

12 August 2015

Hon Christopher Finlayson QC, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Bright-line Test for Residential Land) Bill**

1. We have considered whether the Taxation (Bright-line Test for Residential Land) Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared with the latest version of the Bill (IRD 19295/5.0) and on the understanding that the Bill may be subject only to minor amendments before it is submitted to Cabinet. We will provide you with further advice if the final version of the Bill includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with section 18(1) (freedom of movement and residence). Our analysis is set out below.

### **The Bill**

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4. The Bill introduces amendments to the Income Tax Act 2007 and the Tax Administration Act 1994. The purpose of the Bill is to improve compliance with the current land sale rules in section CB 6 of the Income Tax Act 2007. Under these rules, gains from the sale of land are taxable if the land is bought with an intention of resale.
5. The Bill proposes a new objective "bright-line" land sale test to improve compliance. This supplements the current test based on intention to resell the land, as there can be difficulties determining whether a person purchases land with a purpose or intention of resale. More specifically, the Bill aims to prevent tax avoidance by land speculators.
6. The bright-line test requires income tax to be paid on any gains from the disposal of residential land that is acquired and disposed of within two years, subject to three exemptions:
  - disposal of property that is the main home of the transferor (in certain circumstances);
  - disposal of property inherited following the death of the owner; and
  - transfer under a relationship property agreement.

## **Consistency with the Right of Freedom of Movement – Section 18(1)**

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7. Section 18(1) of the Bill of Rights Act affirms that everyone lawfully in New Zealand has the right to freedom of movement and residence within New Zealand.
8. Clause 4 of the Bill inserts a new section CB 6A, which provides that an amount that a person derives from disposing of residential land is taxable income of the person, if the land is disposed of within two years of its acquisition. We have considered whether this constitutes a limit on the right to choose a place of residence within the country, engaging section 18(1) of the Bill of Rights Act.
9. The bright-line test will not apply to a person's main home. Where a person has more than one home, their main home is the one with which the person has the "greatest connection". The main home exclusion is not available for people who have utilised it twice before in the previous two years. This exclusion limits the applicability of the provisions to habitual sellers of land, and persons selling their second or subsequent homes within two years of acquiring them.
10. We also note that gains from the sale of land are already taxable under the current rules if the land is bought with an intention of resale, and the bright-line test facilitates the enforcement of these rules. We consider that clarifying the tax liability of gains from land sales does not constitute a limit on the right to choose a place of residence within the country.
11. Given the narrow applicability of the provisions and the existing land sale rules, we do not consider that the provisions constitute a limit on the right under section 18(1) of the Bill of Rights Act.

## **Conclusion**

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12. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

Jeff Orr

**Chief Legal Counsel**

**Office of Legal Counsel**

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