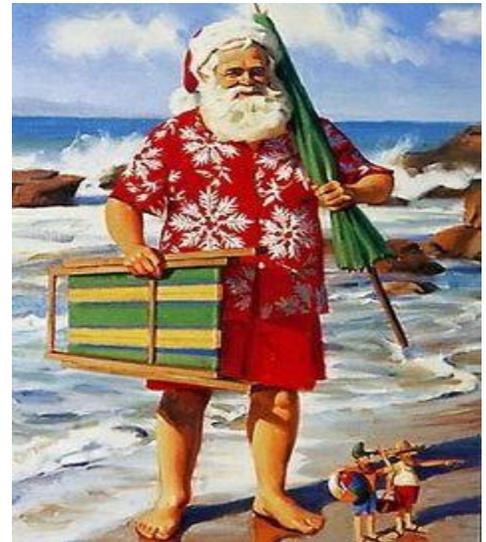


laydoddnews

Season's Greetings 2015

**Our office will close on Wednesday,
23 December 2015 and reopen on
Monday, 11 January 2016.**

**Best wishes for a happy holiday season and a
New Year of peace and happiness!**



New Brakes on Residential Property Investments

The Taxation (Bright-line Test for Residential Land) Bill introduced in late August proposes a new “bright-line” test and other measures to improve compliance with the residential land sale rules.

Anyone thinking of purchasing residential property now needs to clearly understand the implications.

The bright-line test will require income tax to be paid on any gains from the disposal of residential land and dwellings that is acquired and disposed of within two years, subject to some exceptions.

The new land sale rule will supplement the “intention test” in the current land sale rules, as part of Budget 2015. The “intention test” makes gains from the sale of land taxable when bought with an intention or purpose of resale. This intention test is difficult to enforce due to its subjectivity. The bright-line test is intended to deal with the problem by supplementing the current intention test with an objective test.

The two-year period for the bright-line test runs from the date of acquisition of the land to the date of disposal. The date of acquisition is the latest date on which the person acquires an estate or interest in the land. Generally, this will be the date the title to the land is registered for the purchase of the property. The date of disposal is generally the date that a person enters into an agreement for the sale of the property.

The bright-line test applies only to the disposal of “residential land”. Residential land includes land where the owner has an arrangement to build a dwelling on it. Residential land does not include business premises or farmland, but two new adjustments are proposed to include serviced apartments within the definition of “residential land” and exclude all rest homes and retirement villages from the definition.

A disposal property that is the main home of the owner will be excluded from the bright-line test when the property has been predominantly, for most of the time that the person has owned the property, as their main home. When a person has two or more homes, their “main home” is the property with which they have the greatest connection. The main home exception can apply to properties held in trust; there are rules preventing trusts being used to obtain the exception for multiple properties. A person cannot use the main home exception if they have already used the exception twice in the previous two years.

Taxpayers are allowed deductions for property subject to the bright-line test according to ordinary tax rules.

Losses arising only as a result of the bright-line test are ring-fenced so they can only be used to offset gains on other land sales that are taxable under any of the land sale provisions. A person cannot recognise a loss under the bright-line test arising from a transfer of property to an associated person.

The bright-line test will apply to properties for which an agreement for sale and purchase is entered into from 1 October 2015 and which is subsequently disposed of. When the property is acquired other than by way of sale, the bright-line test will apply to properties for when registration of title occurs on or after 1 October 2015.

If you think that these rules may impact on your situation, please do not hesitate to contact us for advice.

BUYING OR SELLING A PROPERTY OWNED BY A FAMILY TRUST? Changes in Tax Rules you need to know about...

The Government's Taxation (Land Information and Offshore Persons Information) Bill has been passed and took effect from 1 October 2015.

Trustees of family trusts need to be aware of these changes, as without the necessary tax information they may not be able to complete a property transaction!

If your settlement date is after 1 October 2015, trusts which are buying or selling property will be required to provide a Trust IRD number.

It will not be satisfactory for individual trustees to provide their own personal IRD numbers. The trust will need to supply its own IRD number. This could be problematic as many trusts do not have an IRD number and there may be delays in applying for one.

If a Trust does not have an IRD number, trustees should apply to Inland Revenue to obtain one. This way, you can avoid delays in your settlement proceeding. If you need any help, then please contact us.



**IRD are black and white
about undeclared cash jobs.**

It's tax crime.

The Inland Revenue Department have recently concentrated audit in the construction sector regarding the obligation to declare all income, including cash jobs – no matter how big or small – when a client files their upcoming GST return and/or income tax returns.

Some ways we can help you are:

- Inland Revenue are getting smarter at finding people in their industry who are not declaring all their income. This is a timely reminder to declare all your income.
- The consequences of being caught can include tax penalties, or criminal convictions that could lead to prison – which could have considerable impact on your business and personal circumstances.
- If you have cash jobs to be declared, please adjust your financial records for such items.
- We encourage good record keeping ensuring all jobs are accounted for when your returns are due.



QUESTION: *A Solicitor has suggested the settlor of a Discretionary Family Trust adds his company as a beneficiary. Meaning the flow of revenue from the Trust could be allocated to the company and tax paid at 28 cents rather than 33 cents.*

Is this taxation avoidance?

Is this able to be set up?

ANSWER: A company is able to be added as a beneficiary of a discretionary trust as are individuals or other trusts. As long as the rationale for allocating income to the company is not purely for tax purposes then there would be an argument it's not tax avoidance.

Disclaimer

This publication has been carefully prepared, but it has been written in general terms only. The publication should not be relied upon to provide specific information without also obtaining appropriate professional advice after detailed examination of your particular situation