

Departmental Disclosure Statement

Taxation (Land Information and Offshore Persons Information) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Inland Revenue and Land Information New Zealand.

Inland Revenue and Land Information New Zealand certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 June 2015

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Part One: General Policy Statement

The broad policy of the Bill is to improve compliance with the Income Tax Act 2007. In particular, the focus is on gathering better information for tax compliance. For the Land Transfer Act 1952 amendments (and other consequential amendments) the focus is on getting better tax information from all people (New Zealanders and offshore people) dealing in land.

This is complemented by amendments to the Tax Administration Act 1994, which also relate to concerns with tax enforcement against people dealing in land. However the amendments to the Tax Administration Act are wider than just tax compliance in land dealings. They are intended to promote the enforcement of tax obligations of offshore persons generally (offshore person may include certain New Zealand residents and certain New Zealand citizens). The changes are intended to give Inland Revenue greater assurance about the identity of the offshore person.

Land Transfer Act 1952 amendments

Purchasers and vendors of property will, subject to certain exceptions, need to provide tax numbers – a New Zealand Inland Revenue Department (IRD) number, and in the case of those who are currently tax resident in another jurisdiction, an overseas Tax Identification Number – as part of conveyancing processes prescribed by the Land Transfer Act 1952. When a person is acting in another capacity (for example, as trustee of a trust), the number provided must relate to the capacity in which they are acting, rather than their individual capacity. Nominees must provide details of the principal.

The IRD number requirement does not apply a New Zealand individual (who is not an 'offshore person' as defined) buying or selling their main home, or to any other transfers specified as exempt transfers in regulations, unless they are selling their third main home in a two-year period.

This information will be collected by conveyancers from property vendors and purchasers, and provided to Land Information New Zealand (LINZ), which in turn will provide the information to Inland Revenue. This will help ensure taxpayers' compliance with tax obligations, both in New Zealand and overseas.

While principally a tax measure, the amendments to the Land Transfer Act 1952 will provide the mechanism for collecting the information during the conveyancing process on behalf of Inland Revenue. Tax information provided to LINZ will be personal information. It will not form part of the land transfer register administered by LINZ and will not be publicly available.

A conveyancer will be required to provide the declared information before certifying the property transfer. Conveyancers will not be required to certify the accuracy of the information provided. In this way the onus will be on purchasers and vendors to provide accurate information. An offence will be committed if a transferee or transferor provides false or misleading tax information.

Regulations will be made under these provisions to provide exemptions for particular transfers or parties to transfers that meet the following criteria:

- collecting the IRD number must be impractical or involve high compliance costs; or
- the transaction or person must represent a low tax avoidance risk.

Regulations can also be made to include transfers of other estates in land to be covered by the tax information requirement.

Tax Administration Act 1994 amendments

Non-residents will, before being issued with an IRD number, be required to have a New Zealand bank account. This is intended to assist tax compliance by giving Inland Revenue greater assurance about the identity of the person. Greater assurance can be achieved by ensuring that a non-resident looking to obtain an IRD number has first been subjected to New Zealand's anti-money laundering rules.

A non-resident for the purpose of being issued an IRD number, will be defined as an offshore person, with this definition using elements of the Overseas Investment Act definition of overseas person and tests used in the Electoral Act 1993 that relate to people being eligible to be on the electoral roll.

In essence, a person that is not a citizen or permanent resident will be an offshore person and subject to the bank account requirement. However, a New Zealand citizen can also be an offshore person if they have not been to New Zealand for three years. A person with a resident class visa can be an offshore person if they have not been to New Zealand for one year. A non-individual will be an offshore person if it is 25% or more owned or controlled by individuals referred to above. The account can be with any registered bank or licenced non-bank deposit taker. Lists of these entities are maintained on the Reserve Bank website.

To prevent a situation whereby, for example, shares in a New Zealand company with an IRD number are sold to a non-resident to avoid the application of the rule, the bill also imposes an obligation on a non-individual to provide a bank account number in the event that they become an offshore person at a later date.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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Title: Sellers and purchasers of real property required to supply their IRD numbers and tax information numbers

Authorising agency: Inland Revenue

Date: 5 June 2015

Title: Requiring non-resident IRD number applicant to have a New Zealand bank account

Authorising agency: Inland Revenue

Date: 18 June 2015

Copies of both documents can be found at:
<http://taxpolicy.ird.govt.nz/publications/type/ris>

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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The RISs were independently reviewed by Inland Revenue, in accordance with Treasury guidelines.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Analysis available as part of the regulatory impact statements referred to in box 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Analysis available as part of the regulatory impact statements referred to in box 2.3.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Inland Revenue has considered whether the provisions relating to different requirements for offshore persons would breach New Zealand's obligations relating to non-discrimination in its double tax treaties, and considers that the policy is unlikely to breach such obligations. MFAT has been consulted on whether this may or may not have implications for New Zealand's non-discrimination provisions in its free trade agreements and has advised that the "offshore person" test in the bill is less likely to result in a finding of discrimination than would a differentiation that was based simply on nationality.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Provision has been made for regulation to provide certain exemptions from the requirements of the policy. In designing the exemptions it is likely that transactions involving Maori land as defined by Te Ture Whenua Maori Act 1993 will be exempt from the requirements of this Bill.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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A new offence has been created (clause 4 of the bill, proposed section 156E of the Land Transfer Act) if a person knowingly, or with the intention to deceive, provides false or misleading tax information. A person who commits such an offence is liable on conviction to a fine not exceeding \$25,000 for a first offence and not exceeding \$50,000 for subsequent offences.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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Consultation has occurred with the Ministry of Justice who were comfortable with the Bill's provisions from a BORA perspective.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Clause 4, proposed section 156B of the bill requires the collection of tax-related information by LINZ. Clause 4, proposed section 156D of the bill provides that this information can be corrected by LINZ. Clause 4, proposed section 156F provides that LINZ will supply this information to Inland Revenue. Clause 4, proposed section 156G provides that the certifier and LINZ must store this information for 10 years. Clause 4, proposed sections 156H and 156I deal with permitted disclosures of information.</p> <p>Clauses 8 to 11 require an offshore person to provide details of a bank account to Inland Revenue either at the time the person applies for an IRD number, or later if they are not an individual and become an “offshore person” after obtaining an IRD number.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>Preliminary comments on the Bill have been received by the Privacy Commissioner. Inland Revenue and LINZ will continue to work with the Privacy Commissioner to ensure that the Bill addresses privacy issues appropriately.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Due to time constraints there has not been external consultation on the bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
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Clause 4, section 156A(2) “exempt transfer” and clause 6, section 236 will allow for regulations to be made to exempt certain transfers of land or parties to transfers of land from having to provide the relevant tax information. Regulations making such exceptions must meet the following criteria:

- collecting the IRD number must be impractical or involve high compliance costs; or
- the transaction or person must represent a low tax avoidance risk.

These regulation making powers provide identifiable boundaries to any exception that may be created. Creating exception through regulation will allow time for the details of any exemptions to be worked through before the implementation date of the proposals (1 October 2015). It will also allow greater flexibility to change the exceptions in the future if parties or transactions that meet the relevant criteria are discovered or if exceptions become irrelevant. . The detail of the first tranche of regulations (to take effect from 1 October 2015) will be consulted on with representatives of the property conveyancing industry (such as the New Zealand Law Society and Auckland District Law Society).

Clause 4, section 156A “specified estate in land” and clause 6, section 236 also allow for regulations to be made to include transfers of other estates in land to be covered by the tax information requirement.

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
As mentioned in box 4.7, above, clause 6 amends section 236 of the Land Transfer Act to allow regulations to describe which land transfers and/or parties to transfers are exempt from the requirement to provide tax information and to add other estates in land to be included as specified estates in land.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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