



Best Practice Guide

Bright-Line Test and Collection of Information

As part of the Budget 2015, a series of changes have been made with the intention to help the IRD more accurately identify property investors and ensure they pay their share of tax. Licensees need to be aware of these changes but ensure that they do not put themselves in the position of giving legal, tax or accounting advice to clients.

For agreements for sale and purchase which are signed **on or after 1 October 2015**, we recommend that our members:

- **Provide information** on the below changes, including a copy of the IRD's Bright Line Information Sheet (which will be available on the REINZ website when it is released); and
- **Encourage** buyers and sellers to **liaise with their lawyers/conveyancers well before** the settlement date while acting as required by [Rule 9.7](#).

The Taxation (Bright-Line Test for Residential Land) Act 2015

This Act will require income tax to be paid on gains from the sale of any property that is classed as residential land that is bought and sold within 2 years, unless an exemption applies.

Income tax will not need to be paid on gains where the sale is of one of the following:

- a) A property is classed as the 'main home' of the transferor (or seller);
- b) Inherited property; or
- c) A transfer under a relationship property agreement.

The two year date runs from the date of registration of title to the date of the agreement for sale and purchase is signed.

There is a variation in the start date for 'off the plan' sales. Here the start date will run from the date that the contract to purchase the property is signed, and will run to the date that the next agreement for sale and purchase is signed.

NB: It is not the role of the Licensee to advise clients on whether the Bright-Line Test or any other tax will apply to a transaction. To fulfil your duty of care you should recommend to your clients that they seek professional advice from a lawyer or accountant. Licensees may also wish to refer buyers and sellers who appear to fit these criteria to the IRD's *Property tax decision tool* available on the IRD's website.

Land Transfer Amendment Bill and Tax Administrations Amendment Bill (formerly the Taxation (Land Information and Offshore Persons) Bill)

The introduction of the Bright-Line Test follows the changes introduced from 1 October 2015 in relation to new collection of tax information requirements.

New Land Information New Zealand (LINZ) procedures require that all transfers of land entered into after 1 October 2015 must be accompanied by tax statements before an agreement can be settled.

Most buyers and sellers will need to provide full IRD numbers for the tax statement. In some cases Taxpayer Identification Numbers (TINs) for those receiving overseas income may also be needed.

There is an exemption for providing an IRD number where it is a New Zealand resident's main home, but this will not apply for offshore persons or trusts. Clients will need to seek advice from a lawyer or accountant who will help them with exemptions or where they have more than one home.

Many trusts are not registered with the IRD and will now have to apply for IRD numbers.

Clients may need to seek accounting advice before applying for an IRD number for a trust or other entity. The IRD requires original, signed applications to be received by post. An application for an existing trust is estimated to take 8-10 working days from receipt of an application to process. The time between the satisfaction of the conditions in the contract and the settlement date will need to allow for this timeframe.

Overseas buyers (and sellers) who do not have IRD numbers will also have to apply for IRD numbers. This will require the overseas buyer to open a bank account in New Zealand. The IRD has helpful information about this process on its website

“Red Flags” for Real Estate Agents to be aware of:

a) Where the settlement date is 14 days from the satisfaction of conditions:

Licensees should be vigilant where clients are seeking to allow a very limited amount of time between satisfaction of the conditions and settlement. If a party to a contract cannot complete the tax statements prior to the settlement date, they may suffer serious loss including incurring penalty interest. In circumstances where the Licensee is aware there is a contemporaneous sale and purchase (such as in an on-sale situation), this could be a particularly significant issue.

b) Where two or more people are shown on the title:

Clients should always be asked if the property is owned, wholly or in part, by a trust or estate.

c) Where the client has one or more properties and asks if the Main Home Exemption will apply:

The Licensee must always ensure the client seeks advice from a lawyer/conveyancer on this question.

d) Where the client(s) have sold a house recently with the consequence that they may not be able to obtain the Main Home Exemption:

The Licensee must always ensure the client seeks advice from a lawyer/conveyancer on this question.

e) Where the client has purchased a property and is sub-dividing a portion of it for sale:

The seller should be alerted to the possibility that the Main Home exemption may not apply to the sale of the new sections and encouraged to seek professional advice from a lawyer.

f) Buyer's Agents

If a Licensee is acting for a buyer, they should ensure that they are aware that the buyer's details will be required for the tax certificates on settlement, even if a nomination is taking place.

We reiterate that a Licensee must always ensure the client seeks advice from a lawyer/conveyancer if:

- a) A client asks whether the Main Home Exemption applies if they have more than one property;
- b) Where the client has sold a house recently with the consequence that they may not be able to use the Main Home Exemption.

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