artichandtax.nz
+64 21 922 718
arti@actaxlaw.nz

Arti Chand Tax

AC Tax Desk

Issue No.2

Companies Act changes

As of 1 May 2015, all New Zealand companies must have a director who either lives in New Zealand, or lives in Australia and is a director of an Australian corporate.

Directors have to provide their place and date of birth.

And, companies have to provide their ultimate holding company details, if relevant.

Existing companies have 180 days to meet the resident director requirement.

NRWT and related party debt funding

Inland Revenue released an Issues Paper proposing rules to strengthen NZ's NRWT rules on related party debt.

Submissions closed on 15 June 2015. Some of the proposals include:

(a) NRWT (and not AIL) to apply if interest is paid to a non-resident, if part of a group acting together;

(b) Limit AIL to loans from financial intermediaries or raised from a group of 10 or more unassociated persons; and

(c) Limit existing onshore branch exemption from NRWT - if a non-resident has a NZ branch, NZ sourced interest not connected to the NZ branch would be subject to NRWT (or AIL).

New Property Rules - Key Measures

The Government introduced in the Budget, measures targeted at foreign ownership of residential property in New Zealand.

Property Tax - "Bright line" Test

Tax on gains - gains on sale of residential land will be taxed, if the property is disposed <u>within 2 years of acquisition</u> (referred to as "the bright line test").

Date of acquisition - the date of registration on Landline (rather than the date of the sale & purchase agreement). For subdivided land, date of acquisition is date when undivided land was acquired.

Date of disposal - date you enter into the contract of sale.

Exemptions - If the property:

- is the person's main home (for a home owned by a trust, the property must be the main home by a beneficiary);
- is inherited from a deceased estate; or
- is transferred as part of a relationship property settlement.

Residential land - defined as land with dwelling and land with arrangement to build a dwelling.

Does not include land used predominantly as farmland and business premises. Farmland must be land capable of being farmed as an economic unit (not lifestyle blocks).

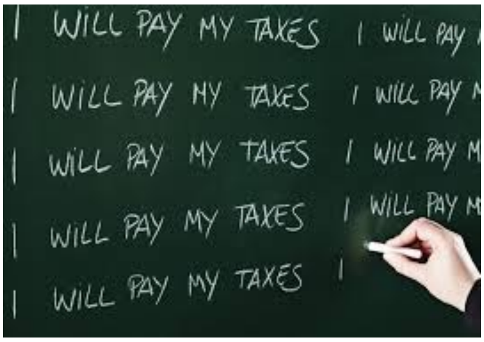
Application - for sale & purchase agreements entered into on or after 1 October 2015 (rather than registrations on or after 1 October 2015, which could make provision have retrospective effect).

Deductions - the following costs will be deductible:

- Cost of the property;
- Costs related to buying the property and incidental costs;
- Capital improvements;
- Holding costs if these have a nexus with the income, such as interest, rates, insurance, repairs and maintenance. These are deductible in the year in which they are incurred.

Loss on sale - will be "ring-fenced" - so can only be offset against taxable gains from other land sales. No deduction for losses permitted if property sold to an associated person.

Anti-avoidance - disposal deemed to have occurred if any of the following transactions are entered into with the intention and purpose of defeating the bright line test:



- disposal of shares;
- change in trustees or beneficiaries of a trust;
- change in person who can appoint trustees or beneficiaries of a trust; and
- change in ownership of shares in a corporate trustee.

Submissions on the Issues Paper close on 24 July 2015.

So what is the current tax treatment for such transactions?

A person who acquires a property with the purpose or intention of sale has to pay tax on any gain on sale. This is regardless of how long the property is held for, and it is the intention of the person at the time of acquisition that is determinative. The bright line test is intended to complement this rule.

There are two exclusions for this provision:

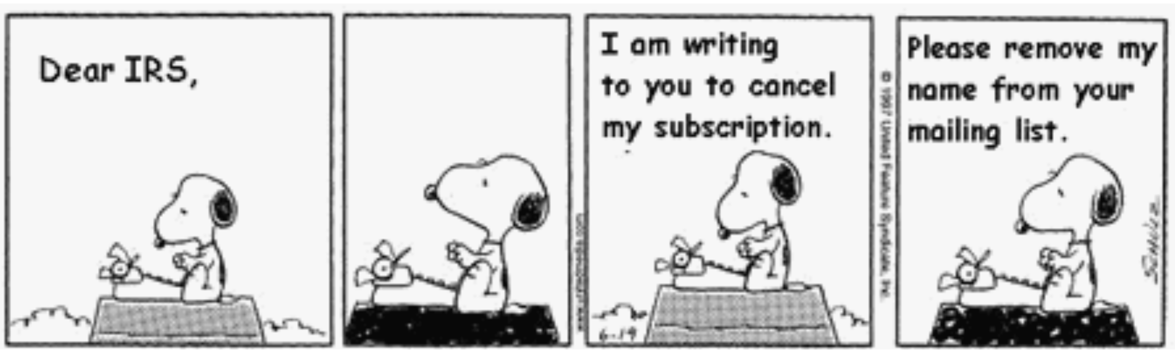
- this provision does not apply if the property was the person's residence; or
- used mainly to carry on substantial business from them.

These exclusions do not apply if the person is engaged in a pattern of acquiring and disposing properties. If a person is engaged in a pattern of buying and selling properties, then any gains will be taxable.

If there is no intention/purpose of resale, while there are provisions that deal with land developers, land dealers and builders (which also extend to associated persons in specific circumstances) etc, a "normal" person does not have to account for tax on the sale of real property.

The above proposal extends this - and brings to tax gains if property is sold within 2 years, provided it is not the person's main home.

For example, an investor with a rental property portfolio will pay tax on a property they sell within 2 years of acquisition, whereas currently, they would not (unless they fell within the ambit of the land taxing provisions).



Property information reporting rules

The new property information gathering measures are set out in the Taxation (Land Information and Offshore Persons Information) Bill.

The proposed legislative amendments will take effect from 1 October 2015 - the rules will apply in respect of property transfers on or after that date.

Tax Statement

THIS IS MY DREAM HOUSE ALRIGHT, EXCEPT IN MY DREAM IT WAS ABOUT HALF THIS PRICE.

Property conveyancers (generally, lawyers) must complete a tax statement and lodge this with LINZ. The tax statement completed for the transferor or transferee must:

- be signed and dated by the transferor or transferee;
- include the IRD number, or Tax File Number (TFN) for offshore persons;
- state whether or not the person is a New Zealand tax resident as at the date of the statement; and
- if non-resident: the name of their jurisdiction, the code allocated to that country by IRD, and their tax number equivalent to an IRD number.

A person who does not have an IRD number has to obtain a TFN. IRD will not issue a TFN unless the person has a NZ bank account, and provides this detail to the Commissioner.

Exempt transfers

The above information doesn't have to be provided if it an "exempt transfer", defined as:

- for a transferee, residential land meant to be the person's main home;
- for a transferor, residential land that was the person's main home

The exemption **does not** apply:

- if the transferee or the transferor is acting in their capacity as a trustee.
- if the transferor has relied on this exemption 2 times in the preceding 2 years.
- to "offshore persons".

The tax statement must disclose why the transfer is exempt.

Offshore persons

Offshore person is defined as:

- a NZ citizen who is outside NZ and has been for the past 2 years;
- a person who holds a NZ resident class visa but who is outside NZ and has been for the past 12 months;
- any person who is not a NZ citizen and does not hold NZ resident class visa;

- for a body corporate or incorporated body of persons, a person who would be an overseas person under the Overseas Investment Act 2005.

Accuracy of information

The conveyancer does not have to certify the accuracy of the information. This obligation rests with the transferee and transferor.

Exclusions

The rules will not apply to land predominantly used as a business or farmland.

2015 Budget: Tony's Tradies versus the "Fudge it" Budget

While the Australians have said that the 2015 Budget is one for Tony's Tradies, Andrew Little has called ours the "fudge-it" budget.

Tony's Tradies

In July 2013, the G20 endorsed the OECD's Base Erosion and Profit Sharing (BEPS) Action Plan. Australia became the G20 chair in 2014, and on appointment, vowed to lead the reform on this front.

Consequently, the Australian Government in October 2014, set up an enquiry into corporate tax avoidance - the focus being Multi National Enterprises (MNE's) structuring business so as to minimise or eliminate tax in Australia and therefore not paying tax on a source or residency basis.

In April, Google, Microsoft, and Apple fronted up to the Senate and were questioned about the so-called "double Irish sandwich with Dutch associations" and the corporations denied any such tax driven activity.

For instance, while Google accepted that Australian firms that advertised on Google were billed out of Singapore, (which has a lower corporate tax rate), the Managing Director for Google Australia stated "Google does not structure itself based on tax...We are structured to be competitive".

While the enquiry continues with the report of the Committee due later this year, the Australian budget stays with this theme and introduces further measures to make progress on its BEPS plan.

The Netflix Tax

- GST (10%) will be imposed on digital products and services imported by Australian consumers. This will include purchase of on-line movies and music, e-books, as well as legal and consultancy advice. It does not include purchase of goods on-line.
- Non-resident suppliers of products/services will have to register for GST in Australia. The low threshold level for imported items of $1,000 will apply. This change will be effective from 1 July 2017.
- Those providing legal or consulting services to Australian residents may have to register and account for GST.

MNE Tax Avoidance Provision

The Commissioner can assess tax as if the MNE has a taxable presence in Australia if:

- The foreign resident has global turnover in excess of $1b;
- The foreign resident supplies goods/services to Australian residents, where there is an Australian entity that supports that supply;
- The foreign resident is connected to a low or nil tax jurisdiction unless the activities in those jurisdictions have no Australian relationship or it represents substantial economic activity in that jurisdiction; and
- A principal purpose is to obtain a tax benefit, or a tax benefit and a reduction in foreign tax.

The Commissioner will have the power to impose a penalty of 100% of the unpaid tax plus interest.

The provisions have effect from 1 January 2016.

Small businesses

Effective 1 July 2015, companies with an annual turnover of $2m or less, will have their tax rate cut from 30% to 28.5%. They will still be able to claim existing franking credits at 30%. In addition to this, all businesses which meet this threshold, can:

- Claim a tax deduction for purchases less than $20,000 between budget day and 30 June 2017, to the extent the purchases are assets for running the business.
- For purchases over $20,000, the business can claim depreciation at an accelerated rate of 15% in the first year, and 30% thereafter - such assets being pooled together.

- If the value of the pooled assets is less than $20,000 as at 30 June 2017, this will be deductible at that point.

Interestingly, it was Wentworth Galleries in Sydney that used the $20,000 tax concession to entice customers to purchase art - they went so far as to create an entire webpage on this tax concession with examples, such as:

"For example: lawyers and doctors, accountants and financial planners, engineers and architects, plumbers and electricians, storekeepers and franchisees conducting their own business with an annual turnover of $2 million may apply the concession of a 100% depreciation for artworks."

"Fudge-it" Budget

Unfortunately, the New Zealand budget, from a purely tax perspective was as interesting as watching paint dry. While we have the tax measures focussed on residential property, particularly, foreign ownership of the same, there is very little else.

A further $29m has been given to Inland Revenue to focus on property speculation, $19.6m on aggressive tax planning, and $25.4m on the hidden economy. However, with the increased tax risk review and audit activity of recent years, this simply means Inland Revenue has (in addition to its current focus on personal services income, high net worth individuals, foreign investment and tax avoidance), further resources at its disposal.

"Of course you have a purpose in life. You pay taxes, don't you?"