



## Withholding tax on foreign property sellers

### Snapshot

The third part of the Government's Budget 2015 property tax package, a residential land withholding tax on offshore sellers, has been released. This completes the trifecta which also includes new tax disclosure requirements and a bright-line test for taxing residential land (refer our August [taxmail](#) on these changes).

Yesterday's [issues paper](#) confirms that the residential land withholding tax will:

- Apply to New Zealand property that is subject to the bright-line test if the seller is an "offshore person".
- Be the lower of 33% of the gain on sale or 10% of the agreed purchase price.
- Be collected by the conveyancing agent (or purchaser, if there is no agent).

The withholding tax will apply where settlement occurs on or after 1 July 2016.

Submissions are requested by 2 October. There is devil in the detail which will need working through. Property conveyancers and lawyers should take particular note as the proposed withholding tax may have a significant impact on their business.

**The residential land withholding tax is another example of the move towards withholding "at source", a trend which is likely to continue as Inland Revenue's Business Transformation gets underway**

**As proposed, it will apply only to property caught by the bright-line test. This is likely to create a further incentive for non-resident sellers to hold property for longer than two years, to avoid the bright-line test**

### Contact us

**Paul Dunne**  
Partner, Tax  
T: +64 9 367 5991  
E: [pdfunne@kpmg.co.nz](mailto:pdfunne@kpmg.co.nz)

**Darshana Elwela**  
National Tax Director  
T: +64 9 367 5940  
E: [delwela@kpmg.co.nz](mailto:delwela@kpmg.co.nz)

## What's the proposal?

### Who will the withholding tax apply to?

The residential land withholding tax will apply to sellers of New Zealand residential property who are:

- “offshore persons”, as defined for IRD number disclosure purposes (this will include NZ citizens who have not been in New Zealand in the last 3 years or residence visa holders who have not been here in the last 12 months); and
- subject to tax under the “bright-line” test (i.e. the New Zealand property was acquired on or after 1 October 2015 and sold within two years of acquisition).

It will apply where a property settlement that meets the above requirements occurs on or after 1 July 2016.

### What is the proposed rate of withholding?

The residential land withholding tax will apply at the lower of:

- 33% of the vendor's gain (the “standard rate”), being the difference between the agreed sales price and the vendor's acquisition price, with no withholding in case of a loss or disposal “at cost”; or
- 10% of the agreed sales price (the “default rate”), if the withholding agent cannot apply the standard rate due to insufficient information.

The withholding tax will not be final, meaning an offshore person will still need to file a New Zealand tax return. This is both in order to get refunds, if the default or standard rate is too high, or square up if too little tax has been paid.

### Who will be the withholding agent?

The issues paper suggests that either the vendor or purchaser's conveyancer or lawyer could be the withholding agent. It does not specify a preference noting advantages and disadvantages with each approach.

It is proposed the purchaser would be the withholding agent where there is no conveyancer involved.

### What are the withholding requirements?

It is proposed that:

- The conveyancing agent would generally be able to rely on statements made and evidence provided by the vendor, unless they know them to be false. (The agent would need to evidence the vendor's acquisition date using land registration data to confirm whether the bright-line test applies.)
- The obligation to deduct the residential land withholding tax will arise on the day the contract for sale is settled.
- The payment of the tax will rank ahead of any other payments made in relation to the property (e.g. repayment of mortgages or other charges).
- Conveyancing agents will be able to “batch” multiple withholding payments and remit these each month or pay the tax on a transaction by transaction basis.

## Who should take note?

The residential land withholding tax is aimed at non-New Zealand and expatriate New Zealand residential property owners. As property transactions within the bright-line period will be tracked, the withholding requirements should largely trigger automatically. A tax return will need to be filed, at year end, to square up any residual New Zealand tax liabilities.

## Contact us

**Paul Dunne**  
Partner, Tax  
T: +64 9 367 5991  
E: pfdunne@kpmg.co.nz

**Darshana Elwela**  
National Tax Director  
T: +64 9 367 5940  
E: delwela@kpmg.co.nz

It will also impose evidentiary, tax collection and payment obligations on property conveyancers and lawyers, who will become the primary withholding agents. This is likely to have a significant business impact for them.

## KPMG view

### The trifecta

The proposed residential land withholding tax completes the Government's property taxation package, announced in Budget 2015. The other changes (which you can read about [here](#)) are being legislated in haste, for application from 1 October 2015. The proposed withholding tax was never suitable for enactment in such a tight time-frame. However, a 1 July 2016 application date will mean that legislation will need to be introduced sooner, rather than later.

### Withholding tax the order of the day

The residential land withholding tax is another example of the move towards withholding "at source", a trend which is likely to continue as Inland Revenue's Business Transformation gets underway. This is an efficient way for Government to get its tax, particularly where the taxpayer is not resident. However, this is at the cost of others, in this case conveyancers, acting as an unpaid collection agent.

As proposed, it will apply only to property caught by the 2 year bright-line test, and not if the normal land rules apply. This is likely to create a further incentive for non-residents to hold property for longer than two years, to avoid the bright-line test.

### Beware the detail

There are a number of design features on which feedback is being sought.

Two withholding rates – 33% (of net income) or 10% (of gross sales proceeds) – are proposed. These rates are likely to over, rather than under, tax. This is a deliberate design feature to protect the tax base and puts the onus on offshore vendors to file to claim back refunds.

It will be up to the withholding agent to determine which rate applies, which potentially puts them in a tricky situation. For example, it is not clear if there will be use of money interest implications, for the seller, if tax is under deducted. We assume not, consistent with how other withholding taxes operate.

Officials are undecided on whether the purchaser or vendor's agent should deduct the tax. Requiring the purchaser's agent to withhold is considered consistent with how other NZ withholding taxes operate while imposing the obligation on the seller's agent is seen as fairer (as the costs are borne by the party with the ultimate tax liability). For the net withholding option to work, the seller will still need to provide information about their status and other details (e.g. acquisition price). This suggests to us that withholding by the seller's agent may be the more likely outcome. This also puts into context the claim by Officials that publicly available information can be used to simplify the rules and reduce compliance costs on buyers, sellers and their agents.

These and other design issues will need careful consideration. We strongly encourage those affected to make submissions by the 2 October due date.

## For further information

### Paul Dunne

Partner, Tax  
Auckland  
Phone: +64 9 367 5991  
Email: [pfdunne@kpmg.co.nz](mailto:pfdunne@kpmg.co.nz)

### Darshana Elwela

National Tax Director  
Auckland  
Phone: +64 9 367 5940  
Email: [delwela@kpmg.co.nz](mailto:delwela@kpmg.co.nz)

[kpmg.com/nz](http://kpmg.com/nz)  
[twitter.com/KPMGNZ](https://twitter.com/KPMGNZ)

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