

To: New Zealand Chamber of Commerce Hong Kong  
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### **BEWARE OF OFF THE PLAN SALES**

Have you purchased a New Zealand residential apartment "off the plan"?

The strong housing market in Auckland has seen a proliferation of medium to high-rise apartment developments. Lack of skilled labour and material price increases has seen a number of developments abandoned; and those that have been retained see purchasers being asked for an increase on the original price.

This has led to a number of purchasers pulling out prior to settlement. A number however, who have purchased "off the plan" have entered into agreements to on sell at a much higher price. This particularly so for major upmarket developments. This is where a tax trap can occur. Previous articles have addressed the new *two year* minimum ownership before any gain becomes taxable. This is under the recently introduced *bright-line test*. Where however, an agreement was entered into to purchase "off the plan" prior to 1 October 2015, the new rule **does not** operate. Under the bright-line test, the gain is not taxable. For this legislation, the *date of acquisition* is deemed to be the date entered into to purchase "off the plan".

However, for the current existing rule relating to the purchase and on sale of land, where the intention of a purchaser, at the *date of acquisition*, is to on sell, prima facie the gain made would be taxable (unless an exemption applied). For the purposes of the existing legislation, *acquisition date* is the date a person first acquires an equitable or legal interest in the land. This will usually be when a person first acquires interest under an agreement for sale and purchase. At the time a person enters into an agreement to purchase "off the plan", no title is available. Title is acquired at the time of settlement. If at that time, there is already an existing agreement to on sell, that gain becomes taxable. An exemption applies only where the property has been **owned and occupied** (my emphasis). If in fact there is no occupation, then an exemption does not apply.

Care is necessary then, if buyers are sitting on agreement to purchase “off the plan” and have entered into an agreement to on sell at the time title issues. In effect, acquisition and sale occurs on the same day. While New Zealand does not have a capital gains tax per se, such a gain on sale is likely to be taxable.

**Disclaimer:**

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