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Recent change to the bright-line test

The new rules around the bright-line test have been hard to miss in recent days, but what do they mean for the average person buying a residential home to live in? The bright-line test has been amended over the years and as such, there are three different rules to consider depending on when you purchased your residential property.



For a residential purchase between 1 October 2015 and 28 March 2018, the bright-line period was just two years; this test is now no longer relevant because if you were to sell your residential property today, it would be outside of the applicable bright-line period. If you purchased your residential property between 29 March 2018 and 26 March 2021 the bright-line period now runs for five years. For the most recent change on March 27 2021, purchasing a residential property will bring you under the new 10 year bright-line period. Knowing which bright-line period applies to you is just the first hurdle.

Understanding the ‘main home’ exclusion test is a key factor in ascertaining whether you may be caught by the bright-line test. The ‘main home’ exclusion can only be used when the residential home being sold (before the expiry of the 10 year period) has been used solely as a main home for the whole of the bright-line period, i.e. from the date of settlement to the date of disposal. This exclusion is extended to those that have inherited a residential home or are holding the title to residential property as the executor of an estate.

However, do not be fooled by the seemingly simple use of this exclusion as it comes with some catches. You cannot use this exclusion if you sold your main home two or more times within the two years immediately prior to the bright-line period, or if you have engaged in a regular pattern of acquiring and disposing of residential land.

And that is not all. Consideration then needs to be given to a further ‘property sale’ rule - your intention when you bought the residential property. If from the outset you had a firm intention to resell the property to make a profit, then you will be caught by the bright-line test. Your solicitor or conveyancer will assist you with correctly completing the required Land Transfer Tax Statement when you buy and sell residential land; they

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can also check the date you purchased the land to see which bright-line period relates to your situation. The details from the Land Transfer Tax Statement are uploaded to Land Information New Zealand. The information is collected on behalf of the IRD, who are actively making sure property tax obligations are being met.

The IRD website has a Property Tax Decision Tool online, if you wish to check your situation yourself. Otherwise, if you are selling your residential property and believe you may be caught by the bright-line test, you can talk to an accountant about how to correctly note this in your upcoming tax return.

Proposed changes to hate crime and hate speech laws

The Government is proposing amendments to current hate speech and hate crime laws in the wake of the Royal Commission of Inquiry's investigation into the Christchurch Mosque terror attacks, which occurred in March 2019.



In December 2020, the Royal Commission of Inquiry made 44 recommendations, which included repealing hate speech offences in the Human Rights Act 1993 and inserting them into the Crimes Act 1981 and the Summary Offences Act 1981. This would allow people to be charged with hate motivated offences as a standalone offence. Currently in New Zealand, hate speech and hate crime is not a standalone offence and instead, offenders can have their sentence lengthened if they are convicted of a crime that had a hateful motivation.

The Commission found significant gaps in current legislation for dealing with hate speech and hate crimes and recommended that legislation relating to hate speech and hate crime should be fit for purpose. Further recommendations by the Commission included expanding hate speech to encompass rainbow communities, religious minorities, age and disability - alongside the current racial, ethnic and national origin grounds. The Commission found that the current legislation did not appropriately capture the culpability of hate motivated offences, nor did it provide workable methods to deal with hate speech.

The Bill of Rights Act 1990 provides that every person has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form. This right is limited only by such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. However, one person's view of "reasonable limits" may be vastly different to that of another person's view, hence the proposal to encompass a wider scope of offences with narrower language, in order to provide clarity on what exactly is meant by hate speech.

Enforcement of the proposed offences would carry higher penalties than what is currently provided for. These include raising the maximum prison sentence from three months to three years and the minimum fine from \$7,000.00 to \$50,000.00.

The proposed changes have been met with intense scrutiny by opposition parties and various experts in the human rights field. The regulation of hate speech will likely be controversial, given the fine line between real hatred motivated crimes and speech and that of stupid or reckless speech, particularly that which takes place online.

Either way, it will be interesting for New Zealand to see how these proposals take shape and potentially influence the way in which we live and co-exist in our multi-cultural nation.

A guide to KiwiSaver withdrawals and First Home Grants

The KiwiSaver first home withdrawal and First Home Grants are two completely separate processes. However, if you are eligible, the combination of the two can jump-start the process of buying your first home.



The KiwiSaver first home withdrawal allows for early withdrawal of your KiwiSaver savings in order to assist with the purchase of your first home. There are however, limitations and eligibility criteria to consider. These include:

- You must have been a member of and been contributing to your KiwiSaver regularly for at least three years.
- Are buying a home or piece of land for the first time.

- Are buying a home within New Zealand.
- You must live in the home or build a house on the land you are buying.
- You no longer have any interest or share in a previously bought home.
- You are buying one of the following arrangements of property or land: Fee Simple, Stratum Estate (freehold and lease), Cross-lease (freehold and lease), Leasehold, Maori Land.

Provided you meet these criteria, you will be able to withdraw from your KiwiSaver either a specific amount or all of your savings (excluding the initial \$1,000.00 Government grant you received when opening your KiwiSaver).

In addition to the KiwiSaver first home withdrawal, you may also be able to apply for the First Home Grant. This is a grant of funds from the Government of between \$3,000.00 and \$10,000.00, depending on the type of your purchase and your circumstances. Again, there are limitations and eligibility criteria. These include:

- You must have been a member of and been contributing to your KiwiSaver regularly for at least three years.
- Do not currently own land or a home.
- Have not previously received this grant or the previous 'KiwiSaver deposit subsidy' scheme.
- Have a deposit of 5% or more of the purchase price – this can include funds from your KiwiSaver first home withdrawal.
- Contributed no less than 3% of your total yearly income for at least three years.
- If you are purchasing on your own; your total earnings have been less than \$95,000.00 before tax for the last 12 months.
- If you are purchasing as two or more buyers; your total, combined income in the last 12 months is less than \$150,000.00 before tax.
- Ownership must be in equal shares when purchasing property with other people.
- The price of the property you are purchasing is within the regional house price caps.

- Are buying one of the following arrangements of property or land; Fee Simple, Stratum Estate (freehold and lease), Cross-lease (freehold and lease), Leasehold, Maori Land.

Assuming you are eligible, you would be entitled to the following grant amounts:

- \$1,000.00 for every year you have contributed to your KiwiSaver account, beginning at three years (\$3,000.00 minimum) and capping at five years (\$5,000.00 maximum) if you purchasing an existing or older home. This grant caps at \$10,000.00 for couples or groups.
- If you are purchasing a house and land package/ a property off the plans you may receive \$2,000.00 for every year of contribution, beginning at three years (\$6,000.00 minimum) and capping at five years (\$10,000.00 maximum). The grant caps at \$20,000.00 for couples and groups.

The application process for both these schemes is simple. You must complete the required forms supplied by your chosen provider accompanied with supporting documentation such as certified ID and proof of address. Your provider will supply you with a full list of the required documentation. Note applications can take up to 15 working days to process. Your lawyer will be familiar with the process and can assist you with the applications.

Changes to tax deductibility on interest expenses

In late March earlier this year, the Labour Government announced a number of changes regarding the New Zealand housing policy in an attempt to make the housing market more affordable, particularly for first home buyers. This article specifically discusses interest expense deductions on residential properties and how these will change.



Currently, when owners of residential investment properties (not their main homes) complete their annual tax returns, they can deduct any interest paid on loans from their taxable income as an expense. This reduces the income they earn, thus reducing the amount of income tax to pay.

The Government has proposed to change the rules that enable investors to claim interest on loans as an expense against income for their residential properties. The Government is yet to confirm the details of this proposed change, however, legislation effecting these changes is expected to come into force from 1 October 2021, i.e. owners of residential investment properties purchased after 27 March 2021 cannot deduct interest from their income from 1 October 2021. However, it is expected that there may be an exemption for new builds used as residential investment properties to encourage investors to provide healthy homes for renters. There is also a hopeful expectation that these

investors may be permitted to deduct their interest expenses at the time of sale where they are caught by the bright line test and liable to pay income tax on the gain of sale.

Residential investment property owners who acquired properties before 27 March 2021 can still claim interest as an expense, however, the amount that can be claimed will be reduced by 25% over the next four years and will eventually be phased out. The 2025-26 income year will be the first year that interest expenses cannot be deducted from taxable income (with exceptions yet to be confirmed and as canvassed above).

Some common scenarios to be aware of as advised by the IRD are as follows:

- If you acquire a residential investment property before 27 March 2021 but your settlement doesn't take place and your loan isn't drawn down until after 27 March 2021, you can still deduct interest using the 4-year phase out process described above. However, if you draw down additional funds in relation to the investment property after 27 March 2021, i.e. not for the settlement, interest on that portion of the loan cannot be claimed as an expense from 1 October 2021 onwards.
- If you have made an offer on a property before 23 March 2021 but the offer is only accepted

after 27 March 2021 and you cannot withdraw your offer for example in a tender, you can still deduct interest using the 4-year phase out process.

- Where residential loans are used for business use by business owners, property developers or builders, interest expenses can be deducted.

Keep an eye out for any IRD updates on this matter and ensure you consider your position carefully when looking into investing in residential properties. It is prudent to speak with your accountant and lawyer before investing in the housing market whether it be a new build, existing property or even your main home.

Snippets

NZ/ Australia travel bubble requirements



COVID-19 is ravaging the world. New Zealand and Australia have fared well in containing and limiting its impact on their populations both personally and economically. However, certain sectors of commerce have been stopped in their tracks. The hospitality industries, with all their supporting services from airlines to vineyard workers, together with all the dots joined in between, have been limited to local support only.

The New Zealand and Australian governments have extensive structured quarantine requirements in place, which have been adapted by mutual agreement to open a travel bubble between the two nations. There is no longer a 14-day isolation period, with its related charges, for arriving into New Zealand from Australia.

However, each country could impose a lockdown and has the legislation to enforce it, if a COVID-19 flare-up occurs; particularly those of community transmission. In Australia, central government as well as state government have the power to lock down the entire country or individual states. That means that if a lockdown is implemented, either by state or for the whole country, a New Zealander who is visiting must adhere to those lockdown rules, with the delays and costs associated with them. Following on from a situation such as that, New Zealand may see fit to put conditions on travelers returning to New Zealand after being caught in a lockdown in Australia. These are some of the many risks associated with the travel bubble.

It is also unlikely that your employment agreement, if you have one, has an appropriate provision for the travel bubble. Prior to travelling to Australia, you should check with your employer or lawyer regarding what happens in the event that you are delayed and locked down in Australia due to Covid-19.

The “she’ll be right” attitude is not appropriate when dealing with the complexities of this pandemic.

Removal of incapacitated trustees

The new Trusts Act 2019 has had a far-reaching impact on all aspects of trust law. One of its very sensible and practical amendments is to assist in streamlining the process when a trustee under a trust becomes incapacitated. The outcome is that, where a trustee has lost mental capacity and is deemed medically unable to carry out the trustee function with its related duties, they may be relieved of those duties.



The regular focus on trust administration will mean that trustees’ mental capacity will likely be considered on an ongoing basis, however there are currently many trusts with incapacitated trustees.

Prior to the new Act coming into force, the removal of such a trustee required an application to the Court. While the outcome was a foregone conclusion, the time and costs associated with that application often had an impact on the ongoing workings of trusts. As trustee decisions are personal to each trustee and cannot be delegated under a Power of Attorney, an incapacitated trustee brings all that decision making to an immediate halt.

The new Act creates a new process; a Court order is no longer required. A statutory declaration may be completed alongside the relevant trust resolution, which outlines the nature of the incapacity while providing supporting medical evidence (e.g. a letter from a qualified medical practitioner confirming mental incapacity of a trustee). In many instances, trustee changes are required to be shown on titles of property owned by trusts. Land Information New Zealand will accept this statutory declaration as a basis for updating the relevant titles to reflect the trustee change.

The Trusts Act 2019 has now provided a more common-sense approach. However, your lawyer still needs to be in the loop.

If you have any questions about the newsletter items, please contact us, we are here to help.

Swayne McDonald Lawyers

Manurewa Office 09 267 2700 Botany Junction Office 09 265 2700

Postal: P O Box 75 442 Manurewa, Auckland 2243

advice@smlaw.co.nz

www.smlaw.co.nz