

## Land Tax - Rezoning...

Designation of land as a special housing area amidst the present cry for residential building has made land rezoning a topical tax item.

A common set of facts is rural land held by one or more generations of family members for which a resource consent is lodged. The land will have predominantly been bare land (scrub) or used for grazing livestock. The resource consent application is required to change the zoning. This will ordinarily have been sought in conjunction with the neighbours. Sometimes an agreement will have been entered into with the neighbours for that purpose.

What are the tax implications here? There are three specific land taxing provisions that may apply. GST considerations are also relevant.

The first of the land taxing provisions is that dealing with re-zoning gains. On the facts above this provision will not apply. It generally does not produce a tax result where the land has been held for more than 10 years.

Similarly, retention of the land for more than 10 years will ordinarily result in the second land taxing provision not applying either. This section only applies to schemes or undertakings commenced within 10 years of ownership.

If any tax is payable on sale of the land it is because the land is tainted by association with a land dealer or developer or because the owner has commenced a "major" scheme or undertaking on the land. For purposes of this article I will assume there is no tainting.

Does making an application for resource consent mean an owner has commenced a "major" scheme or undertaking? In some circumstances the answer might be yes but in the usual case the answer is no. The IRD accept that merely making such an application is a preparatory step only and does not, by itself, trigger this section. Obviously the further you go towards undertaking a land development or division of land into lots, the more likely this section will apply. At the resource consent stage however, it should not apply. Similarly a taxable activity should not have commenced by then either so the property will remain outside the GST net. Tax matters are acutely tax specific so please beware and seek advice if in doubt.