

Property – Purchases and investments

New Zealand does not have a capital gains tax and capital profits are generally tax-free. However, in certain circumstances land transactions will be taxable. Any land transaction requires that the particular circumstance be considered individually, as minor variations in the facts can have result in different tax outcomes.

It is important to note that the following comments are general in nature and you should seek specific advice for your particular circumstances.

Tax on land

There are seven situations where tax may be payable on profits derived from selling land. These are:

- 1 Sale of land purchased for purpose of sale;
- 2 Sale of land by dealer;
- 3 Sale of land by developer;
- 4 Sale of land by builder;
- 5 Sale of land which has been re-zoned;
- 6 Sale of land in scheme of development or subdivision within 10 years; and
- 7 Sale of land in scheme of development or subdivision.

1. Sale of land acquired for purpose of sale

If, at the time you purchase land, one of your intentions is to resell all or part of it then the profits are assessable for tax.

There are no time limits. If a clear purpose of selling existed at the time you purchased the land, the profit you ultimately make is taxable.

2. Sale of land by dealer

If the land was purchased for the purpose of the business of dealing in land, the profits from its sale are assessable even if outside the 10-year period.

If you are a dealer, profits on any sale of land within 10 years are assessable – irrespective of whether the particular land was held as part of the business of dealing in land.

If the sale or disposition takes place after 10 years from the date of purchase, any profit is assessable only if it is established that it was held as part of the dealing business.

A sale by an 'associated person' is equivalent to a sale by the dealer personally, except that the profit is assessed to the associated person and not to the dealer.

3. Sale of land by developer

If you purchased the land for the purpose of the business of developing or dividing land into lots, then profits from its sale are assessable even if outside the 10-year period.

4. Sale of land by builder

Builders are treated in a similar way to that of a land dealer or developer except that tax may not be payable where the builder carries out substantial improvements to the land.

Improvements have to be something more than minor in nature. Inland Revenue has indicated that substantial remodelling and renovation is contemplated but work involving normal repair or repainting, even where the building has been neglected as such, would be considered work of a minor nature.

5. Sale of land which has been re-zoned

Tax is payable for gains from land sold within 10 years of being purchased, where at least 20% of the gains were due to one or more of the following factors:

- a The rules of an operative district plan under the Resource Management Act, or a change in those rules following the purchase of the land.
- b The *likelihood* of such rules being imposed or changed.
- c A consent granted in relation to the land under the Resource Management Act, or a decision by the Planning Tribunal, following the purchase of the land.
- d The *likelihood* that such a consent will be granted or a decision made.
- e The removal of any condition, obligation, restriction, prohibition, or covenant (including a designation or heritage order) in relation to the land following the purchase.
- f The *likelihood* that such a condition, obligation, etc will be removed.
- g Anything happening that is similar to (a) to (f) above, or the likelihood of such an occurrence or change.

6. Sale of land in scheme of development or subdivision within 10 years

Tax is payable for gains from land sold within 10 years where you as the taxpayer commenced an undertaking or scheme involving development or subdivisional work, not being work of a minor

nature, on that land within 10 years of the date of the purchase of that land.

It does not apply where Inland Revenue is satisfied that the development or division work is for the purpose of creating a development or division for use in and for the purposes of:

- ✦ The carrying on by the taxpayer of any business on or from the land, excluding the undertaking or scheme;
- ✦ A private residence for the taxpayer and any member of the taxpayer's family living with the taxpayer; or
- ✦ The deriving by the taxpayer of rents or similar revenues from that property.

Note that a profit motive is not essential.

7. Sale of land in scheme of development or subdivision

Tax is payable here only when the profits are derived from the development or subdivisional undertaking/scheme, as the value of the land at the date of the commencement of the scheme is allowed as a deduction.

Note that Inland Revenue may ascertain the value of the land at the date of commencement of any undertaking in any manner it thinks fit.

See Us First

- ✦ If you consider that any of the issues contained in this fact sheet may affect you.
- ✦ Property transaction can be very complicated and require careful planning to minimise tax exposure.
- ✦ We advise clients to speak to us before making any property decisions.
- ✦ We can assist you meet the necessary legal or tax requirements.

Disclaimer

Important: This is not advice. Clients should not act solely on the basis of the material contained in this fact sheet. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. We believe the contents to be true and accurate as at the date of writing but can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents. This fact sheet is made available to our clients as a helpful guide for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.