

# The Treasury

## Budget 2015 Information Release

### Release Document July 2015

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- [1] 6(a) - to prevent prejudice to the security or defence of New Zealand or the international relations of the government
- [2] 6(c) - to prevent prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- [3] 6(e)(iv) - to damage seriously the economy of New Zealand by disclosing prematurely decisions to change or continue government economic or financial policies relating to the entering into of overseas trade agreements.
- [4] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [5] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [6] 9(2)(ba)(i) - to prevent prejudice to the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.
- [6a] 9(2)(ba)(ii) - to protect information, where the making available of the information would be likely otherwise to damage the public interest
- [7] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [8] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [8a] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting the collective and individual ministerial responsibility
- [9] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [10] 9(2)(h) - to maintain legal professional privilege
- [11] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [12] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [13] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage
- [14] Not in scope

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [4] appearing where information has been withheld in a release document refers to section 9(2)(a).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

## **Tax and housing – back pocket Qs and As for Ministers**

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### **Why are you making these changes now?**

Inland Revenue advises it is seeing more activity in the housing market and that there is sometimes difficulty getting clear information to enforce the current tax rules. The Government is therefore taking steps to improve the information Inland Revenue receives and to make the sale of residential property sold within two years of acquisition taxable – other than within the few exceptions we've set out. We think that in a large majority of cases, property sales within two years are likely to reflect an intention to sell and make a profit.

### **When will the changes apply?**

- Information disclosure requirements will apply to sale and purchases occurring on or after 1 October 2015.
- The new bright-line test will apply to residential property bought on or after 1 October 2015. The current intention test rules will continue to apply to all land transactions.
- The requirement for a non-resident to have a New Zealand bank account before they can get a New Zealand IRD number will also apply from 1 October 2015.

### **What tax rate will apply to investors under the bright line test?**

Any gains from property sales will be included in a seller's normal annual income tax calculation and taxed at their marginal income tax rate.

### **Will losses be available for tax purposes under these new rules?**

Losses will continue to be allowed according to existing rules that apply to people who have acquired property with the intention of selling for a profit. Officials will look at whether any of these rules should be changed to account for the new "bright line" test for residential property and will consult on these details.

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### **Is this an extra tax?**

Gains on property are currently taxable when property is bought with an intention to resell at a profit. In the large majority of cases, sales within two years are likely to reflect an intention to sell and make a profit. Not all sales within two years necessarily reflect that intention, but probably the vast majority do. And, as we've said, owner-occupiers of residential property will not be affected by the new measures over and above existing laws when they sell their main home.

### **What is the difference between a "bright line" test and a capital gains tax?**

Under New Zealand's existing tax rules, anyone buying property with the intention of selling for a gain is already liable for tax on that gain. These changes are about improving the enforcement of this existing law. A comprehensive capital gains tax would tax gains on all assets (subject to any exceptions) including those held for

more than two years. The new “bright line” test taxes only non-owner occupied residential property that is bought and sold within two years. The current “intention” test will also continue to apply to all property transactions. However, any gains that are subject to tax will only be taxed once.

### **Who will be affected by these changes?**

As we’ve said owner-occupiers of residential property will not be affected by these new measures over and above existing laws when they sell their main home, or if the property is inherited from a deceased estate or transferred as part of a relationship property settlement.

There are several other aspects to the changes:

- The extra Inland Revenue funding we’ve announced will be used to target property speculators and other property sellers who should already be taxed on their gains. The extra information disclosure requirements will apply to anyone buying and selling real property, except if it is their main home.
- All non-residents and New Zealanders buying and selling any property other than their main home must provide a New Zealand IRD number as part of the usual land transfer process.
- The requirement for a New Zealand bank account will apply to non-residents who want an IRD number.
- Other than the exceptions we’ve set out, the “bright line” test will affect people who buy and sell residential property within two years and are not clearly caught by any of the current land sale tax rules. The bright-line test supplements the existing tests.

### **What if people try to beat the 1 October changes by bringing forward property deals?**

We have set the 1 October implementation date for all of these measures so we can consult on the details. It’s important that we get them right. There is a small risk that people will bring forward the timing of their purchases to beat the 1 October deadline. However, Inland Revenue will be closely monitoring the market for these kinds of transactions. In particular, it will ensure the existing rules requiring gains to be taxed are followed – and it has been given extra money for investigations and for policing those rules.

### **Can people get around the “bright line” test by holding residential property for two years and one day?**

Many people who do this are very likely to have had an intention to sell and make a profit – and they’re therefore likely to be liable for tax under the current “intention” test. These changes and additional resources should help Inland Revenue identify such transactions and ensure that the correct amount of tax is paid.

**What is the meaning of “main home”?**

In most cases, it's clear what constitutes someone's main home. A “main home” is occupied mainly as a residence by the taxpayer and their family. A person can only have one “main home” at any time. This means that second houses and batches are not a person's “main home”. The Government will consult on the details of the best way to define “main home” for these new rules.

**Why does the “bright line” proposal apply only to residential property?**

We consider there is greater price pressure in residential property than other types of property. To the extent that demand in this sector is driven by expectations of untaxed gains, improving the enforcement and clarity of the current tax rules should have some impact on demand. Reducing demand for residential property may help to reduce price pressures, particularly in the Auckland market.

**How will this improve tax collection from non-residents?**

We are considering introducing a withholding tax on sales by non-residents of residential property. Inland Revenue sometimes finds it difficult to collect outstanding tax revenue in cases where non-residents have a tax liability.

This withholding tax at the point of transaction, along with the extra information disclosure requirements for non-residents, is likely to ensure they comply with our tax laws when they are buying and selling property. As a matter of fact, the Australian Government released a Discussion Paper last year proposing a new withholding tax on Australian property.

**How do you define New Zealand residents and non-residents?**

There are various ways to distinguish between New Zealand residents and non-residents. They include tax residence; immigration and citizenship status; or the Overseas Investment Act criteria. The Government will consult on the definition of New Zealand resident and non-resident used for these new rules.

**What is the process from here?**

As everyone knows, tax rules are complex and affect people in different ways. So the Government will consult on the details of these measures to ensure we get them right. An issues paper will be released in July on the “bright line” test and extra disclosure requirements with a short period for submissions. We expect legislation will be introduced by late August to enable a 1 October application date. We will take longer to consult on the proposed withholding tax for non-residents, which we expect to take effect in the middle of 2016.