



### Erceg case - Trusts and disclosure

The settlor, Mr Snr E, established two trusts. Although not named, his brother (Mr E) was within the class of discretionary and final beneficiaries of the trusts.

The trusts were wound up in December 2010, at that time, the brother was bankrupt.

Mr E requested specific documents (trustee resolutions, share valuation reports, debt details etc) from the trustees of the trusts and having no luck then unsuccessfully sought a summary judgment in the High Court. He appealed and the CA held that:

Mr E had standing as a beneficiary of the trust to request the disclosure of documents. His bankrupt status did not affect his standing.

Whether and the extent of disclosure of trust documents is at the discretion of the trustee. The trustee must take into account factors such as personal and commercial confidentiality, nature of interests of the beneficiaries, etc.

That Courtney J did not err (in HC) when she held that the trustees were correct in not making the disclosure taking into account factors such as wider family interests and no suggestion of impropriety by the trustees.

### The Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016

The Act received Royal Assent on 13th May 2016 and brings into effect a number of key tax changes.

#### Residential Land Withholding Tax (RLWT)

A withholding tax has been introduced for offshore RLWT persons who sell residential land in New Zealand. The RLWT is imposed if residential land in NZ is sold and the transaction would be caught under the bright line test (residential land disposed of within 2 years of acquisition). For the purposes of the RLWT, the main home exclusion is ignored.

"Offshore RLWT person" is defined as:

For natural persons:

- (a) a NZ citizen who has not been in NZ for 3 years;
- (b) a person who holds a residence class visa and has not been in NZ for 12 months;
- (c) the person is not a NZ citizen and does not hold a NZ residence class visa.



For trusts:

- (a) if 25% of the trustees are offshore RLWT persons;
- (b) if 25% of the appointors or persons who have the power to amend the trust deed are offshore RLWT persons;
- (c) all the beneficiaries are offshore RLWT persons;
- (d) if a beneficiary of the trust, being an offshore RLWT person, received a distribution in 1 of the last 4 years before the relevant disposal of residential land; and if the beneficiary is a natural person, the total distribution for the relevant year is more than \$5,000;
- (e) if the trust has disposed residential land in the last 4 years before the relevant disposal and the trust has a beneficiary, including a discretionary beneficiary, that is an offshore RLWT person.

Other entities

- (a) the person is incorporated outside NZ;
- (b) the person is not a natural person and is registered outside NZ;
- (c) the person is constituted under foreign law;
- (d) the person is a company or a limited partnership and more than 25% of the directors/general partners are offshore RLWT persons;
- (e) the person is a company and more than 25% of the shareholder decision making rights are held directly or indirectly by offshore RLWT persons;
- (f) the person is a partner in a limited partnership or owner of an effective look through interest in a look through company (LTC) and more than 25% of the partnership share or LTC's effective look through interests are held directly or indirectly by offshore RLWT persons.

How much is the RLWT?

RLWT is the lesser of the amounts calculated using the following:

- ✦  $RLWT \text{ rate} \times (\text{current purchase price} - \text{vendor's acquisition cost})$

Where:

RLWT rate = 28% for companies (not acting as trustees) and 33% for all other persons (as per Schedule 1).

Vendor's acquisition cost = the purchase price paid by the vendor.

- ✦  $10\% \times \text{current purchase price}$  (the price agreed between the vendor and purchaser)
- ✦  $\text{Current purchase price} - \text{security discharge amount} - \text{outstanding rates}$ .



### Who pays the RLWT?

While the RLWT is the tax liability of the offshore RLWT person, the amount must be paid to IRD by the vendor's conveyancer and if the vendor does not have one, by the purchaser's conveyancer. The conveyancer, referred to as the "paying agent" is responsible for making the payment and providing the relevant RLWT return to the Commissioner.

The paying agent is not jointly or severally liable for this amount. And, the paying agent is not liable for a penalty if they did not withhold the RLWT amount based on a reasonable reliance on the form and documentation made available to them.

If the parties are associated, then the purchaser has to withhold the RLWT.

### RLWT Exemption Certificate

An offshore RLWT person can apply for an exemption certificate from the Commissioner if they fall within certain criteria.

Summarily, an exemption certificate can be issued for persons:

- (a) in the business of land development, dealing or building if they provide security or have complied with tax obligations for the preceding 2 years; or
- (b) persons who would meet the main home exclusion under the bright line test rules.

### **GST and Online Services**

From 1 October 2016, GST will be imposed on cross border remote services and intangibles supplied by non-residents to New Zealand customers. A non-resident person making such supplies will have to register for GST if the total value of the supplies exceeds or is expected to exceed NZD60,000 in a 12 month period.

#### **What is a "remote" service?**

A service where, when the service is performed, there is no necessary connection between the physical location of the recipient and the physical location where the service is performed. For example, supply of on-line music, movies, e-books, and the like.



#### **Supplies to registered persons**

The supply of such remote services by a non-resident supplier to a GST registered business will be zero-rated for GST.

IRD has released a special report on this, found using this link: [Special Report: GST on cross-border supplies of remote services](#)

### **Simplification of Business Tax**

Here is a link to the summary of the proposals to simplify business tax that will come into effect from 1 April 2017: [Making Tax Simpler - Better Business Tax - Summary](#)

Feedback is being sought and submissions close 30 May 2016.