

## **TAX TRAPS IN SUBDIVISIONS**

There are a number of situations in which the profits received upon resale of land may be deemed to form part of the land owner's income and so be subject to tax. These include the following:

- land acquired partially with the intention of on-selling it
- land sold by a land dealer, land developer, subdivider or builder
- and which is developed or subdivided within 10 years of the date on which it was acquired

### **Land acquired with the intention of on-selling it**

Determining the intent a land owner had at the time the land was acquired is largely a question of evidence. The Commissioner of Inland Revenue is likely to look at things such as the length of time the property was owned by the land owner before it was on sold and the frequency and number of similar transactions undertaken by the landowner.

It is important to keep any evidence of intention such as letters to solicitors or financial advisors, reports from real estate agents or letters to the bank manager in which you may have indicated an intention to keep the property as an investment or some other intended use for the property. However, remember that anything you tell your bank manager or any other person may be your downfall if it does indicate an intention to resell the property.

### **Land sold by a dealer, land developer, subdivider or builder**

Where the owner of the land is in the business of erecting buildings developing land or subdividing the owner will be liable to pay tax upon any profit on the resale of the land if:

- the land was acquired for one of the above business purposes; or
- improvements of more than a minor nature have been carried out on the land and the land is sold within 10 years of the completion of the improvements.

These provisions may catch those of you who have undertaken more than one subdivision or development. Whether a land owner can be said to be a "dealer", "developer", "builder" or "subdivider" is again a question of fact and is likely to be decided in light of surrounding circumstances. A strong indicator is the number of similar transactions which have been undertaken by the land owner in the past. However, even a number of similar land transactions may have some other satisfactory explanation.

### **Land subdivided within 10 years of the date on which it was acquired**

Regardless of whether or not you have ever been involved in a subdivision before there is still a potential liability for first time subdividers. Liability will arise where:

- The Commissioner is satisfied that a development or subdivision of more than a minor nature has been carried out by or on behalf of the land owner, and
- he project was started within 10 years of the date on which the land was acquired

The key to avoiding tax liability upon resale of the property is determining when the "project" was commenced. Is approaching a real estate agent seeking information on resale prices in the area sufficient to constitute commencing a "project"? What about approaching a surveyor or checking council zoning requirements for the area to see if subdivision is viable?

As always it will depend on the particular circumstances surrounding the proposed subdivision and the actions taken by the land owner. Of course there are a host of exemptions which may be available to the land owner in particular cases.