

## RESIDENTIAL LAND WITHHOLD TAX (RLWT)

From 1 July 2016 there is a new requirement for the withholding of a resident land withholding tax (RLWT) from sale proceeds received. All solicitors and other Registered Conveyancers have the task of collecting and paying to the Inland Revenue Department in New Zealand the RLWT.

Even if you act for yourself in the sale, there is still an obligation for the payment of the tax.

There are 2 Tests involved in determining whether RLWT is to be deducted.

### TEST 1 - Bright line Test

If the property is

YES

- (a) a residential property located in New Zealand; and
- (b) You (the vendor/seller) acquired the property **after 1 October 2015**; and
- (c) Have owned it for less than 2 years before selling it (regardless of any main home exemption);
- (d) And you are an Offshore Person (Test 2)

### Declaration:

I/we \_\_\_\_\_ [insert names] declare that

We do / do not meet the tests (a), (b), (c) above.

**STOP NOW** if you do not meet all of the requirements of (a) to (c) above.

If you have **ANSWERED YES TO ALL ITEMS (a) to (c)**, then we need to determine the 2<sup>nd</sup> Test – The Offshore Person Test.

### TEST 2 - Offshore Person

You are an offshore person if:

#### Natural Persons:

- (e) You are an NZ Citizen and have not been in NZ within the last 3 years; OR
- (f) You hold a Residence Visa and you are outside NZ and have not been within NZ for the last 12 months; OR
- (g) You are not a NZ citizen or resident; OR

#### Trusts:

- (h) More than 25% of the Trustees of your Trust are offshore persons; OR
- (i) More than 25% of the people who have the power to appoint or remove trustees of the trust (or amend the trust) are offshore; OR
- (j) All natural person beneficiaries or discretionary beneficiaries of the trust are offshore persons; OR
- (k) All beneficiaries or discretionary beneficiaries of the Trust are offshore persons;

- (l) Any offshore beneficiary (inks discretionary) has received a distribution from the Trust in 1 of the last 4 years before the sale, **and** if the beneficiary is a natural person, the total distributions to the beneficiary for the relevant year are more than \$5,000.00; OR
- (m) The trust has disposed of residential land within 4 years before this sale **and** the trust has a beneficiary (incl. discretionary beneficiary) that is an offshore person.

**Companies:**

- (n) The company is incorporated outside NZ; OR
- (o) The company is constituted under foreign law; OR
- (p) The company (or limited partnership) has more than 25% of the company’s directors/partnership as offshore persons; OR
- (q) The company has more than 25% of its shareholder decision-making rights held directly or indirectly by offshore persons; OR
- (r) The person in a limited partnership or LTC, has more than 25% of its shareholders/partners held directly or indirectly by offshore persons.

IF you meet ANY of the above tests – then you are deemed an Offshore Person for the purposes of RLWT. If you are unsure or have queries – speak to your Accountant.

**Declaration:**

I/we \_\_\_\_\_ [insert names] declare that

We do / do not {delete which does not apply} meet the tests (as circled).

Please circle the Test which applies to you.

**TAX CALCULATION**

If we (as your solicitors and Tax Agents for the IRD) are required to deduct RLWT from your sale proceeds, then the calculation is the lesser of the following 3 methods

**RLWT Tax rates: 33% - natural persons / 28% companies**

<u>Method 1</u>	RLWT rate % above of the sale price less original acquisition cost	E.g.: \$1,000,000.00 less \$600,000.00 = \$400,000.00 X 33% = <b>\$132,000.00</b>
<u>Method 2</u>	10% of the current sale price	E.g.: \$1,000,000.00 x 10% = <b>\$100,000.00</b>
<u>Method 3</u>	Current sale price, less mortgage and rates (legal fees/real estate commissions not part of formula) – but can’t be less than ZERO	E.g.: \$1,000,000.00 less mortgage \$530,000.00 less rates \$2,000.00 = <b>\$468,000.00</b>

In using the above formula’s the lesser tax prevails – therefore the payment to the IRD would be \$100,000.00 as per Method 2.

Payment is to be deducted at point of settlement, and paid to the IRD by the 20<sup>th</sup> of the following month. No allowances can be made for any other sales adjustments. The client can, if they choose, register a specific interim Tax return in order that those adjustments/refunds can be made. Further guidance must be sought from the client’s accountant.