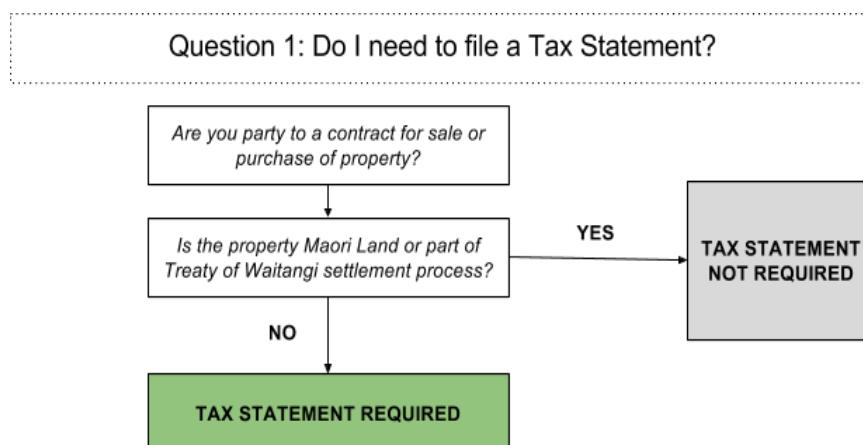


Buying and Selling Property IRD Information Requirements

In 2015, new laws were introduced that were designed to help the Inland Revenue Department enforce tax obligations that relate to the buying and selling of property. In general terms, these new laws mean that if you buy or sell a property, you (or, more likely, your lawyer) will have to complete and file a new form called a “**Land Transfer Tax Statement**”. In some circumstances you will have to include your IRD number and other tax information.

Important question number one: do I need to file a tax statement?

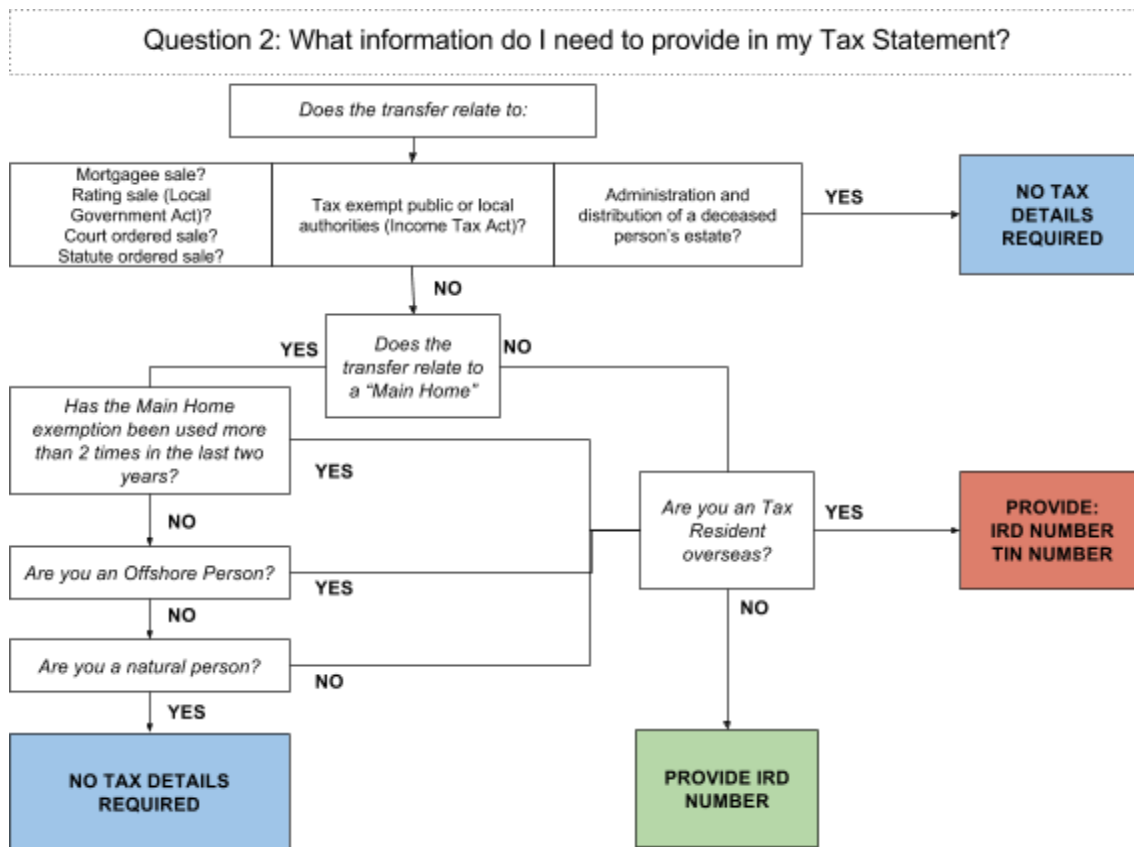
You might be wondering if this Tax Statement business applies to you. Here's a little flow chart to show you who needs to file a Tax Statement.



So, you'll see that in almost all property transactions a Tax Statement will be required. The IRD specifically mentions that, with the exception of Maori Land and Treaty of Waitangi transactions, Tax Statements are applicable for every single kind of property transaction including residential property, commercial property or farmland.

Important question number two: what information do I need to include in my tax statement?

In the likely event that you're required to complete a Tax Statement, it turns out that your particular circumstances will dictate what information you have to provide in sections 3 and 4 of this document. In certain cases, you will have to provide your IRD Number. In other cases, you won't be required to disclose this information. If you're a tax resident in another country, you'll have to provide even more information. Wondering where you fit into this scenario? Here's another flowchart that will help you figure out where you stand.



Let's break down some of these questions:

- **“Does the transfer relate to a Main Home?”** This is relevant because you don't have to provide your tax information if the property you are transferring is your “main home”. Your main home must be a residential property and is one that you've had as your main home for 50% of the time that you've owned it, and it's your only main home. You can't have more than one, so if you do live in more than one house, your main home is the one that you have the greatest connection to. The IRD suggests that you think about the following when you decide whether a home is your “main home”:
 - Where is your personal property?
 - How much time do you spend living in each house?
 - Where does your immediate family live?
 - Where are your social ties the strongest?
 - What other ties (for example: employment, business, economic) do you have with the community?

Finally, you may wonder who makes the decision about whether a home is a “main home”. The person transferring the property gets to decide. However, the IRD is quick to follow this fact up with a warning that knowingly providing false or misleading tax information is an offence with serious consequences. Therefore, it is a good idea to talk through the main home exemption with your lawyer so you can ensure you're within the legal boundaries of this exemption.

- **Has the main home exemption been used more than 2 times in the last two years?** You can only use the main home exception twice in any two-year period.

- **What does an “Offshore Person” mean?** When we’re talking about an individual, an offshore person is either:
 - A New Zealand citizen who is outside of New Zealand and not within New Zealand for three years
 - A person who holds a resident visa and who is outside New Zealand and hasn’t been in New Zealand for the last 12 months; or
 - A person who is not a New Zealand citizen and who does not hold a resident visa.

For a company or trust, an Offshore Person is someone who would be defined as an Overseas Person under the Overseas Investment Act.

- **What’s a Tax Resident in another jurisdiction?** A person who is currently a tax resident in another country under the tax laws of that country. A TIN number is a “Tax Identification Number” for that country.

Where it gets tricky

Let’s say that you, your family trust, your company or another entity related to you just bought a home and, under the new laws, that entity is required to provide its tax details in the Tax Statement. Here is a bit more information on the circumstances where it can get complicated.

- **You’re a Tax resident in another country:** If you’re a tax resident in another country (i.e., you’re required to file a tax return overseas), you’ll need to provide your Tax Identification Number (TIN) for that country, even if you live in New Zealand. If you have more than one TIN, you’ll need to provide all TINs from each country where you’re a current tax resident.
- **Trusts:** If your family trust is listed as the buyer or seller of a property, the “main home” exemption does not apply. This means that the trust will be required to provide its IRD number on the Tax Statement (and potentially its TIN number too if it has one in another country). Unfortunately, you cannot use the IRD number of an individual trustee to tick off this requirement. If your trust does not have an IRD number, you’ll have to apply for one from the IRD before you can register the sale or purchase. Fortunately, this process is relatively straightforward.
- **You don’t have an IRD number:** If the buyer or seller does not have an IRD number, it will also have to apply for, and receive, an IRD number before the sale or purchase can be registered. This is relatively straightforward *unless* one of the following situations applies to you:
 - You do not have New Zealand citizenship or a residence visa;
 - You’re a New Zealand citizen who has been overseas continuously for the last three years or more years; or
 - You have a New Zealand residence visa and have been overseas continuously for the last year or more.

If any of these situations apply, you’re required to have a “fully functional New Zealand bank account” before you can apply for an IRD number. This is a bank account where you can make deposits and withdrawals and the account holder’s identity is verified in line with all relevant New Zealand legal requirements.

What you need to do

If you're buying or selling a property and wondering what you should do, the good news is that your lawyer knows how to fill out a Tax Statement and can help you work out what information you'll need to provide. If you need to submit your IRD number or other tax details, you can give these directly to your lawyer, who will complete and submit the Tax Statement on your behalf. You can also talk to your lawyer about any further steps that may be required, such as applying for an IRD number.

Have a question about these new requirements? Or perhaps you just fancy a chat about how this applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.

Phone: +64 9 486 6827 | Email: info@kevinmcdonald.co.nz | Website: kevinmcdonald.co.nz

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