COLLINS & MAY | LAW

NEWSLETTER

Volume 5, April 2016

# PROPOSED RESIDENTIAL LAND WITHHOLDING TAX—THE ISSUES

By Freya Boyd
freya@collinsmay.co.nz
DD: 576 1409

Lloyd Collins
lloyd@collinsmay.co.nz
DD: 576 1403

Eugene Collins
eugene@collinsmay.co.nz
DD: 576 1407

Amy Haste
amy@collinsmay.co.nz
DD: 576 1412

Simone Seddon
simone@collinsmay.co.nz
DD: 576 1411

## What is it?

The Taxation (Residential Land Withholding Tax, GST on Online Services and Student Loans) Bill has been introduced by the Government. The Bill proposes a residential land withholding tax on residential property located in New Zealand sold within two years by offshore persons, which is or would be taxable income under the bright-line test.

The bright-line test requires income tax to be paid on any gains from the sale of residential property that is brought and sold within two years, with the exception of the main family home.

The withholding tax is designed to support this bright-line test and is to come into force on 1 July 2016.

## Who it Affects:

The tax applies to offshore persons. Offshore persons are individuals who are not New Zealand citizens or do not hold a resident visa or permanent resident visa. New Zealand citizens who have not been in New Zealand within the last three years will also be considered offshore persons.

The tax also affects partnerships, trusts and companies which must meet various requirements to qualify for a non-offshore exemption.

Companies in particular, are likely to be most affected. This is because it is not unusual for New Zealand companies to have shareholdings held by offshore persons. If companies have even a minority of offshore shareholdings, they will need to adhere to the withholding requirement despite basically being New Zealand companies.

There are also certain information requirements that must be complied with. The vendor must provide the IRD certified copies of documents proving they are not associated with the purchaser and that they are not an offshore person.

## The Issues:

There are four main issues with this tax proposal. Firstly, it makes property transactions more complicated. Vendors will need to show they are not offshore persons, and to file interim tax returns to get refunds of excess tax deducted.

Secondly, the responsibility of lawyers and accountants to manage the withholding process and collect tax returns will result in increased costs associated with these transactions.

Thirdly, determining whether a seller and a buyer are associated is often difficult to establish.

Finally, in all circumstances the withholding tax will actually be more than the actual tax owed, if any. This is because the withholding tax calculation does not allow for acquisition and disposal costs, any existing losses or any improvements made. Nor does it account for co-owners who may not be liable for the tax at all.

The select committee are currently reviewing the Bill. Hopefully these issues will be identified and dealt with appropriately so that the withholding tax is workable and reasonable.

**20 MINUTE FREE**

**WANT to review your Family Trust structure?**
**THEN call us and take advantage of our 20 Minute Free interview**

*If you would like any of our previous newsletters or any of the our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at* ***www.collinsmay.co.nz***