

Q&As – Residential land withholding tax

What is RLWT and why is it being proposed?

RLWT stands for “residential land withholding tax” and it is a withholding tax on certain sales of residential property in New Zealand.

The Government has introduced draft legislation for taxing gains from the sale of residential land made within two years of acquisition under a proposed new bright-line test. The RLWT is being proposed as a collection mechanism for the bright-line test and would apply where the seller is an “offshore person”.

The Commissioner of Inland Revenue has a number of powers available to enforce tax obligations and to ensure that the correct amount of tax revenue is collected. However, these are not always administratively practical or effective, particularly when the taxpayer has no or limited presence in New Zealand. Withholding taxes ensure that the relevant amount of tax is paid before the recipient obtains control of the funds. Withholding taxes are commonly used to tax New Zealand-sourced income derived by non-residents.

If I sell a property after 1 July 2016, will RLWT be withheld from the payment for the property?

It is proposed that RLWT would apply only to “offshore persons”. In addition, the following must also apply:

- the property you are selling is “residential land”;
- you acquired the property you are selling on or after 1 October 2015; and
- you owned the property for less than two years before selling it.

Who is an “offshore person”?

The definition of “offshore person” includes individuals as well as entities and is defined in the Taxation (Land Information and Offshore Persons Information) Bill.

I’m an individual. Am I an offshore person?

- Are you a New Zealand citizen and are you (or have been) physically present in New Zealand within the last three years? If so, you’re not an offshore person.
- Do you have a residence-class visa and are you (or have been) physically present in New Zealand within the last year? If so, you’re not an offshore person.

An entity will generally be classified as an offshore person if it is incorporated outside New Zealand or is owned 25% or more by an offshore person or offshore persons.

Further information about the Taxation (Land Information and Offshore Persons Information) Bill can be found at www.parliament.nz and www.taxpolicy.ird.govt.nz.

What is “residential land”?

“Residential land” is defined in the Taxation (Bright-line Test for Residential Land) Bill and means:

- land that has a dwelling on it;
- land for which the seller is party to an arrangement that relates to erecting a dwelling; or
- bare land that because of its area and nature is capable of having a dwelling erected on it;
- but does not include land that is used predominantly as business premises or as farmland.

Further information about the Taxation (Bright-line Test for Residential Land) Bill can be found at www.parliament.nz and www.taxpolicy.ird.govt.nz.

How is the “two year” test measured?

The two-year holding period for RLWT would be the same as that in the Taxation (Bright-line Test for Residential Land) Bill. The bright-line test looks at when a person acquires a property and when they subsequently dispose of it.

In most cases, the seller’s date of acquisition would be the date on which their title to the property was registered and the date of disposal would be the date on which the seller enters into an agreement for the sale of the property.

Further information about the Taxation (Bright-line Test for Residential Land) Bill can be found at www.parliament.nz and www.taxpolicy.ird.govt.nz.

What would the rate of RLWT be?

The officials’ issues paper *Residential land withholding tax* released for public feedback on 31 August 2015, proposes that RLWT should be withheld at a rate that is **the lower of**:

- the standard rate: 33% x seller’s gain (total purchase price - seller’s acquisition price); and
- the default rate: 10% x the total purchase price for the property.

Example

Hannah is an offshore person and purchases a property for \$610,000 in February. In August of the same year, Hannah sells the property to Michael for \$820,000. Hannah’s gain is \$210,000 (\$820,000 - \$610,000).

The amount to be withheld under each calculation option is:

- 10% x \$820,000 = \$82,000; and
- 33% x \$210,000 = \$69,300.

Under the “lower of” approach, \$69,300 would need to be withheld.

Who withholds the RLWT?

The officials' issues paper proposes that the person involved in the land transaction in the best position to withhold the tax and pay it to Inland Revenue is the conveyancer or solicitor.

For the purposes of the RLWT, this person is referred to in the officials' issues paper as the conveyancing agent. The issues paper asks for feedback on whether it should be the buyer's or the seller's conveyancing agent that is responsible for withholding RLWT.

If I am buying a house, will I need to withhold RLWT?

In most cases, no. As noted above, it is proposed that RLWT would apply in only limited situations and that the obligation to withhold RLWT should be placed on a conveyancer, solicitor, or other professional involved in the conveyancing of the property sale (we use the term "conveyancing agent" in the issues paper).

In many other countries that have withholding taxes on sales of residential property, the obligation to withhold is placed on the buyer, but they expect the buyer to use a solicitor to fulfil their withholding obligations.

Sometimes, the services of a conveyancer or solicitor might not be used. If this is the case, it is proposed that you may be required to withhold RLWT.

Would RLWT be withheld if I make a loss on the sale of my property?

No. The issues paper proposes a "lower of" approach where the amount to be withheld would be the lower of 33% of the seller's gain (which is the total purchase price minus the seller's acquisition price) and 10% of the total purchase price. This means that where a loss is made (where the total purchase price is less than your acquisition price), no withholding would be required.

There may be instances where you make a gain on the property, but improvements you've made to the property may result in an overall loss. In this case, the issues paper proposes you should be entitled to either a refund from Inland Revenue for the RLWT paid or a credit to offset another tax liability.

Example

Dan is an offshore person and purchases a residential property for \$1,000,000. Dan sells the property to Sam for \$850,000 18 months later. Dan has made a loss on the sale of the property ($\$850,000 - \$1,000,000 = -\$150,000$).

The amount to be withheld under each calculation option is:

- $10\% \times \$850,000 = \$85,000$; and
- \$0, because Dan has made a loss on the sale of the property.

Under the “lower of” approach, no withholding would be required due to the fact that Dan has made a loss on the sale of the property.

What if I have deductible expenses?

There may be instances where you haven’t made a loss on the sale of your property, but you have a number of expenses that will be deductible in determining your overall income tax liability. This may be because you undertook renovations or made improvements to the property before selling it, for example.

These expenses aren’t reflected in the amount that would be withheld under RLWT. You would need to file an income tax return to obtain a deduction for your relevant expenses.

Would I still need to file an income tax return if RLWT has been withheld?

Yes. The proposed RLWT is not intended as a final tax and has been designed as a collection mechanism for income tax payable under the two-year bright-line test announced at Budget 2015. This means that while we have designed the RLWT to approximate your income tax liability as closely as possible, you are still required to file an income tax return including your taxable income (or loss) arising from the sale of your property under the bright-line test. The issues paper proposes that you would be entitled to a tax credit for any RLWT withheld and paid to Inland Revenue against your income tax liability.

After your income tax return has been filed and your income tax liability has been confirmed, you may be entitled to a refund if too much RLWT was withheld, or you may have additional tax to pay if not enough RLWT was withheld.

Would I need to wait until the end of the tax year to file an income tax return?

No. It is proposed that you may be able to file an interim income tax return before the end of the tax year. However, this wouldn’t be your final tax liability if you earn other taxable income during the year.

I am a conveyancing agent – how do I get information about the seller and the property to determine whether to withhold RLWT and at what rate?

The proposed RLWT has been designed so that most information can be independently obtained by any party to the property transaction.

In the interests of certainty, the officials’ issues paper proposes that RLWT could apply unless an exception is available. This means that the seller or their solicitor may need to supply relevant information for an exception to apply.

The seller would need to provide evidence of whether or not they are an offshore person. This could include a New Zealand passport or a copy of their residence class visa (and if they

are not physically present in New Zealand at the time of the sale, a statement as to their recent physical presence in New Zealand).

To determine whether the land being sold is residential land, the seller's conveyancer or solicitor may be required to certify whether or not the land is residential land. In most cases this should be relatively straightforward.

To determine whether the two-year holding requirement has been exceeded, the withholding agent would need to obtain information about the seller's dates of acquisition and disposal.

Generally, the seller's date of acquisition would be the date their title to the property was registered. This date is available from Quotable Value Limited and Landonline. If the seller's title to the property was registered after 1 October 2015, but the seller entered into an agreement to acquire the property before 1 October 2015, withholding would not be required. In this case, the seller would need to provide a certified copy of that agreement to the withholding agent.

The date of disposal would in most cases be the date on which the buyer and seller enter into an agreement for sale and purchase for the property being sold. Both parties and their agents would have access to the agreement and should be able to obtain this date.

To calculate the amount of RLWT to be withheld, the withholding agent would need to obtain the total purchase price agreed between the buyer and the seller, as well as the seller's acquisition price. The total purchase price would be available in the agreement for sale and purchase between the buyer and seller. Both parties and their agents would have access to the agreement and should be able to obtain this figure. The seller's acquisition price is the total price paid by the seller to acquire the property being sold. This should be available from Quotable Value Limited.

What happens if there isn't enough information to calculate RLWT under the standard rate?

In most cases, we think that the standard "33% x seller's gain" rate would apply. However, there may be instances where there isn't enough information available to calculate the seller's gain. This could be because accurate information about the seller's acquisition price isn't available from Quotable Value and the seller does not disclose this information. In such a case, the default 10% rate would apply.

Example

Melanie agrees to buy a property from David for \$1,000,000. David has owned the property for two months. The withholding agent is required to withhold RLWT, but is unable to obtain accurate information about David's acquisition price from Quotable Value. David does not wish to provide this information to the withholding agent or the buyer.

The withholding agent is only able to calculate RLWT using the 10% rate ($10\% \times \$1,000,000 = \$100,000$). The withholding agent can't calculate RLWT using the gain approach because they are unable to get information about David's acquisition price.

What happens if I fail to withhold RLWT?

If a withholding agent fails to withhold the correct amount of RLWT and pay this amount to Inland Revenue, the sale (and in particular, the title transfer process) would not be held up.

Instead, the issues paper proposes that monetary penalties should apply. The Tax Administration Act 1994 sets out when and at what rates such penalties may be charged. This ensures that penalties for breaches of tax obligations are imposed consistently, at a level that is proportionate to the seriousness of the breach. RLWT penalties could be set in accordance with other penalties in the Tax Administration Act 1994.

How do I provide feedback on the RLWT proposal?

We invite you to make a submission on the officials' issues paper – the closing date for submissions is Friday 2 October 2015.

We are particularly interested in submitters' views on:

- whether the obligation to withhold should be on the buyer's or seller's conveyancing agent;
- the key compliance costs associated with the proposed withholding tax;
- circumstances in which a conveyancing agent would not be able to obtain the seller's acquisition price;
- other instances where the standard RLWT rate would not be able to be calculated;
- situations where the conveyancing agent would not handle the funds; and
- other practical considerations.

Submissions should be addressed to:

Residential land withholding tax
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140

Or email policy.webmaster@ird.govt.nz with "Residential land withholding tax" in the subject line. Electronic submissions are encouraged. Your submission should also indicate whether it would be acceptable for Inland Revenue and Treasury officials to contact you to discuss the points raised, if required.

Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions, or parts thereof, on the grounds of privacy, or commercial sensitivity, or for any other reason, will be determined in accordance with that Act. If you are making a submission and consider that there is any part of it that should properly be withheld under the Act, please clearly indicate this in your submission.