

FACT SHEET

RESIDENTIAL LAND WITHOLDING TAX (RLWT)

JULY 2016

The RLWT is a withholding tax that applies to certain residential property sales made within two years of purchase. It applies to 'offshore RLWT persons'. It will be relatively straightforward to work out whether an individual is an offshore RLWT person. Companies, trusts and partnerships will want to consider their structure carefully to see whether they fit in that category. The rules for trusts are particularly complicated.

Who has to pay RLWT?

An individual will be an offshore RLWT person if they are:

- › a New Zealand citizen who has not been in New Zealand within the last three years,
- › a New Zealand resident who has not been in New Zealand within the last twelve months, or
- › neither a New Zealand citizen nor a New Zealand resident.

A company or partnership will be an offshore RLWT person if:

- › it is incorporated or registered outside NZ, or is constituted under foreign law, or
- › more than 25% of its directors or general partners are offshore RLWT persons.

In addition:

- › A company will be an offshore RLWT person if more than 25% of its shareholder decision-making rights are held directly or indirectly by offshore RLWT persons.
- › A person will be an offshore RLWT person if they are a partner in a limited partnership or an owner of an effective look-through interest in a look-through company (LTC), and more than 25% of the partnership's partnership shares or of the LTC's effective look-through interests are held directly or indirectly by offshore RLWT persons.

A trustee of a trust will be an offshore RLWT person if:

- › more than 25% of the trustees of that trust are offshore RLWT persons,
- › more than 25% of the people that have the power to appoint/remove a trustee, or amend the trust deed, are offshore RLWT persons,

- › all natural person beneficiaries are offshore RLWT persons,
- › all beneficiaries are offshore RLWT persons,
- › a beneficiary who is an offshore RLWT person has received a distribution within one of the last four years before the disposal of land, and if the beneficiary is a natural person the total distributions for the relevant year are more than \$5,000, or
- › the trust has disposed of residential land within 4 years before the relevant disposal, and the trust has a beneficiary who is an offshore RLWT person.

What is payable?

The RLWT payable is the lesser of:

- › Sale price multiplied by 10%,
- › (Sale price less purchase price) multiplied by 33% (or 28% for companies, unless the company is acting as a trustee of a trust), and
- › Sale price less NZ registered securities and outstanding local authority rates.

Completing a declaration

A vendor will need to complete an IRD form, declaring whether or not they are an 'offshore RLWT person', where all of the following apply:

- › the property is residential property in New Zealand,
- › the vendor acquired the property on or after 1 October 2015,
- › a sale amount is paid/payable on or after 1 July 2016, and
- › it has been less than 2 years between the date of acquisition and the date the vendor will dispose of the property.

It is important that the dates of acquisition and sale are calculated correctly. Note that in most (but not all) cases:

- › the date of acquisition is the date of settlement of the purchase, and
- › the date of sale is the date of the Agreement for Sale and Purchase (not the settlement date).

If you declare that you are not an offshore RLWT person, then you will need to provide supporting proof of this. The declaration form is separate from and additional to any 'tax statement' you may have to provide for the transaction.



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