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IRD Pursuing Property Investors for Tax

In April 2014 the Media quoted the Prime Minister who said there had been a considerable increase in the amount of tax IRD has claimed back from taxpayers on their property sales. Mr Key said:

“There has been a huge amount of energy and effort put into those that IRD believe are actually in fact speculating, and so therefore subject to a capital gains tax and haven’t paid one.”

Whether income tax must be paid on the capital gain on the sale of a property can be a complex issue. Usually tax will not be payable on any gains made on the sale of a family home. Similarly gains on selling an investment property or rental property will not usually attract a tax liability (except for any depreciation recovered). However, at the time of sale consideration must be given to whether the taxpayer selling the property has changed from being an investor into a dealer.

If a taxpayer’s business is dealing in real estate; or the property that was sold was originally acquired for the purpose of resale; or the profits or gains were derived from the carrying out of an undertaking or scheme for the purpose of making a profit then the profit or gain will be taxed at the taxpayer’s ordinary rate.

Whether or not someone is a dealer in real estate or not (and therefore, potentially liable to pay tax on any gains on a sale) is usually determined by three key factors:

1. What was the person’s intention when they bought the property?
2. What previous property transactions has the person had ie is there some sort of pattern of transactions?
3. What association does the person have to a builder, property dealer or a developer?

If you are unsure of whether you must account for income tax on any gains or profits made on the sale of a property or if you are being investigated by IRD you will need expert tax advice. Graeme Withers of Graeme Withers Law can help you. For prompt, personal service contact Graeme on (04) 478 4888 or info@witherslaw.co.nz or visit our website www.witherslaw.co.nz

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.