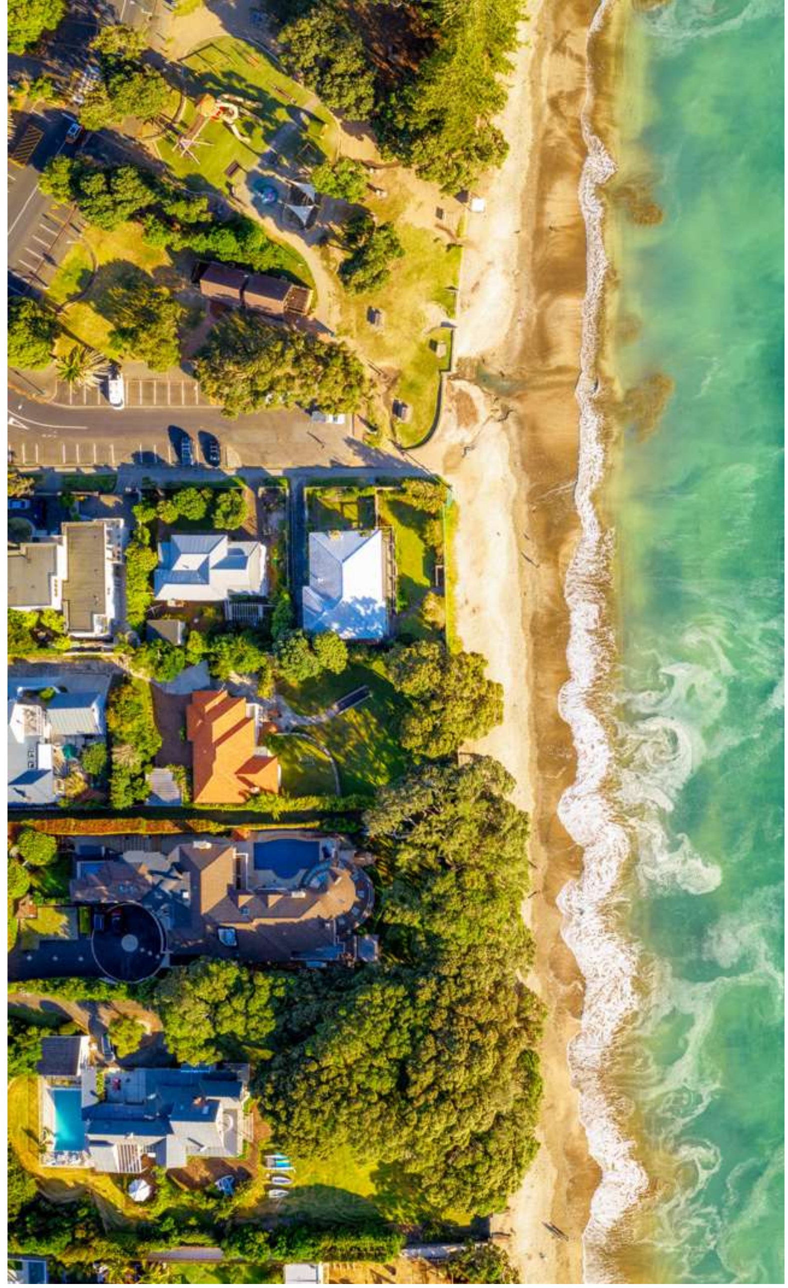
Ask an expert
Offshore property investors



A READER ASKS:

"I am an offshore property investor, and there have been a lot of changes lately to the rules in New Zealand. What do I need to consider?"

STORY
Richard Williams
Director
Baker Tilly Staples Rodway Waikato

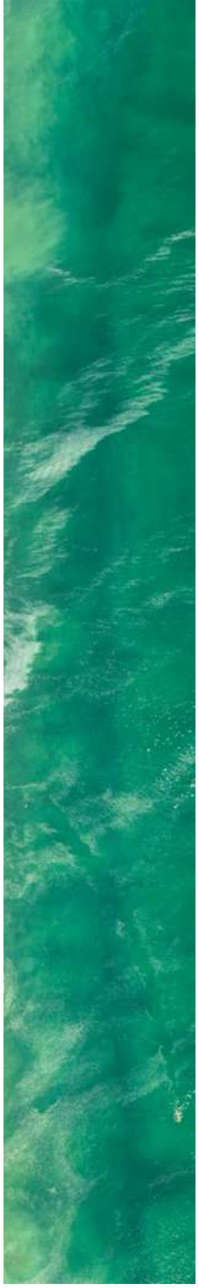
Offshore property buyers need to keep a close eye on changes to our taxation system and Overseas Investment Office (OIO) rules, which can differ depending on whether it is residential or non-residential property being considered.

Property investment decisions have turned into a decision-making minefield with many hidden traps and pitfalls for the uninformed. Here is a summary of the main questions that we are asked.

Are foreign investors allowed to buy under their personal name?

Ordinarily, no. Individuals can only purchase residential property in New Zealand where it is intended for their own occupation and use, with the consent of the OIO (exceptions do apply).

Residential development land can be purchased personally or by a nominated entity with the consent of the OIO.



Commercial and industrial property which isn't "sensitive land" under OIO regulations can be purchased individually or by a nominated entity.

Is there stamp duty for foreign investors?

No

Are foreigners allowed to use a company to acquire property?

If the company is an "associate" (i.e. controlled by) of a foreigner, then the same rules as above apply.

Are there any additional costs involved?

OIO application costs and related legal fees vary depending on the nature of the property purchase.

Are mortgage interest costs deductible?

Yes, where they relate to income-earning assets. For New Zealand resident companies, interest is deductible by default, other than where they are a Look-through Company.

Any tax losses arising from a residential rental activity are ring-fenced and carried forward for offset against future income of the same character.

Is a sale of property caught by a limited ownership period?

The sale of residential land requires income tax to be paid on gains from the disposal of residential property acquired and disposed of within five years, with the exemption of the main family home.

For commercial properties, there is no minimum ownership period (refer to next question about CGT).

Will Capital Gains Tax be incurred?

New Zealand has no comprehensive Capital Gains Tax regime.

Where property is part of a business of dealing, dividing or developing land or part of an undertaking or scheme devised for profit, sale proceeds will be subject to income tax.

Where the entity owning property in New Zealand is associated with an entity in the business of dealing, dividing or developing land, sale proceeds from property will be subject to income tax where the property is sold within 10 years of acquisition.

If that entity is associated with one which is in the business of erecting buildings on land, sale proceeds from a property will be subject to income tax where the property is sold within 10 years of construction of the building on that property.

Where property has been acquired with the purpose or intention of disposal, sale proceeds will be subject to income tax.

However, there are exemptions that may apply to the scenarios above.

There may be taxable depreciation recovered where depreciation on buildings has been claimed previously or where fit-out is recorded separately.

In the case of property purchased by a New Zealand tax resident company, withholding tax can apply in some circumstances to the distribution of capital gains to a non-resident shareholder.

richard.williams@bakertillysr.nz

The above general advice only should not be relied upon as specific circumstances can vary.
Please contact your usual Baker Tilly Staples Rodway advisor for assistance.