Taxation of Land Transactions Checklist

# Taxation of Land Transactions Checklist

The checklist provides a general list of issues and opportunities that should be considered when dealing with land transactions. Please note that the checklist is not designed to be an exhaustive list of all issues that may warrant consideration. References to “the Act” refers to the *Income Tax Act 2007*, and references to “the GST Act” refers to the *Goods and Services Tax Act 1985*.

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**About the author**This checklist has been prepared by Baker Tilly Staples Rodway on behalf of CPA Australia.

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| LAND PROVISIONS | POTENTIAL ISSUES & OPPORTUNITES TO CONSIDER |
| **BRIGHT LINE TEST** | |
| Has residential land been acquired after 1 October 2015 and before 29 March 2018 been disposed of within two years of acquisition?  For residential land acquired between 29 March 2018 and 26 March 2021, has the property been disposed of within five years of acquisition?  For residential land acquired on or after 27 March 2021, has the property been disposed of within ten years of acquisition? | Consider section CB 6A of the Act, and its corresponding exclusions in sections CB 6A(12) and CB 16A of the Act.  Extra care is required for subdivided properties if the exclusions are to be relied on. Refer to Inland Revenue guidance QB 18/17 and QB 18/16.  Section CB 6A had been amended as at 30 March 2021 to extend the bright line test to ten years. The amendment is not retrospective. |
| Was the disposal by an offshore residential land withholding tax person (as defined)? | Residential land withholding tax per subpart RL of the Act may apply.  Offshore residential land withholding tax person is defined in section YA 1 of the Act. |
| **INTENTION TEST** | |
| At the time of acquisition, did the purchaser have a purpose or intention disposal? | Consider section CB 6 of the Act, and its corresponding exclusions in sections CB 16 and CB 19 of the Act. |
| **BUSINESS RELATING TO LAND** | |
| When the land was acquired, did the purchaser (or a person associated with them), carry on a business of:   * dealing in land, or * developing land or dividing land into lots, or * erecting buildings (and before or after acquiring the land, that person or an associated person made improvements to the land).   If so, was the land acquired for the purpose of that business? | Consider section CB 7 of the Act, and its corresponding exclusions in sections CB 16 and CB 19 of the Act.  Associated persons are defined in subpart YB of the Act. |
| **LAND USED AS LANDFILL** | |
| Was the land used as a landfill prior to disposal? | Consider section CB 8 of the Act. |

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| LAND PROVISIONS | POTENTIAL ISSUES & OPPORTUNITES TO CONSIDER |
| **OTHER BUSINESS RELATING TO LAND** | |
| At the time of acquisition, did the purchaser (or an associated person), carry on a business of dealing in land (regardless of whether the land was acquired for the purpose of the land dealing business)?  If so, was the land disposed of within 10 years of acquisition? | Consider section CB 9 of the Act, and the corresponding exclusions in sections CB 16 and CB 19 of the Act.  Associated persons are defined in subpart YB of the Act. |
| At the time of acquisition, did the purchaser (or an associated person), carry on a business of developing land or dividing land into lots (regardless of whether the land was acquired for the purpose of the land development or division business)?  If so, was the land disposed of within 10 years of acquisition? | Consider section CB 10 of the Act, and the corresponding exclusions in sections CB 16 and CB 19 of the Act.  Associated persons are defined in subpart YB of the Act. |
| At the time of acquisition, did the purchaser (or an associated person), carrying on a business of erecting buildings (regardless of whether the land was acquired for the purpose of the building business)?  If so, was the land disposed of within 10 years of completing the improvements? | Consider section CB 11 of the Act, and the corresponding exclusions in sections CB 16 and CB 19 of the Act.  Associated persons are defined in subpart YB of the Act. |
| **DEVELOPMENT OR SUBDIVISION** | |
| Did the purchaser commence an undertaking or scheme involving the development or division of the land into lots, within 10 years of acquisition?  If so, was the work involved more than ‘minor’? | Consider section CB 12 of the Act, and the corresponding exclusions in sections CB 17, CB 20, CB 21 and CB 23 of the Act.  Consider case law and Inland Revenue commentary for the definition of minor work. |
| Did the purchaser commence an undertaking or scheme involving the development of division of the land into lots? Note this should be considered regardless of when the land was acquired.  If so, did the scheme or undertaking involve significant expenditure on channelling, contouring, drainage, earthworks, kerbing, levelling, roads, or any other amenity, service, or work customarily undertaken in relation to the development or division of land. | Consider section CB 13 of the Act, and the corresponding exclusions in sections CB 17, CB 20, CB 21 and CB 23 of the Act.  If none of the exclusions apply, a specific deduction may be available in accordance with section DB 27 of the Act.  Refer to case law and commentary on what constitutes ‘significant expenditure’. |
| **LAND AFFECTED BY CHANGE** | |
| Has land been disposed of within 10 years of acquisition?  If so, was 20% or more of the gain on the sale attributable to one or more of the following factors (or similar):   * the rules of an operative district plan * the likelihood of the imposition of rules * a change or the likelihood of a change to the rules * a consent granted under the Resource Management Act 1991 * a decision or likelihood of a decision in the Environment Court | Consider section CB 14 of the Act, and the corresponding exclusions in sections CB 18 and CB 22 of the Act.  If none of the exclusions apply, a specific deduction may be available in accordance with section DB 28 of the Act. |

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| GST CONSIDERATIONS | POTENTIAL ISSUES & OPPORTUNITES TO CONSIDER |
| **VENDOR IS NOT REGISTERED FOR GST IN RESPECT OF THE TRANSACTION** | |
| If the purchaser is not registered for GST, or they do not intend to use the land for making taxable supplies. | No GST should arise on the transaction for either the vendor or the purchaser. |
| If the purchaser registered for GST and is intending to use the land wholly or partly for making taxable supplies. | No GST should be payable by the vendor.  The purchaser may consider claiming a second hand goods credit pursuant to section 3A of the GST Act. |
| **VENDOR IS REGISTERED FOR GST IN RESPECT OF THE TRANSACTION** | |
| If the purchaser is not registered for GST, or they do not intend to use the land for making taxable supplies. | Output tax should be returned by the vendor pursuant to section 5(3) of the GST Act. |
| If the purchaser is registered for GST and is intending to use the land wholly for making taxable supplies and is not a supply of land intended to be used a principal place of residence by the purchaser or an associated person. | The supply of the land should be zero rated pursuant to section 11(1)(mb) of the GST Act for both the vendor and purchaser. |
| If the purchaser is registered for GST and is intending to use the land partly for making taxable supplies or part of the supply of land intended to be used a principal place of residence by the purchaser or an associated person. | If the disposal of the land acquired by the purchaser:   * does not include a principal place of residence, then the entire transaction may be zero rated per section 11(1)(mb) of the GST Act for both the vendor and purchaser. * includes a principal place of residence, then the portion of the supply relating to the principal place of residence may be deemed a separate supply for GST per section 5(15) of the GST Act for both the vendor and the purchaser. The remaining portion may be zero rated pursuant to section 11(1)(mb) of the GST Act.   For the portions of land which are zero rated but will only partly be used for making taxable supplies, the purchaser should return output tax on the proportion of the land which will not be used in making taxable supplies pursuant to section 20(3J) of the GST Act. |

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| RECENT CHANGES | POTENTIAL ISSUES & OPPORTUNITES TO CONSIDER |
| Ring-fencing of residential rental losses. | Legislation was passed that restricts the use of losses incurred from the rental of residential properties. The rules apply from 1 April 2019.  Where the property is held by a company, the usual loss carry forward rules (requiring 49% shareholder continuity to be maintained) must also be met to allow unused residential rental losses to be carried forward. |
| Interest deductions | For residential rental properties purchased before 27 March 2021, the ability to deduct interest incurred in respect of loans financing the acquisition of the property will be gradually phased out until interest is fully non-deductible from 1 April 2025 onwards. Interest incurred in respect of properties acquired after 27 March 2021 won’t be fully deductible from 1 October 2021.  Exclusions to the new rules may apply to ‘new builds’ and land held by taxpayers / businesses undertaking property development, provided specific criteria is met. |