



**CHARTERED ACCOUNTANTS**  
AUSTRALIA + NEW ZEALAND

## 2015 – THERE GOES ANOTHER YEAR!

WE CONTINUE TO SEE INCREASED BUSINESS ACTIVITY IN THE LOCAL ECONOMY AND WITH THAT GREATER OPPORTUNITIES FOR OUR CLIENTS AND THEIR BUSINESSES.

A recent address from a respected economist highlighted the strong position that the Bay of Plenty region is in as the New Zealand economy begins to slow down. House prices continue to rise, bringing us back in line with other areas, and there is the need for further commercial infrastructure to accommodate the increased business activity.

YRW is moving with the times and with that comes our arrival on social media. We are finding Facebook a particularly good way to engage with our clients. If you haven't already, please make sure you like us on Facebook and connect with YRW on LinkedIn.

*The principals and staff at YRW wish you a Merry Christmas and a prosperous New Year.*



### CHRISTMAS DATES

Closing 5.00 pm  
Wednesday 23rd  
December 2015 –  
Opening 8.00 am  
Monday 18th January  
2016

If you have a situation arise during our closure period that requires our immediate attention, please phone:

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**Steve Read**  
Principal

**Raimarie Pointon**  
Principal

**Eric Woudberg**  
Principal

**Natalie Milne**  
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# TAXING RESIDENTIAL PROPERTY

## THE BRIGHT-LINE TEST FOR RESIDENTIAL LAND TRANSACTIONS IS NOW LAW AND APPLIES TO RESIDENTIAL LAND TRANSACTIONS THAT OCCUR ON OR AFTER 1 OCTOBER 2015.

The sale of “residential land” (apart from the main home) within two years of acquisition will be taxable in relation to properties acquired under an agreement entered into on or after 1 October 2015. The acquisition and disposal date definitions for the purposes of this rule cater for sales occurring before title of the property is registered (e.g., off-the-plans apartment, or section on sold before completion).

It is important to note that the purpose of the bright-line test is to supplement the “intention test” in the current land sale rules under the Income Tax Act 2007. The intention test makes gains from the sale of real property purchased taxable where there was an intention of resale at the time the property was purchased. There is no time limit to the intention test.

Inland Revenue have made it clear that the objective nature of this test means that the sale of residential property within two years of acquisition will be taxable even when the seller did not acquire the property with an intention of resale and when a person needs to sell property due to circumstances outside of their control. In the IRD’s view this is unavoidable for the bright-line test to achieve its goal of being objective and unambiguous.

### What is considered residential land?

For the purposes of the bright-line test residential land is defined as:

- land that has a dwelling on it; or
- land for which there is an arrangement to build a dwelling on it;
- but does not include land that is used predominantly as business premises or as farmland.

Farmland is land where the area and nature of the land disposed of means that it is then capable of being worked as an economic unit as a farming or agricultural business.

### Main home exemption

The primary exemption from the two year rule will be for properties that meet the definition of a “main home” – the home that has been predominantly used as a person’s main residence. If a person has several residences, then the main home will be the dwelling that the person has the “greatest connection” to (similar to the Permanent Place of Abode test).

Complexities can arise where a person’s main home is held in a Trust. The main home exemption will only apply where a beneficiary of the Trust occupies the dwelling as a main home and the Settlor of the Trust is not already claiming the exemption for the same home.

The main home exemption can only be claimed twice in two years, which essentially means there cannot be a regular pattern of buying and selling main homes.

Some lifestyle blocks may not qualify for the main home exemption. Most of the land must actually be used for the home, based on actual use not intended use, for the exemption to apply. When the area of the property is used less than 50% for the main home the exemption will not apply. It is likely that the area of the land not used for the main home will also fail to meet the requirements to apply the exemption for business premises or farmland!

### Restructuring

More care and consideration should be given ahead of restructuring the ownership of properties from personal ownership to be under a Company or a Trust structure, as associated person transactions will not be exempt from the two year rule.

### Inherited property and relationship property transfers

There will be no tax liability under the bright-line test for the transfer of property under an inheritance. Also, the beneficiary of the property will not be subject to the bright-line test if they sell the property within two years of



its transfer. This has been justified on the basis that a beneficiary following a death does not have any say as to what property is transferred to them.

The transfer of property as a result of a relationship property agreement will not be subject to a tax liability under the bright-line test. However, if the transferee disposes of that property within two years of having acquired it under the relationship property agreement they will be subject to the bright-line test (assuming there is no main home exemption available).

#### Anti-avoidance provisions

The use of land-rich Companies and Trusts to circumvent the bright-line test is to be addressed through an anti-avoidance provision that deems a disposal subject to the bright-line test to have occurred if any of the following occurs with the intention to avoid the bright-line test:

the disposal of shares;

- a change in the trustees of a Trust;
- a change in the beneficiaries of a Trust;
- a change in the identity of any person who is able to appoint the trustee or the beneficiaries of a Trust;
- and a change in the ownership of a corporate trustee.

#### Losses ring-fenced

Losses arising from the bright-line test will be ring-fenced so that they may only be used to offset taxable gains from other land sales.

#### What deductions are available in the event that the bright-line test applies?

The initial cost of the property expenditure incurred in relation to acquisition of the property i.e., legal fees, capital improvements (renovations) and other incidental costs of disposal will be allowed as deductions.

Other deductions, or holding costs (such as interest on mortgages, insurance, rates and repairs and maintenance), will be available as expenses incurred in relation to properties subject to the bright-line test provided that the property was part of a business activity and there is a sufficient nexus between the expenditure incurred and the income earning process. For example, a property investor who sells a rental property within two years of acquisition will be able to deduct the holding costs and normally do so year on year against the rental income generated.

The other deductions will not be available in relation to other residential property sales within two years of acquisition that were not part of a business activity (e.g holiday homes).

#### Documentation required

There is now a requirement for buyers and sellers of residential property to complete a Land Transfer Tax Statement and provide their IRD numbers. Where the property is owned by individuals and the main home exemption is available, the IRD numbers will not need to be provided.

Non-residents will be required to provide their relevant tax identification number from their home country and have a New Zealand bank account opened in order to apply for an IRD number. This will ensure they also meet the requirements of New Zealand Anti-Money Laundering rules.

IRD numbers will be required to be provided for all properties under Trust ownership, regardless of whether or not the main home exemption applies. This may require an application for an IRD number to be made for the Trust prior to the residential land transaction occurring.

**We recommend that you contact Natalie Milne or your advisor at YRW to discuss any imminent property purchases before you enter into the agreement to ensure you have received advice as to the implications of these rules.**

# ROCKET! YOUNG READ WOUDBERG BALL AND AWARDS

*Ben and Teresa Gorinski, and David and Sheree Merrett, D & B Construction Limited*

FOR THOSE OF YOU WHO MAY NOT KNOW, ROCKET! IS AN ORGANISATION OF YOUNG PROFESSIONALS SEEKING TO PROVIDE MORE OPPORTUNITIES FOR YOUNG BUSINESS-ORIENTATED PEOPLE IN THE TAURANGA REGION.

YRW was once again proud to be the principal sponsor of the Rocket! Ball and Awards. The awards process is hugely beneficial for the entrants and it is great to recognise and celebrate the success of some of Tauranga's young business people.

#### The winners of this year's awards were as follows:

HOBEC, Young Employee of the Year: Mike Curruthers, TrustPower  
Priority One, Young Innovator of the Year: Andrea Buchanan, Physiotherapy Innovation Limited  
Young Read Woudberg, Young Business Owner of the Year: David Merrett and Ben Gorinski, D & B Construction Limited

*Andrea and Ben Buchanan, Physiotherapy Innovation Ltd*



## Events & Staff News

### YRW on the fitness front

YRW's City to Surf team achieved fantastic results this year coming 8th out of 27 in the corporate challenge. Well done to Debbie Armstrong, Anna Christie, Eric Woudberg, Glen Lindsay and Chantelle Hodgson.

Eric Woudberg and Debbie Armstrong completed the Taupo Round the Lakes Cycle Event, both with admirable finishing times. Eric Woudberg's next challenges include a half Iron Man event in Taupo and the Taupo full Iron Man in March!

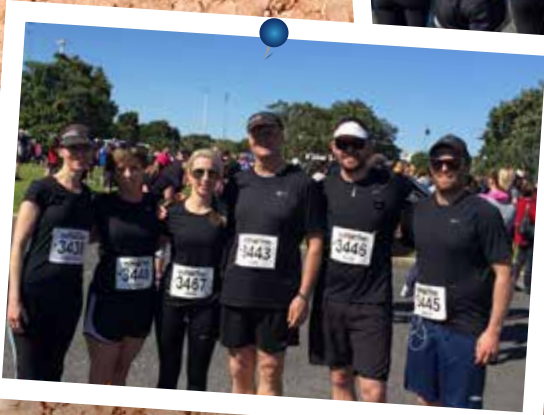
### Westpac Business Awards

Raimarie Pointon did another stellar job as financial judge for the Westpac Business Awards held recently at ASB Arena. Congratulations to D & B Construction for receiving a highly commended award for Brand, Marketing and Design and also being a finalist for the awards for Manufacturing and/or Logistics and Customer Service.

### Babies....

Camille Moore and Partner Nika are patiently awaiting the arrival of their little girl. Camille has recently started her maternity leave, but we look forward to her return to the YRW office in 2016!

James Sherson and his partner Dolly welcomed their first child into the world on the 31st of August. Coco Sherson already has Mum and Dad wrapped around her little finger and it's no wonder.... Isn't she gorgeous?!



## CONTACTS

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### VISIT US:

#### Carparking

We have six client carparks available underneath our building with entry from Anson Street. Please feel free to use them when visiting our office.



### IMPORTANT:

This newsletter is intended to be of a general nature only and should not be relied on in making business or personal decisions without first seeking advice from this office.