

Taxation (Land Information and Offshore Persons Information) Bill

*Officials' Report to the Finance and Expenditure
Committee on Submissions on the Bill*

July 2015

Prepared by Policy and Strategy of Inland Revenue and Land Information New Zealand

CONTENTS

Overview	1
Matters raised by submitters	3
Support for reform	5
Issue: Support for the Bill	5
Impact on the land transfer system	6
Issue: Possible delays in the land transfer system	6
Legislative coherence	7
Issue: Land Transfer Act 1952 and income tax rules	7
Timeframe of bill	8
Issue: Development of the bill	8
Post-implementation review	9
Issue: Automatic expiration of the provisions in the bill	9
Issue: Monitoring and review on an on-going basis	9
Next stages of property compliance measures	10
Issue: Consistency between property tax proposals	10
Main home exemption	11
Issue: Reconsidering the main home exemption	11
Issue: Complexity of main home exemption provision	11
Issue: Use of “main home” rather than existing definitions of residence	12
Issue: Greatest connection	13
Issue: Time “main home” determined	14
Issue: Need for guidance	14
Issue: Main home of family member	15
Issue: Person’s family living with the person	15
Issue: Change “exempt transfer” wording	16
Issue: Vendors who use main home exemption more than twice in past 2 years	17
Issue: Meaning of “arrangement”	17
Issue: Meaning of “dwelling”	18
Issue: Meaning of “farmland”	19
Other interests in land	20
Issue: Specified estates in land	20
Issue: Cross lease properties included	20
Exemptions specified by regulations	21
Issue: Reconsidering exemptions specified by regulations	21
Issue: Reconsidering exemptions specified by regulations	21
Provision of tax information	22
Issue: IRD number application process	22
Issue: Online IRD number application	22
Issue: Validation of residence status	23
Issue: Application date	23
Issue: Non-active trust compliance costs	24
Issue: Exemption for death and relationship property transfers	24
Issue: Fast-tracking IRD number application process for trusts	25
Issue: Change of trustees as an exempt transfer	25
Issue: Mortgagee sale or power of sale conferred by statute	26
Issue: Determining tax residence	26
Issue: Passport basis instead of tax residence basis	27
Issue: Transfer to an offshore person	27
Issue: Foreign tax information provision from multiple jurisdictions	28

Issue: Form of tax statement should be standardised	28
Issue: Form of tax statement should be published in the Gazette	29
Issue: Country code availability	29
Issue: Remove certifiers' retention period for holding of tax statement	29
Issue: Reduce retention period for holding of tax statement	30
Issue: Removal of certifier obligation to provide Commissioner of Inland Revenue with tax statements	30
Issue: Retention by electronic means	31
Issue: No certification of tax statement accuracy and no liability for incorrect information	31
Issue: Definition of "chief executive"	32
Issue: "Nominee" by reference to the Income Tax Act 2007	32
Issue: Focus on person who makes the nomination rather than nominee	33
Issue: Information sharing concerns	33
Issue: Requiring information through IRD number application process	34
Issue: No further information in tax statement	34
Bank account requirement	35
Issue: Bank account number prerequisite	35
Issue: Bank account number on becoming offshore person	35
Issue: Guidance on transition to bank account requirement	36
Issue: Preventing double provision of bank account number	36
Issue: Timeframes of obligation to provide bank account number	37
Issue: Bank account requirement limited to non-individuals dealing in or holding property	37
Issue: The bank account requirement may not deliver intended outcomes	38
Issue: Compliance costs	40
Issue: Communication strategy for bank account requirement	40
Issue: Banks requiring IRD number before opening account	41
Issue: Post-implementation review of bank account requirement	41
Issue: Definition of offshore person	42
Issue: Clarification on "been in New Zealand"	43
Issue: Exception for inbound short-term employees	43
Issue: Shifting identification verification onus onto other parties in land transactions	44
Issue: Drafting error	45
Other policy matters	47
Issue: Bright-line test	49
Matters raised by officials	51
Issue: Identifying if the property is residential	53
Issue: Main homes - multiple dwellings	53
Issue: Issuing an IRD number	54
Issue: Definition of tax file number should be included in Tax Administration Act	54
Matters raised by the Committee	57
Issue: Application to trusts	59
Issue: Statement of intended use for a property	59
Issue: Legislative time limit on issuing IRD numbers	60

OVERVIEW

The Taxation (Land Information and Offshore Persons Information) Bill proposes changes to the Land Transfer Act 1952 and the Tax Administration Act 1994 in order to get better tax information from all people dealing in land and to promote the enforcement of tax obligations of offshore persons generally.

The first key proposal of the Bill requires buyers and sellers of property to present an IRD number (and their foreign equivalent of an IRD number if applicable) to Land Information New Zealand as part of the land registration process. The IRD number equivalent will not apply to a New Zealand individual if they are buying or selling their main home.

The second key proposal of the Bill requires offshore persons to have a New Zealand bank account as a prerequisite to obtaining an IRD number.

Twelve written submissions were received by the Committee, with two of those submissions identified by officials as dealing with issues that are not contained in the Bill. Both submissions concern the proposed bright-line test and officials recommend that the Committee forward the submissions to the appropriate Inland Revenue officials.

Generally submitters were broadly supportive of the policy objectives of the Bill. Some concerns were raised in relation to ensuring that compliance costs are minimised.

A particular concern raised by some submitters was the need for appropriate guidance to determine whether the main home exemption applies. Officials agree that comprehensive guidance should be provided to buyers and sellers. A communications programme to inform buyers, sellers and conveyancers in plain English will be provided as part of the implementation of the changes.

Officials have also proposed several technical and drafting changes.

Matters raised by submitters

SUPPORT FOR REFORM

Issue: Support for the Bill

Submission

(Auckland District Law Society, Chartered Accountants Australia and New Zealand, New Zealand Bankers' Association, New Zealand Property Investors' Federation, Real Estate Institute of New Zealand)

A number of submitters have expressed their broad support for the Bill and its associated policy objectives.

One submitter congratulated the Government on its intention to introduce rules that would enable more accurate information to be collected on the levels of foreign ownership of New Zealand property. *(Auckland District Law Society)*

One submitter noted that it believed that the costs imposed by the Bill would be outweighed by the benefits that would result from easier and better enforcement of income tax rules relating to property and better information about the property market. *(Chartered Accountants Australia and New Zealand)*

Another submitter noted that the Bill is well-intentioned as it seeks to improve systems in order to gather better information and assist tax law enforcement. *(New Zealand Property Investors' Federation)*

Comment

Officials note the submitters' support for the Bill.

Recommendation

That the submissions be noted.

IMPACT ON THE LAND TRANSFER SYSTEM

Issue: Possible delays in the land transfer system

Submission

(Auckland District Law Society)

The changes will disrupt the land transfer system. More time should have been given to consult with stakeholders.

If delays occur and a bank account is not available, a tax file number cannot be issued in a chain of settlements involving a whole series of consequential transactions for third parties could be delayed or ultimately cancelled due to defaults in not settling.

Comment

It will be important that potential buyers and sellers are made aware of the need to apply for bank accounts (if they are an offshore person) and IRD numbers early enough in the transaction process.

Officials are working on communications to ensure that this information is made public as soon as possible, and in particular with real estate agents.

Recommendation

That the submission be noted.

LEGISLATIVE COHERENCE

Issue: Land Transfer Act 1952 and income tax rules

Submission

(EY)

The Land Transfer Act 1952 should not include or attempt to replicate proposed income tax rules, whether wholly or in part.

Comment

The intention of the tax information collection requirements are to provide better information for tax compliance purposes. Accordingly, a balance needs to be struck between requiring information which is useful for tax enforcement purposes and keeping the rules as simple as possible for transferors and transferees of land.

Recommendation

That the submission be declined.

TIMEFRAME OF BILL

Issue: Development of the bill

Submission

(Auckland District Law Society)

Further time should have been given for developing the bill.

Comment

The changes are part of a wider package of reforms aimed at improving tax compliance for property transactions and it is important that the start dates align with other tax changes that commence on 1 October 2015.

Recommendation

That the submission be declined.

POST-IMPLEMENTATION REVIEW

Issue: Automatic expiration of the provisions in the bill

Submission

(Auckland District Law Society)

The provisions should automatically expire in 3-5 years' time to ensure that there is a mandatory review.

Comment

An automatic expiry date is unnecessary and would create uncertainty.

A post implementation review is a recognised part of the generic tax policy process.¹

Recommendation

That the submission be declined.

Issue: Monitoring and review on an on-going basis

Submission

(Chartered Accountants Australia and New Zealand)

The proposed new rules should be monitored and reviewed on an on-going basis to ensure that they are working as intended and that they are consistent with further legislative reform, such as Phase 2 of the Government's anti-money laundering policy.

Comment

As part of generic tax policy process, newly introduced measures are subject to a post-implementation review. In addition, the efficiency and effectiveness of the tax system is monitored by Inland Revenue on an on-going basis.

Recommendation

That the submission be noted.

¹ Further information about the generic tax policy process can be found at <http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy>

NEXT STAGES OF PROPERTY COMPLIANCE MEASURES

Issue: Consistency between property tax proposals

Submission

(EY)

The Bill implements the first of three proposed reforms to the taxation of real property. There will be a need to review and possibly revise the land information requirements once the detailed proposals for the second and third stages of the property tax law reforms have been developed.

This would be an unfortunate outcome and inefficient use of resources and create increased uncertainty and confusion for taxpayers.

Comment

Consequential amendments to the Land Transfer Act 1952 may be necessary once detailed proposals for the bright-line test and withholding tax have been developed.

Any such amendments will seek to maintain coherence between these proposals.

Recommendation

That the submission be noted.

MAIN HOME EXEMPTION

Issue: Reconsidering the main home exemption

Submission

(Chartered Accountants Australia and New Zealand, EY)

The main home exemption makes the rules more complex and limits the volume of information available and therefore the value of that information.

The exemption should be reconsidered. *(Chartered Accountants Australia and New Zealand)*

All parties to property transfers should provide IRD numbers, with no main home or other exemption. *(EY)*

Comment

The exemption broadly aligns with both the current rules for taxing gains from property, and the proposed bright-line test which are not targeted at a person's main home.

Recommendation

That the submissions be declined.

Issue: Complexity of main home exemption provision

Submission

(Auckland District Law Society, Chartered Accountants Australia and New Zealand, New Zealand Law Society, EY)

The main home exemption from providing an IRD number will be difficult to apply. The main home exemption will create uncertainty and difficulties on the boundary. The provisions need to be simplified.

The uncertainty with the main home exemption means that there is a risk of dispute. This does not seem justified from a broader policy perspective. It would be preferable to focus any issues, disputes and risks on substantive income tax matters, rather than on procedural and information-gathering rules. *(EY)*

Comment

Officials are proposing to simplify the main home exemption by removing the requirement that the land be “residential land”. In addition, officials propose to clarify the date on which a home needs to be the person’s main home and simplify the “mainly used as a residence” test.

Officials agree that guidance on these rules is desirable. To the extent that comments in this report and the bill commentary have not clarified matters to submitters’ satisfaction, officials anticipate the usual post-enactment explanation of the rules in a Tax Information Bulletin (or by way of an earlier special report published upon enactment) should provide further clarification. Inland Revenue is also making administrative efforts to communicate the effect of the proposed legislation to key stakeholder groups. Officials would also welcome direct contact from interested parties on any areas of particular concern.

Recommendation

That the submission be accepted.

Issue: Use of “main home” rather than existing definitions of residence

Submission

(Auckland District Law Society, Chartered Accountants Australia and New Zealand, New Zealand Law Society)

There are existing terms used to define a person’s main residence such as “principal place of residence” in the Goods and Services Tax Act 1985 or the concept of “permanent place of abode” or “habitual abode” in double tax agreements.

Creating a new definition of “main home” creates uncertainty. Instead an existing definition should be used.

Comment

Officials consider it preferable to align the main home exemption with the current tax rules for land sales. This ensures that a person would only obtain the main home exemption where it is likely that the gains from the sale of the property will not be taxable.

The two key requirements for the main home test (mainly used as a residence and greatest connection) are to some extent based on existing tax rules. As a result, existing guidance on these provisions could be used to assist in the application of the rules.

Officials consider in the majority of cases, these provisions would be simple to apply. When there are situations on the boundary, plain English guidance for buyers, sellers and conveyancers will be provided.

Recommendation

That the submission be declined.

Issue: Greatest connection

Submission

(Auckland District Law Society, Chartered Accountants Australia and New Zealand, EY, New Zealand Law Society, PricewaterhouseCoopers)

A person's "main home" is the "1 home with which the person has the greatest connection". The concept of a "greatest connection" is imprecise and greater clarity is needed.

It should be sufficient that the home is the one home used by the person mainly as a residence, regardless of whether they subjectively have the "greatest connection" to it. *(New Zealand Law Society)*

Comprehensive guidance should be provided as to how it should apply. *(Chartered Accountants Australia and New Zealand)*

What factors are relevant in determining a person's "greatest connection" should be listed in the legislation. *(Auckland District Law Society)*

"Greatest connection" is not used in New Zealand revenue legislation. It is unclear how the "permanent place of abode" test, that it appears to be trying to replicate, is applicable as a person can have more than one "permanent place of abode". *(EY)*

Some common examples would be useful to illustrate the concept of "greatest connection". *(PricewaterhouseCoopers)*

Comment

The definition of "main home" must broadly align with the definition to be used in the bright-line test, so that people understand what their tax obligations are likely to be now, and so that the right information is gathered as part of this process.

The core of the definition is "the 1 home that is mainly used as a residence".

The "greatest connection" requirement is only necessary to determine which home obtains the main home exemption in circumstances where a person has multiple homes. The greatest connection requirement therefore operates only as a tie-breaker where a person has more than one home.

Officials consider in the majority of cases, these provisions would be simple to apply. When there are situations on the boundary, plain English guidance for buyers, sellers and conveyancers will be provided.

Recommendation

That the submissions be declined.

Issue: Time “main home” determined

Submission

(Chartered Accountants Australia and New Zealand)

It is unclear when a person needs to satisfy the “main home” requirement in order to obtain the main home exemption from providing an IRD number. The current drafting creates uncertainty where a person moves out of their home for a short period prior to transferring it.

Comment

It is intended that the main home exemption applies where the person did use or intended to use it as their main home. The exemption would still apply when a person moves out of their home shortly before selling it.

Officials consider that the current drafting achieves this outcome.

Recommendation

That the submission be declined.

Issue: Need for guidance

Submission

(Chartered Accountants Australia and New Zealand, PricewaterhouseCoopers)

It is critical that comprehensive guidance on the main home exemption is provided. The absence of such guidance will lead to unacceptable levels of uncertainty.

The proposed definition of “main home” is different from the “principal place of residence” test for GST. To avoid any confusion when the Bill is enacted it should be clearly communicated that these two definitions are different and must both be considered separately. *(PricewaterhouseCoopers)*

Comment

Officials agree that guidance on these rules is desirable. Plain English guidance for buyers, sellers and conveyancers will be provided.

Further, an explanation of the rules in a Tax Information Bulletin (or by way of an earlier special report published upon enactment) should provide clarification.

Recommendation

That the submissions be noted.

Issue: Main home of family member

Submission

(EY)

The main home exemption should be available when a property is not the transferor's main home but is the main home of a family member of the transferor.

Comment

The main home exemption from providing an IRD number is intended to align with the current land sale rules. This ensures that a person only gets the exemption where it is likely that the gains from the sale of property will not be taxable.

The exemption under the current land sale rules for a person's residence only applies where it is the transferor's main home. As a result, a home used solely by other family members should not be able to obtain the exemption.

Recommendation

That the submission be declined.

Issue: Person's family living with the person

Submission

(New Zealand Law Society)

Main home is defined as the "1 home that is mainly used as a residence by the person and any member of the person's family living with the person..."

If a property is used mainly as a residence by the person (i.e. the owner), it should be irrelevant whether it is mainly used as a residence by any member of the owner's family living with them.

Comment

The intention of the reference to a "person's family living with the person" was to ensure that owners can qualify for the main home exemption when they reside in property with their family living with them. Officials accept that this can be achieved without including these words in the legislation and they should be deleted.

Recommendation

That the submission be accepted and the words "and any member of the person's family living with the person" should be deleted from the definition of main home in s156A.

Issue: Change "exempt transfer" wording

Submission

(EY)

The wording "exempt transfer" should be changed to a different wording (such as "non-notifiable transfer") to avoid creating the impression that no income tax liabilities will arise in relation to a particular piece of land if it meets the "exempt transfer" standard.

Comment

Officials note that the references to exempt transfer will be included in the Land Transfer Act and it is clear they only refer to the collection of information rather than liability for tax. Tax liability is dealt with under different legislation.

Officials will refer the submission to the drafter for consideration.

Recommendation

That the submission be considered by the drafter.

Issue: Vendors who use main home exemption more than twice in past 2 years

Submission

(EY)

The Bill as drafted would exclude a transfer from being an “exempt transfer” for vendors if they have relied on the main home exemption category at least twice in the last two years. This exclusion would not apply to any vendor until they make a disposal after 1 October 2017, at the earliest (assuming the Bill is enacted and its provisions come into force for transfers from 1 October 2015).

The exclusion from the main home exemption should be reconsidered and, if it is to be retained, its drafting should be clarified for the following reasons: the reference to “the date of transfer is not clear; the exclusion increases the complexity of the rules; and the exclusion may create or reinforce perceptions as to the tax liability on the disposal of property.

Comments

While the two year period would start from the enactment of this Bill (which is intended to be 1 October 2015), the provision limits exempt transfers to two in any two year period. Thus, if a person sold two main homes in any lesser period than two years, for example six months, and then shortly thereafter was going to sell their third main home, they would not be able to use the main home exemption and would need to provide a full tax statement. The Bill as drafted has the intended effect.

The relevant date is intended to be the date the transfer is registered. Officials consider that current drafting achieves this result. As noted elsewhere, this bill is about information collection and the fact that information has not been collected does not necessarily mean that there is no tax liability in any particular situation.

Recommendation

That the submission be declined.

Issue: Meaning of “arrangement”

Submission

(Auckland District Law Society, New Zealand Law Society)

It is not clear what an arrangement is. Often a contract to construct a dwelling is not entered into until after a property is transferred. The current definition also does not cover a residential section upon which a dwelling may be constructed in the future.

There needs to be a timeframe for the expiry of an arrangement. *(Auckland District Law Society)*

Residential land should include “land that will have a dwelling on it within X months” rather than refer to an arrangement. (*New Zealand Law Society*)

Comment

Officials consider that the bill could be simplified by removing the requirement that land be “residential land” to obtain the main home exemption from providing an IRD number. This would also mean that the definitions of “dwelling” and “farmland” – which are only included because they are used in the definition of residential land – are not required and could be deleted.

Recommendation

That the submissions be noted and that the definitions of “dwelling”, “farmland” and “residential land” be deleted from clause 156A of the Bill.

Issue: Meaning of “dwelling”

Submission

(*New Zealand Law Society*)

The definition of “dwelling” excludes a number of types of premises. These are presumably intended to capture the units/sections within the various premises listed, rather than the entire premises. If that is the case it should be clarified.

The definition of “dwelling” excludes retirement villages. This means that a person who uses a retirement village as their main home will not be able to get the benefit of the main home exemption.

Comment

As discussed above, officials consider that the bill could be simplified by removing the requirement that land be “residential land” to obtain the main home exemption.

If the Committee agrees to that recommendation, the definition of “dwelling” would be deleted. This would enable people who live in retirement villages to utilise the main home exemption.

Recommendation

That the submission be noted.

Issue: Meaning of “farmland”

Submission

(EY)

The definition of farmland should also refer to forestry, horticultural, and pastoral businesses to avoid uncertainty in the context of the Land Transfer Act 1952.

Comment

As discussed above, officials consider that the bill could be simplified by removing the requirement that land be “residential land” to obtain the main home exemption.

If the Committee agrees to that recommendation, the definition of “farmland” would also be deleted.

Recommendation

That the submission be noted.

OTHER INTERESTS IN LAND

Issue: Specified estates in land

Submission

(Chartered Accountants Australia and New Zealand)

It should be communicated widely and explicitly that the proposed changes affect all transfers of “specified estates in land”. For instance, land other than residential land will be affected.

Comment

Plain English guidance for buyers, sellers and conveyancers will be provided.

Recommendation

That the submission be noted.

Issue: Cross lease properties included

Submission

(Auckland District Law Society)

Cross lease properties should also be included within the definition of “specified estate in land”.

Comment

Cross lease properties are a form of leasehold estate in land so are already included as a specified estate in land in s156A of the Bill.

Recommendation

That the submission be noted.

EXEMPTIONS SPECIFIED BY REGULATIONS

Issue: Reconsidering exemptions specified by regulations

Submission

(Chapman Tripp, Chartered Accountants Australia and New Zealand)

The exemptions to be specified in regulations should be reconsidered, or public consultation on proposed regulations should be provided for.

In addition, the “low risk of tax avoidance” reason for the Minister making regulations that would exempt certain transfers should be reconsidered. *(Chartered Accountants Australia and New Zealand)*

The relevant provision be limited to administrative details required to make the two class exemptions of the explanatory note to the Bill workable. *(Chapman Tripp)*

Comment

The Bill provides that the exemption is only to be applied in a narrow set of circumstances, where it is impractical or involves high compliance costs or where there is a low risk of tax avoidance. The number of transfers that will fall within qualifying categories is likely to be limited.

The “low risk of tax avoidance” criterion aligns with one of the underlying policy objectives of the Bill, which is to improve tax compliance. The process of introducing any regulations will involve consultation with key stakeholders.

Recommendation

That the submissions be declined.

Issue: Reconsidering exemptions specified by regulations

Submission

(EY)

Regulations can be made on the recommendation of the Minister. Clarification is required as to which Minister is intended in this context.

Comment

The Bill will be amended to make it clear that the regulations will be made by the Minister for Land Information. These regulations will be made after consultation with the Minister of Revenue.

Recommendation

That the submissions be accepted.

PROVISION OF TAX INFORMATION

Issue: IRD number application process

Submission

(Chartered Accountants Australia and New Zealand)

The process for obtaining a New Zealand IRD number will need to be kept simple, fast and efficient.

Comment

Once a completed application is received, the current timelines for Inland Revenue to issue an IRD number is 8–10 working days.

Inland Revenue plans to increase its resources in this area to ensure that it continues to meet the current timeframes.

As part of Inland Revenue's business transformation work, a key business objective is to encourage as many customers as possible to deal with us through digital channels. Any future improvements for people obtaining an IRD number would be part of this work.

Recommendation

That the submission be noted.

Issue: Online IRD number application

Submission

(Auckland District Law Society)

Inland Revenue should make available the option to apply for an IRD number online.

Comment

As part of Inland Revenue's business transformation work a key business objective is to ensure that officials encourage as many customers as possible to deal with us through digital channels. Any future improvements for people obtaining an IRD number would be part of Inland Revenue's business transformation work.

Recommendation

That the submission be noted.

Issue: Validation of residence status

Submission

(Chartered Accountants Australia and New Zealand)

Inland Revenue should have a system for validating a person's residence status before exchanging information with a foreign jurisdiction's tax authority.

Comment

Inland Revenue does not need to validate a person's residence status before exchanging information with a foreign tax authority. This is because the standard for exchanging information under double tax agreements with other countries is whether the information would be "foreseeably relevant". If a foreign tax information number has been used by a person in the past, then information relating to that person can justifiably be exchanged with other tax authorities under this standard without validation of the tax residence status of that person. Officials note that safeguards are built into exchange of information processes to maintain data protection and secrecy.

Recommendation

That the submission be declined.

Issue: Application date

Submission

(New Zealand Law Society)

The requirement to provide a tax statement should only apply to transfers of land under contracts entered into on or after 1 October 2015.

Comment

Officials consider that, for simplicity, the best policy is for any transfers of land where registration is done on or after 1 October 2015 to be subject to the new requirement to provide a tax statement. Thus, where the contract for transfer of land is concluded before this date, the parties to the transfer may still be required to provide tax statements upon registration. An information campaign is planned to inform people of the changes as early as possible.

Recommendation

That the submission be declined.

Issue: Non-active trust compliance costs

Submission

(Chartered Accountants Australia and New Zealand, EY, PricewaterhouseCoopers)

Trusts that are required to obtain an IRD number due to the proposed changes should not have to file a tax return for years in which they derive no income. *(Chartered Accounts Australia and New Zealand, EY)*

A non-active trust declaration similar to the non-active company declaration should be introduced. Trustees should be made aware of the extra tax obligations that arise once a trust has an IRD number and also the required criteria for a non-active trust declaration, if introduced. *(PricewaterhouseCoopers, Chartered Accountants Australia and New Zealand)*

Comment

All trusts, including trusts that only hold a family home, will be required to provide an IRD number under this proposal.

Any tax implications will be considered as part of the second stage (which will include the “bright-line” test) of the property law reform process. This will include clarification that trusts do not generate income (for example, because their only asset is the family home) will not be required to file.

Officials understand that an administrative practice has allowed non-active trusts to not file and will ensure that this practice continues until that stage of reform is completed.

Recommendation

That the submission be declined and considered as part of the second stage of the property law reform process.

Issue: Exemption for death and relationship property transfers

Submission

(EY)

Death and relationship property transfers should be exempt or addressed specifically in relation to the requirement to provide tax information.

Comments

Officials note that in some cases the information collection provisions will not entirely align with the proposed bright-line rule. This bill relates to information collection only and not to core taxing provisions.

Officials note that the legislation makes provision for transactions to be exempt via Regulations where it is impractical, there are high compliance costs, or there is a low risk of tax avoidance. As part of developing regulations officials will consider whether death and relationship property transfers should be exempt.

Recommendation

That the submission be declined

Issue: Fast-tracking IRD number application process for trusts

Submission

(New Zealand Law Society)

Inland Revenue should allow the IRD number application process for trusts to be fast-tracked.

Comment

The current application process is between 8–10 working days upon receiving a completed application. As part of the application process, trusts are required to provide the trust deed and the names of the trustees.

Officials do not consider that there is a reason to prioritise applications for trusts over other taxpayers.

Recommendation

That the submission be declined.

Issue: Change of trustees as an exempt transfer

Submission

(Auckland District Law Society, New Zealand Law Society)

Land transactions that are the result of a change in the trustees of a trust should be exempt transfers.

Comment

A land transfer transaction is already required where there is a change in trustee. There is therefore no additional on-going compliance cost from this requirement as the same IRD number will be used and it will already be known.

Further, it is possible that a change in trustees could result in a change in the tax residence of a trust for overseas tax purposes. For example, adding a new trustee who is considered to be tax resident in another country may, in certain cases, result in the trust itself becoming tax resident in the other country for the purposes of that country's laws. The policy intent is that in this situation, any new foreign tax information number should be captured.

Recommendation

That the submission be declined.

Issue: Mortgagee sale or power of sale conferred by statute

Submission

(New Zealand Law Society)

There should be no obligation to provide a tax statement where a transfer of land is pursuant to a mortgagee sale or power of sale conferred by statute. This is because the transferor's tax information is not relevant as they are the mortgagee, and the mortgagor's tax information may not be available to the mortgagee.

Comment

This is an issue for consideration under the proposed regulation-making power. Officials will consult with stakeholders as part of the regulation-making process.

Recommendation

That the submission be declined.

Issue: Determining tax residence

Submission

(Chartered Accountants Australia and New Zealand, EY)

Inland Revenue should release some guidance as to how people determine their tax residence (for the purpose of providing a foreign tax information number).

Comment

A person will need to provide their foreign tax information number, if they are currently treated as tax resident in another jurisdiction under that jurisdiction's tax laws. Where a person is tax resident in a jurisdiction, the jurisdiction is entitled to tax them on their worldwide income.

Most jurisdictions' rules relating to tax residence provide that a person will be resident if they have a significant presence in that jurisdiction (common examples are having a house in that jurisdiction at the time, or spending more than six months in that jurisdiction during the relevant period). Accordingly, officials expect the person will have already had contact with the relevant tax authority.

Officials will ensure that Inland Revenue guidance makes it clear that the person should contact the relevant overseas jurisdiction's tax authority for assistance in determining whether they are tax resident, if they are uncertain.

Recommendation

That the submission be declined.

Issue: Passport basis instead of tax residence basis

Submission

(PricewaterhouseCoopers)

For simplicity, the requirement to provide a foreign tax information number if an individual is tax resident in another country should be replaced with a passport basis. That is, if an individual has a passport in another country, they will be required to provide information from that jurisdiction.

Comment

The information that is being collected is to be used for tax purposes, and therefore should be on the basis of tax residency.

Recommendation

That the submission be declined.

Issue: Transfer to an offshore person

Submission

(EY)

The legislation is not clear as to whether a transfer to an offshore person intending to use the property as their main home is exempt.

Comments

The submitter queries whether transfers to an offshore person made by a person who qualifies for the main home exemption will be exempt. The Bill's intention is that, in

such a case, the transferor's transaction would be exempt, but that the offshore person's transaction would not be exempt. Officials consider that the current drafting achieves this intention.

Recommendation

That the submission be declined.

Issue: Foreign tax information provision from multiple jurisdictions

Submission

(EY, PricewaterhouseCoopers)

Foreign tax information should be sought for all jurisdictions in which a non-individual person is tax resident. The current drafting tends towards only requiring foreign tax information from one foreign jurisdiction.

Comment

The Bill's intent is that a person who is tax resident in more than one jurisdiction will have to provide all of their foreign tax information numbers. Officials consider that the drafting currently achieves this policy intent.

Recommendation

That the submissions be noted.

Issue: Form of tax statement should be standardised

Submission

(Chartered Accountants Australia and New Zealand, New Zealand Law Society)

There should be a standard form tax statement agreed to by Inland Revenue and Land Information New Zealand.

Comment

The Bill sets out clearly what information is required to be included on the tax statement. Land Information New Zealand and Inland Revenue intend to produce a standard form.

Recommendation

That the submissions be accepted.

Issue: Form of tax statement should be published in the Gazette

Submission

(New Zealand Law Society)

The standard form of the tax statement could be Gazetted.

Comment

Publishing the form in the New Zealand Gazette would require everyone to use that form as gazetted, and officials believe that is unnecessarily restrictive.

Recommendation

That the submission be declined.

Issue: Country code availability

Submission

(Chartered Accountants Australia and New Zealand)

Country codes should be made publicly available on the websites of Inland Revenue and Land Information New Zealand.

Comment

Officials will ensure that the country codes are publicly available, including on appropriate websites.

Recommendation

That the submission be accepted.

Issue: Remove certifiers' retention period for holding of tax statement

Submission

(Chapman Tripp, Chartered Accountants Australia and New Zealand)

The ten year retention period obligation for tax statements on certifiers should be completely removed.

Comment

The ten year retention is required for all other land transfer requirements. Further, the retention period should be preserved as stated in the Bill, because tax statements must be available for prosecution purposes under the Tax Administration Act 1994.

Recommendation

That the submission be declined.

Issue: Reduce retention period for holding of tax statement

Submission

(Chartered Accountants Australia and New Zealand)

The retention period should be reduced to seven years to align with the retention period for tax records.

Comment

The reduction of the retention period to seven years would result in a misalignment with other land transfer documentation retention periods, which are (generally) specified to be ten years.

Recommendation

That the submission be declined.

Issue: Removal of certifier obligation to provide Commissioner of Inland Revenue with tax statements

Submission

(Chapman Tripp)

Certifiers should not be required to give a copy of a tax statement to the Commissioner of Inland Revenue upon request. This information will already be provided to Land Information New Zealand.

Comment

The information that will be provided to Land Information New Zealand is the summary of the tax information, not the tax statement itself. In situations where a tax investigation is necessary, the tax statement may be required by Inland Revenue for evidentiary purposes.

Recommendation

That the submission be declined.

Issue: Retention by electronic means

Submission

(Auckland District Law Society, New Zealand Law Society)

Retention of tax statements should be able to be done electronically as an additional option.

Comment

The Electronic Transactions Act 2002 already provides that electronic retention can be done instead of physical retention. The Bill does not overrule the relevant part of that Act, nor is it intended that electronic retention is disallowed.

Recommendation

That the submissions be noted.

Issue: No certification of tax statement accuracy and no liability for incorrect information

Submission

(Auckland District Law Society, Chapman Tripp, New Zealand Law Society, Real Estate Institute of New Zealand)

It is submitted that an explicit provision be included in the Bill to ensure that Certifiers do not certify the accuracy of the tax statement information provided to Land Information New Zealand. Further to this, the Bill should state that there will be no liability for incorrect information provided by Certifiers. *(Chapman Tripp, New Zealand Law Society)*

The liability for providing false or misleading tax information should be limited to transferees and transferors. *(Real Estate Institute of New Zealand)*

The references to certifiers and chief executives should be removed altogether. *(Auckland District Law Society)*

Comment

The Bill provides for an offence to apply to a person who knowingly gives false information. As the person who gives the tax statement is either the transferee or the transferor, the offence contained in the bill would not apply to certifiers such as a conveyancing lawyer.

However, it should be noted that, under existing provisions of the Tax Administration Act 1994, a person who knowingly provides a false or misleading tax statement to any

person could be liable for similar penalties. This could include a certifier who knowingly provides false information to Land Information New Zealand.

A transferee, transferor, or certifier will not be liable (under existing law or under the proposals in the bill) for unintentionally providing incorrect information. The bill provides a process for information to be corrected.

Recommendation

That the submissions be noted.

Issue: Definition of “chief executive”

Submission

(Auckland District Law Society, New Zealand Law Society)

“Chief executive” should be defined.

Comment

The references to Chief Executive will form part of the Land Transfer Act 1952. That Act currently only defines “department”, which is Land Information New Zealand. Officials agree that as currently drafted this may create confusion. Officials recommend amending the Bill to add the words “of the department” after “Chief Executive”. This addition, in combination with the existing provisions in the Land Transfer Act 1952, will make it clear who the Chief Executive is.

Recommendation

That the submissions be accepted.

Issue: “Nominee” by reference to the Income Tax Act 2007

Submission

(New Zealand Law Society)

The meaning of the term “nominee” should be clarified by reference to the Income Tax Act 2007.

Comment

Officials accept that the term “nominee” can have different meanings in different areas of law and that it is sensible to clarify that, in this case, the term has a meaning that matches the one that can be found in the Income Tax Act 2007.

Recommendation

That the submission be accepted.

Issue: Focus on person who makes the nomination rather than nominee

Submission

(Chapman Tripp)

In situations where a nominee is a transferor or transferee of land, it is crucial that the Bill's focus is on the person who makes the nomination rather than the nominee in order to collect the right information.

Comment

Officials note that the Bill as currently drafted reflects this focus on the person who makes the nomination.

Recommendation

That the submission be noted.

Issue: Information sharing concerns

Submission

(Office of the Privacy Commissioner)

The Bill as introduced addressed concerns raised by the Office of the Privacy Commissioner that the legislation could allow for the sharing of any information between Inland Revenue and Land Information New Zealand beyond the stated policy objectives. Amendments were made to limit information sharing between Inland Revenue and Land Information New Zealand to the extent necessary to meet the stated policy objective of assessing tax liability on property transactions.

Comment

Officials are aware of the need to consider privacy issues and the use of information collected under the Bill. There is a proposed amendment to allow information to be used by Government departments for housing policy. This information will be provided in aggregate form by Land Information New Zealand and will not allow for the identification of particular individuals or entities. Inland Revenue will have access to individualised information, but only for the purposes of tax compliance.

Recommendation

That the submission be noted.

Issue: Requiring information through IRD number application process

Submission

(EY)

If New Zealand entities are established by other individuals or entities which might fall within an “overseas” category, officials suggest any similar information required of those owners or controllers should be sought as part of the CIR’s process for allocating an IRD number to the entity, rather than as part of the LTA property transfer process.

Comments

Requiring information as part of the land transfer process gives Inland Revenue the information it needs to help enforce tax rules relating to income from property and property transactions.

Recommendation

That the submission be declined.

Issue: No further information in tax statement

Submission

(EY)

There should be no information as to the person’s residence or the use or characterisation of the property disclosed as part of the tax statement.

Comment

The information provided on the tax statement will be relevant for tax purposes and therefore officials consider that it should be collected.

Recommendation

That the submission be declined.

BANK ACCOUNT REQUIREMENT

Issue: Bank account number prerequisite

Submission

(EY)

Further consideration of this proposal is needed to determine whether it is necessary and to limit its possible application.

Comment

The intent of the bank account requirement is that it will provide Inland Revenue with more confidence that it knows who it is dealing with by ensuring that a person has first satisfied a financial institution's anti-money laundering verification of identity requirements.

Subject to the changes recommended below, officials consider that the bill is appropriately drafted to achieve this objective.

Recommendation

That the submission be declined.

Issue: Bank account number on becoming offshore person

Submission

(Chartered Accountants Australia and New Zealand)

The requirement for a person to provide a New Zealand bank account number to Inland Revenue upon becoming an "offshore" person should be removed.

Comment

Officials consider that the requirement to provide a bank account on becoming an offshore person is an important anti-avoidance measure. If a New Zealand person were to establish such companies and sell their interests in them to offshore persons without the bank account requirement kicking in, the requirement could be easily circumvented.

The comment by the submitter that Inland Revenue will already have a bank account for the person, or have other means of accessing their bank account information will not always be the case in practice. Some companies incorporated in New Zealand will not have New Zealand bank accounts and will not have been required to provide one to Inland Revenue.

Recommendation

That the submission be declined.

Issue: Guidance on transition to bank account requirement

Submission

(PricewaterhouseCoopers)

Guidance should be produced by Inland Revenue as to whether non-individual offshore persons which already have an IRD number need to provide Inland Revenue with a New Zealand bank account number.

Comment

The provision applies only to people that apply for an IRD number on or after 1 October 2015. If a company that is an “offshore person” already has an IRD number, they will not be required to provide a bank account to Inland Revenue after that date. The only way that a person with a current IRD number can be required to provide a bank account is if they are a non-individual and become an offshore person on or after 1 October (for example, if New Zealand shareholders of a New Zealand-registered company sell their shares to offshore individuals).

Recommendation

That the submission be noted.

Issue: Preventing double provision of bank account number

Submission

(PricewaterhouseCoopers)

The proposed rule should be changed to ensure that only those non-individuals who have not previously provided Inland Revenue with a bank account number will be required to provide one.

Comment

The submission raises the issue of whether the provision of a bank account at this stage is necessary if Inland Revenue already has bank account details of that company. Officials would agree that requiring a bank account in these circumstances would be unnecessary, but only if the bank account that Inland Revenue has on file is current at the relevant time.

Recommendation

That the submission be accepted and that the legislation be amended to clarify that a bank account is not required if Inland Revenue already has a current account for a non-individual at the time it becomes an offshore person.

Issue: Timeframes of obligation to provide bank account number

Submission

(PricewaterhouseCoopers)

The obligation to provide a New Zealand bank account number to Inland Revenue could be extended to the 20th of the following month (to align with various tax return due dates), with a potential requirement to provide the account number earlier if a tax statement is completed at an earlier date.

Comment

It is necessary for the legislation to be clear about when the obligation to provide a bank account number arises. Officials consider that an immediate obligation is appropriate. Given that is the time that the interests are being transferred, it would allow the bank account requirement to form part of the transfer transaction.

Recommendation

That the submission be declined.

Issue: Bank account requirement limited to non-individuals dealing in or holding property

Submission

(PricewaterhouseCoopers)

The requirement to provide a New Zealand bank account number should be limited to non-individuals who either hold property or are in the process of actually making a property transfer.

Comment

As set out above, the policy is that it will provide Inland Revenue with more confidence that it knows who it is dealing with by ensuring that a person has first satisfied a financial institution's anti-money laundering verification of identity requirements. It is intended that this policy apply equally to both individuals and non-individuals.

With regard to the timing of the bank account requirement, the IRD number application is a recognised point of contact for people with Inland Revenue. It is expected that the vast majority of offshore persons that are individuals and have the ability to work will either have, or will be otherwise required to obtain a bank account as part of their working arrangements. Those offshore people that are not required to get an account are more likely to be the people that the proposal is targeting, so imposing the bank account requirement is consistent with the policy.

Inland Revenue is generally not involved in the property transaction process. Making an additional contact point with Inland Revenue at that time would add compliance costs. Equally, having the bank account information routed through LINZ would add administration costs to that process. If a party to a property transaction was required to provide evidence of a New Zealand bank account as part of that transaction, it would require either:

- The person (generally a conveyancing lawyer) registering the change of property ownership to certify that the account exists. The Bill has been drafted on the basis that the advisors (in most cases the conveyancing lawyer) will not need to certify information being provided by the vendor or purchaser as being correct. This was a deliberate policy decision to ensure that penalties for non-compliance rest with the underlying vendor/purchaser of the property, rather than their advisors. To impose obligations at the advisor level would result in increased transaction costs as advisors would require longer to certify documents and would probably require new or different tools to authenticate information their clients provide them; or
- The lawyer providing a copy of a bank statement (or some other similar evidence) to LINZ outside of the automated Landonline registration process. The receipt and passing on of this information would be administratively cumbersome for conveyancing lawyers and LINZ and potentially for the information exchange with Inland Revenue. Whether a person is an “offshore person” is not currently a feature of the information being collated by LINZ – it is only relevant for a person’s self-assessment of whether an exemption applies.

Recommendation

That the submission be declined.

Issue: The bank account requirement may not deliver intended outcomes

Submission

New Zealand Bankers’ Association, ANZ

The bank account requirement may be undermined, particularly by anti-money laundering rules that allow accounts to be opened prior to completion of all due diligence.

Comment

Officials note that, under section 16(3) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, customer due diligence can only be conducted after the business relationship has been established if:

- a) it is essential not to interrupt normal business practice; and

- b) money laundering and financing of terrorism risks are effectively managed through procedures of transaction limitations and account monitoring; and
- c) verification of identity is completed as soon as is practicable once the business relationship has been established.

It will be up to the financial institution to determine in any given case whether these criteria are met.

Officials consider it is appropriate for offshore applicants to go through the appropriate anti-money laundering due diligence checks (even if those are the enhanced checks for high risk customers), as that is what the Bill is designed to achieve. Officials consider that the requirement may result in increased customer numbers for financial institutions, but it is not the intention that new customers are treated differently – just that they are subject to the appropriate anti-money laundering checks. There are no extra reporting obligations imposed by these requirements.

In saying this, officials understand from the submission that the anti-money laundering rules allow a bank to open an account and then require/examine all the identity material sometime later. Until the customer goes through all the checks, the account is effectively frozen to transactions.

Officials are concerned that this scenario could pose a significant risk to the effectiveness of the rules. An offshore person could open an account with a token amount, use that account to gain an IRD number and then never actually go through the customer due diligence process. The bank would presumably close the account after trying to obtain the information, but Inland Revenue may never know of this. The customer may prefer this approach because they get an IRD number and only lose the small amount involved in the initial deposit.

Officials suggest clarifying the bill so that only an account on which customer due diligence had been completed could be used to obtain the IRD number. If the person uses a “frozen account” to obtain an IRD number they would be breaching the requirement in the bill (with associated penalties). As stated above, officials do not intend to impose any additional compliance burden on banks. It would up to the customer to only use an appropriate account in their IRD number application. The customer should know that due diligence had been completed because the account would be “unfrozen”.

As mentioned above, officials recommend that this policy be reviewed after the Phase 2 roll-out of the anti-money laundering rules, so whether this change is having the desired effect this is something that could be considered as part of that review.

Recommendation

That the submission be accepted and the bill be amended to clarify that only accounts on which customer due diligence has been fully completed should be able to be used to obtain an IRD number.

Issue: Compliance costs

Submission

New Zealand Bankers' Association, ANZ

Other potential impacts could be that it will be harder for foreign investors to open accounts and there may be increased dormant accounts. The 1 October effective date is challenging.

Comment

It is not the intention of these rules to make it harder for offshore persons to open accounts, just that they do so. Equally, it is not the intention that this requirement imposes significant compliance costs on banks. Although dormant accounts may increase in number, officials expect banks to handle these accounts using existing processes. It is not necessary for the account to remain open indefinitely.

The 1 October date is an important component of these changes, because there are a suite of changes all occurring on that date. Alignment is seen as crucial so that the start date of information provision requirements matches that for other measures.

Recommendation

That the submission be noted.

Issue: Communication strategy for bank account requirement

Submission

PricewaterhouseCoopers

Inland Revenue should develop a communication strategy to ensure that persons affected by the new bank account requirement are sufficiently aware of their new obligations upon commencement.

Comment

Inland Revenue and LINZ are coordinating to ensure that advisors most likely to be involved in property transactions are aware of any obligations that their clients may be under following the introduction of these rules. The IRD number application form will be updated so that, post 1 October 2015 the bank account requirement will be clearly signalled for offshore applicants.

Recommendation

That the submission be noted.

Issue: Banks requiring IRD number before opening account

Submission

(Chapman Tripp)

Offshore persons may have difficulty providing a New Zealand bank account number in order to obtain an IRD number because some registered banks will require an IRD number before they will allow a bank account to be opened.

Comment

Officials understand that the absence of an IRD number should not prevent a person from opening a bank account. A bank could open an account irrespective of whether the person has the number. The practical difference is, as the submitter points out, that the “non-disclosure” tax rate will apply to the account until an IRD number is attached to it. The non-disclosure rate is the top personal marginal rate of 33%.

However, if a person opens an account and then applies for an IRD number, the IRD number can then be taken back to the bank and attached to the account. It is recognised that this extra transaction with the bank will have some compliance costs, but these are not expected to be significant. Also, given the timeframes, if these actions are taken promptly, it is unlikely that the higher rate will be in place for any meaningful period of time and so should not impact on interest payments made in respect of the account.

Recommendation

That the submission be noted.

Issue: Post-implementation review of bank account requirement

Submission

(Chartered Accountants Australia and New Zealand)

A post-implementation review is done in two-three years’ time on the requirement to provide a New Zealand bank account number in order to obtain an IRD number.

Comment

A post implementation review is a recognised part of the generic tax policy process.² The submitter has raised the issue that the bank account requirement may be superseded by Phase 2 of the anti-money laundering legislation, which is expected to apply to solicitors, real estate agents and conveyancers.

² Further information about the generic tax policy process can be found here: <http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy>

Officials agree that unnecessary duplication of information is undesirable and so, subject to other Government priorities, agree that the effect of the bank account requirement be reviewed following Phase 2 of the anti-money laundering reform.

Recommendation

That the submission be noted.

Issue: Definition of offshore person

Submission

(Chartered Accountants Australia and New Zealand, Chapman Tripp)

Reconsider the first two parts of the definition of offshore person (for an individual), those being New Zealand citizens not in New Zealand within the previous three years and resident class visa holders not in New Zealand in the last 12 months. *(Chartered Accountants Australia and New Zealand)*

For the purposes of being under a positive obligation to provide a bank account number, the definition should align with the “overseas person” definition in the Overseas Investment Act. *(Chapman Tripp)*

Comment

A definition linked to immigration status was chosen because it is easier for most people to understand than the concept of tax residence. Although a person’s tax residence and immigration status are often the same, this is not always the case. In marginal cases, tax residence can be difficult to determine, whereas immigration status is generally clearer.

However, officials consider it is important that there is not a blanket exemption from the bank account requirement for New Zealand citizens. If a person has no meaningful connection with New Zealand their treatment should be the same irrespective of their immigration status.

The proposed test that a citizen will become an offshore person if they have not been in New Zealand in the previous three years (12 months in the case of residence class visa holders) is replicated in the Electoral Act 1993. Officials consider this test will be simple for people to apply and is appropriate in terms of differentiating between citizens and residents that have retained some connection with New Zealand and those that have not.

With regard to the Chapman Tripp submission, officials consider that applying one rule for individuals and a different rule for individuals that have interest in a New Zealand company/trust may incentivise people to either apply for an IRD number directly or as a shareholder in a company, depending on which route provides the more favourable outcome. To the extent possible, officials consider it desirable to limit these types of behavioural distortions.

Recommendation

That the submissions be declined.

Issue: Clarification on “been in New Zealand”

Submission

(Chartered Accountants Australia and New Zealand)

Clarification is needed for the concept of having “been in New Zealand”

Comment

The expression “been in New Zealand” is intended to be interpreted at face value. It is not intended to impose a time limit on a person’s stay in the country, merely provide recognition for having entered the country.

Recommendation

That the submission be noted.

Issue: Exception for inbound short-term employees

Submission

(Chartered Accountants Australia and New Zealand)

Inbound short-term employees who work in New Zealand should be provided with an exemption in the definition of an offshore person.

Comment

Officials understand that the vast majority of people entering New Zealand on visas allowing employment will either be required to, or will chose to, open a New Zealand bank account in any event as a recipient account for their New Zealand wages. Therefore, although the proposal will require a different sequence of events (obtaining the bank account first and the IRD number second), the additional compliance costs on these immigrants is expected to be relatively low.

Some non-resident workers are engaged on short-term assignments, for example to install or maintain specialised machinery. These visa-holders may be exempt from New Zealand tax if either they never become tax resident under our domestic law or if they are treated as non-resident by the operation of a double tax agreement. If they are not subject to New Zealand tax they are not required to get an IRD number, and so the bank account requirement would not apply to this group.

It is also important to note that no class of visa restricts the ability of the person to purchase New Zealand residential property. The policy objective of this initiative is to increase compliance of New Zealand’s tax laws as they relate to property transactions. Therefore, in order for an exemption to be considered, there would need to be a clearly identifiable group that posed no real revenue risk from a property compliance perspective. The intent of the policy could be defeated if there was an immigration

status that was exempt from the bank account requirement and property investors could access this status.

Recommendation

That the submission be declined.

Issue: Shifting identification verification onus onto other parties in land transactions

Submission

(New Zealand Bankers' Association, ANZ)

The bank account requirement should be removed and replaced with a verification of identification obligation to be placed on parties that will already have relationships with overseas purchasers of land, such as real estate agents and lawyers. Additionally, Phase 2 of anti-money laundering reform should be expedited.

Comment

At present, New Zealand's anti-money laundering rules do not apply to professional bodies such as real estate agents, conveyancers and solicitors. However, it is anticipated that these professionals will be subject to the customer due diligence requirements as part of Phase 2 of the anti-money laundering rules. To impose due diligence obligations on such people as part of this bill, prior to Phase 2 of the anti-money laundering reform, could be seen as subverting the planned roll-out of the anti-money laundering rules.

As set out above, officials consider it would be appropriate to review these rules once anti-money laundering Phase 2 has occurred to see if there is unacceptable duplication of information at that time.

Inland Revenue and LINZ officials understand that the Ministry of Justice are considering timing for Phase 2 roll-out.

Recommendation

That the submission be declined.

Issue: Drafting error

Submission

(EY)

The cross-reference to the Overseas Investment Act in clause 9(3)(b) refers to sections 7(2)(b) – (e) of that Act. It should refer to sections 7(2)(b) – (f).

Comment

Officials agree that the cross-reference contains an error.

Recommendation

That the submission be accepted.

Other policy matters

Issue: Bright-line test

Submission

(John Williams, New Zealand Property Investors' Federation Inc.,)

Two submissions were made on the proposed “bright-line test” that is presently being consulted on through an officials’ issues paper.

Comment

The submissions refer to matters that are not contained in the Bill and are therefore outside the scope for consideration. However, the submissions should be referred to the appropriate officials to be considered as part of the consultation process for the bright-line test proposal.

Recommendation

That the submissions be declined, but that they be referred to the appropriate officials.

Matters raised by officials

Issue: Identifying if the property is residential

Submission

(Matter raised by officials)

The land transfer system does not differentiate between land on the basis of use, e.g. as a home. This makes the information less useful than it could be for housing policy. Officials submit that clause 4 be amended so that if the land is to be used as a residence or home this information is provided in the tax statement.

Comment

The information collected through this tax statement could be useful for understanding the housing market. For this information to be useful in this context the statement needs to identify if the transaction relates to a home. This could be achieved by the statement identifying that the transaction relates to the transfer of a home.

It will also require changes to who can use the information and to what information will be published by Land Information New Zealand.

Recommendation

Amend clause 4 to amend section 156C (1) that the information should include if the transfer relates to land that will be or has been used as a home.

Amend section 156F to allow this and the other tax information collected under the Bill information to be used by relevant department/s and their authorised person for Housing Policy purposes.

Amend section 156F of the Bill to allow Land Information New Zealand to publish aggregate data on the transfers of land used or to be used as homes.

Issue: Main homes - multiple dwellings

Submission

(Matter raised by officials)

The current draft for the main home exemption does not address situations where land has multiple dwellings.

Comment

Where a piece of land has more than one dwelling on it, the majority of the land should be used as the main home to get the main home exemption.

Recommendation

That the submission be accepted.

Issue: Issuing an IRD number

Submission

(Matter raised by officials)

The bank account requirement should be limited to instances when a person has applied for an IRD number.

Comment

Sometimes, for administrative convenience, Inland Revenue will proactively issue a person with an IRD number – essentially as a file number so that transactions involving that person can be recorded in Inland Revenue’s systems. The person may not have requested this number, or even be aware of its existence. An example might be a parent with child support obligations that does not otherwise have an IRD number.

In the event this person is an “offshore person”, the legislation, as currently drafted, would prevent this practice from occurring because the Commissioner will not have a bank account for the person. This would have unintended adverse effects on the administration of the tax system.

Therefore, officials consider that the bank account requirement should only apply in cases when a person has applied for an IRD number, as opposed to situations where one has been assigned to them for administrative reasons.

Recommendation

That the submission be accepted.

Issue: Definition of tax file number should be included in Tax Administration Act

Submission

(Matter raised by officials)

The definition of tax file number should be included in the Tax Administration Act 1994 rather than in the Income Tax Act 2007.

Comment

The definition of tax file number (IRD number) is currently included in the Income Tax Act 2007. There is a potential argument that the tax file number can be issued or used only for income tax purposes.

For clarity, the tax file number should be included in the Tax Administration Act 1994 (which applies for the purposes of all taxes, not just income tax) instead. This would make it clear that, for example, a person who has a GST number (and has no income tax liabilities) can use that GST number as a tax file number.

Recommendation

That the submission be accepted.

Matters raised by the Committee

Issue: Application to trusts

Matter raised

The Committee has asked for guidance on how the proposed rules will apply to complex trust situations, including when the main home exception might apply to a person who is a beneficiary or settlor of multiple trusts.

Comment

For the purposes of the current bill, it is important to note that there will be no instances when the main home exception can be claimed by a trust. This means that all trusts will need to provide their IRD numbers, even when the property is the family home of a beneficiary or settlor of the trust. However, it is equally important to note that it is currently anticipated that many trusts will be able to claim the main home exemption from the proposed bright-line test.

Officials working on the proposed bright-line legislation are aware of the Committee's questions and general interest in these matters. To the extent possible, the bright-line legislation will take into account the scenarios raised by the Committee. Officials will brief the Committee more fully on the application of the bright-line test to trusts as part of the departmental briefing of the Committee on introduction of the Bill.

Issue: Statement of intended use for a property

Matter raised

The Committee has suggested that a person should be asked to state what the intended use of their property is (for example, whether the property is a rental property or bach).

Comment

Officials note that they propose adding a question to the tax statement regarding whether the property has been or will be used as a home. This will partially address the Committee's suggestion.

Issue: Legislative time limit on issuing IRD numbers

Matter raised

The Committee has asked whether Inland Revenue should be under a statutory timeframe for issuing IRD numbers.

Comment

Once a completed application is received, the current timeframe for IRD number processing is 8–10 working days.

Submissions on this bill suggest that the existing processing time is adequate in terms of getting an IRD number in time for settlement of property transactions.

Inland Revenue is, following enactment of this bill, anticipating an increase in IRD number applications. The Department has plans in place to increase its resources in this area to ensure that it continues to meet the current timeframes. Inland Revenue will redesign its IRD number application form to make the obligations of offshore persons clearer.

We believe that this would be a significant response to meet the increase without the need for a statutory timeframe.

In addition, statutory timeframes could introduce complications, for example, it may be difficult to determine when an application is considered to be “complete”. There may also be factors outside of Inland Revenue’s control, such as postal delays.

Work is currently being undertaken to investigate introducing electronic applications for an IRD number as part of Inland Revenue’s business transformation work. It is anticipated that online applications will further reduce application processing times.