Departmental Disclosure Statement

Taxation (Bright-line Test for Residential Land) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Inland Revenue.

Inland Revenue certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

17 August 2015

Contents

Part One: General Policy Statement

This Bill introduces amendments to the *Income Tax Act 2007* and the *Tax Administration Act 1994*.

The policy of the Bill is to improve compliance with the current land sale rules in the *Income Tax Act 2007* by supplementing the current intention test in *section CB 6*, which makes gains from the sale of land purchased with a purpose or intention of disposal taxable.

The reason for the policy is that the current land sale rules can be difficult to enforce. Specifically, there can be difficulties determining a taxpayer's purpose or intention in relation to land. The difficulties have meant that some land speculators are not paying their fair share of tax on gains from property sales.

This Bill proposes a new objective "bright-line" land sale test to improve compliance. The bright-line test will require income tax to be paid on any gains from the disposal of residential property that is acquired and disposed of within 2 years, subject to some exceptions.

The 2-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 instrument to transfer the land to the person is registered for the purchase of the property. The date of disposal is generally the date that a person enters into an agreement for sale and purchase for the sale of the property. When the disposal is other than by sale (for example, by gift), the date of disposal will be determined by the current tax rules. If disposal occurs before registration (sales of the right to buy), the bright-line period runs from the date that a person enters into an agreement to purchase the right to the date that a person enters into an agreement to sell the right.

The bright-line test applies only to the disposal of "residential land". It does not apply to land used predominately as business premises or farmland. "Residential land" is defined as land that has a dwelling on it, land for which the owner has an arrangement to erect a dwelling, or land that because of its area and nature is capable of having a dwelling erected on it.

There are 3 specific exceptions to the bright-line test for:

- A disposal of property that is the main home of the transferor (in certain circumstances);
- A disposal of inherited property;
- A transfer under a relationship property agreement.

A disposal of property that is the main home of the transferor will be excluded from the bright-line test when the property has been used predominately, for most of the time that the person has owned the property, as their main home. A property will be the main home of the owner when it has been mainly used as their residence. Where a person has two or more homes, their "main home" is the property with which the person has the greatest connection. If the property is owned by a trust, the main home exception applies when the dwelling is the main home of a beneficiary of the trust (subject to limitations). If the principal settlor of the trust has a main home that is not owned by that trust, then the main home exception cannot apply to any property owned by the trust. A person cannot use the main home exclusion if they have already used the exclusion twice in the previous 2 years.

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

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

Anti-avoidance rules will prevent land-rich companies or trusts being used to circumvent the bright-line test.

The rollover relief provisions for land transferred as a result of an amalgamation are extended to apply to the bright-line test.

Certain complying trusts will not have to file a return of income for tax years in which the trustee derives no income.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	**NO**

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	**NO**

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**
Title: Bright-line test for sales of residential property Authorising agency: Inland Revenue Date: 7 August 2015 A copy of the document can be found at: http://taxpolicy.ird.govt.nz/publications/type/ris	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	**NO**
The RIS was independently reviewed by Inland Revenue, in accordance with Treasury guidelines.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	**NO**

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	**NO**

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	**YES**
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	**NO**
Analysis available as part of the regulatory impact statement referred to in box 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	**YES**
(b) the nature and level of regulator effort put into encouraging or securing compliance?	**YES**
Analysis available as part of the regulatory impact statement referred to in box 2.3.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
The policy is not discriminatory between residents and non-residents so it is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
The Bill is consistent with the principles of the Treaty of Waitangi. The Bill will apply to land received under a treaty settlement that is acquired after the relevant application date. However, the implications for post-settlement land will be the same as applies to other land.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	**YES**
Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights.	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	**NO**
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	**NO**

3.4.1. Was the Ministry of Justice consulted about these provisions?	**YES**
Consultation has occurred with the Ministry of Justice who were comfortable with the Bill's provisions from a BORA perspective.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	**NO**

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	**YES**
Bright-line test for sales of residential property July 2015 *see* *http://taxpolicy.ird.govt.nz/sites/default/files/2015-ip-property-bright-line-test.pdf*	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	**NO**

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	**NO**
Given the nature of tax, this Bill does contain provisions that could result in the compulsory acquisition of private property. However, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 50 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	**YES**
The Bill includes a new tax provision for the sale of residential property. The new tax provision will require income tax to be paid on any gains from the sale of residential property that is bought and sold within two years, subject to some exceptions.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**YES**
The Bill proposes that the new tax on property sales applies to land for which sale and purchase agreements are entered into on or after 1 October 2015. It is expected that the Bill will be enacted around 30 November 2015. To that extent, therefore, the Bill will apply retrospectively. However, any tax liability will only arise at the end of the relevant income year, generally being 31 March 2016.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	**NO**
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	**NO**

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	**NO**

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	**NO**

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	**NO**

4.8. Does this Bill create or amend any other powers to make delegated legislation?	**NO**

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	**NO**