyancers from property vendors and purchasers and provided to Land Information New Zealand, which in turn will provide the information to Inland Revenue."

The society also backed the changes, albeit with modifications: "The committee does congratulate the Government in putting in place (and some would say it is long overdue) the ability to statistically analyse foreign ownership of residential homes in New Zealand. That statistical data should enable more accurate information to be obtained."

Chartered Accountants Australia and New Zealand also made a submission arguing that the benefits outweigh any disadvantages.

But Pidgeon says more time will have to be spent on ensuring legal staff understand some crucial issues - the definition of land with a home, how exemptions work and definitions of offshore entities, for example - "to ensure that the correct guidance is given to clients completing the forms".

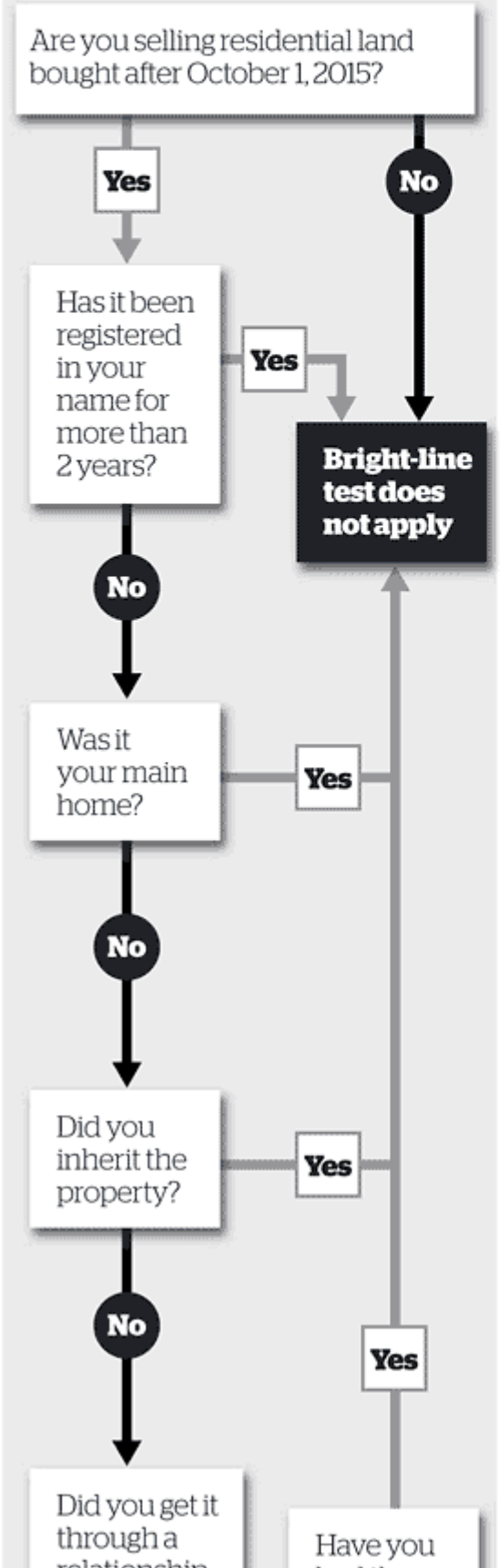
The Bankers Association raised issues about the extra time and costs and pondered whether people from overseas might open the bank account required to buy a property, then never use that account.

"We do have concerns about the effectiveness of measures contained in the bill requiring foreign buyers of New Zealand residential property to open a New Zealand bank account prior to the obligation to obtain an IRD number, and the compliance burden that this requirement will place on banks," the association's select committee submission said.

"These measures are likely to cause significant compliance issues for banks." And there's a fish-hook for trusts, says accountant Leicester Gouwland, of Auckland's William Buck Christmas Gouwland. "Trusts are like any other entity, so the new laws apply whether you're an individual, company or trust. But parents who own property for their children's use - perhaps via trusts - will not be able to claim the family home exception. In order to obtain the family home exemption, the property will need to be owned by the children directly." A lot of money is at stake, Gouwland says. "When a property is sold after October 1, any gain will be taxed at the taxpayer's marginal tax rate."But a rate of either 10 per cent of the total sale price or 33 per cent of the gain will be applied to foreigners, whichever is lower."

UNTANGLING THE TAX TEST

Profits on some property sales will automatically be taxable, under the new 'bright-line test'. Deals that escape the test may still be taxable under existing law — for example, if you are in the business of buying and selling property.



TELL ALL

How the new disclosure rules will affect buyers & sellers after October 1