



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

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

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

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

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

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EXTENSION TO THE “BRIGHT—LINE” TEST

It has recently been announced the “bright-line” test will be extended from two years to five years.

The “bright-line” test was introduced in 2015. Essentially when a property is bought and sold within two years, income tax is payable on any gains from the property unless one of the exemptions apply.

The three main exemptions are:

- The main home exemption (where the property being purchased and sold is the family home);
- Transfers and disposals relating to a deceased estate;
- Transfers and disposals as part of a relationship property settlement.

Date of Disposal

The current two year test runs from the date of acquisition to the date of disposal.

For the standard purchase of land:

- The date of acquisition is date the ownership is transferred and person takes legal title;
- The date of disposal is the date the vendor enters into the Agreement for Sale and Purchase, regardless of when the Agreement becomes unconditional. It is not the date of settlement.

We would suggest taking advice before signing an Agreement if the property may be subject to the bright-line test.

Main Family Home Exemption

The main home exemption cannot be used two or more times within the two years or if there is a regular pattern of acquiring and disposing of residential land.

The main home is the residence which the person has the greatest connection. Factors

taken into account include where immediate family live, where personal property is kept and time spent in the dwelling.

A family trust may claim the main family home exemption to the bright-line test. To do so it must be the main home of a beneficiary of the trust and the principal settlor of the trust either doesn't have a main home, or their main home is the house being sold. A trust cannot use the main home exemption when a principal settlor of the trust has another main home.

A family trust is not however exempt from providing an IRD number on the sale or purchase of a property and will need to provide the Trust's IRD number in the land transfer tax statement.

Residential Land Withholding Tax (RLWT) Declarations

If a property is sold within a two year period the vendor will need to sign a residential land withholding tax (RWLT) declaration and provide supporting information. Individuals must provide either a current New Zealand passport or a birth certificate together with photo ID. If an overseas passport is provided this must be accompanied with a New Zealand residence class visa or citizenship certificate.

Even though a RLWT declaration must be signed, if the individual, trust or other entity qualifies for an exemption as above, income tax will not be payable on any gains from the property.

If you have any particular queries or wish to discuss anything further, please don't hesitate to contact one of our team.

20 MINUTE FREE

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