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Briefing note

Inland Revenue
Te Tari Taake

Reference	BN2026/131
Date	7/05/2026
To	Revenue Advisor, Minister of Finance – Carl Harris Revenue Advisor, Minister of Revenue – Angela Graham
From	Ken Zhou
Subject	**Australian non-resident capital gains tax changes**

Purpose

1 The purpose of this briefing note is to outline recent changes to Australia's foreign resident capital gains tax (CGT) regime and the potential tax impact for New Zealand investors in Australia.

Summary

2 The changes expand Australia's taxing rights over foreign investors, mostly affecting large infrastructure and mining investors. They have provoked a significant negative reaction in Australia. This seems to be more about the way the changes are being made rather than the substance of them. In particular, taxpayers are concerned about the retrospectivity of the changes, the lack of transitional relief and the resulting legislative uncertainty, or "sovereign risk" for foreign investors in Australia. However, we consider the changes are likely to have limited impact for New Zealand investors.

Background

3 On 10 April 2026, the Australian Government released draft legislation[1] and explanatory material[2] for its proposed changes to its foreign resident CGT regime.

4 The regime, implemented 12 December 2006, provides that foreign residents are subject to CGT only on taxable Australian property (TAP), a category which includes taxable Australian real property (TARP).

5 As part of the 2024-25 Budget, the Australian Government announced it intended to make changes to strengthen the foreign resident CGT regime. Consultation was undertaken in 2024. s 6(a) but in April 2026, the exposure draft of the legislation was released for a short consultation period.

Proposed legislative changes

6 The proposed changes include:

- Retrospective amendments (as from 12 December 2006) to the definition of TARP to:

[1] Strengthening the foreign resident CGT regime, Exposure draft.

[2] Strengthening the foreign resident CGT regime, Explanatory materials.

    - Remove the impact of state and territory law which treated some infrastructure assets as severed from the land (thus making these assets subject to CGT); and
    - Include "things" fixed to land that are reasonably expected to be situated on the land for the majority of their useful life, whether or not they are fixtures, and leases over such items.
- Prospective broadening of the TARP definition to include water rights, mining information, licenses, and contractual rights exercisable over land or fixed assets.
- A limited renewable energy concession[3], reducing the tax rate by 50% on certain qualifying disposals undertaken by foreign residents between commencement and 30 June 2030. This is a transitional measure, reflecting the fact that the other changes were bringing such assets into the CGT net for the first time.
- Implementing a 365-day look back period for the principal asset test, which deems shares to be TARP when more than 50% of their value is derived from land in Australia.
- In addition, the changes introduce a new notification requirement for high-value transactions and increase obligations on purchasers to scrutinise vendors' declarations.

7 These changes would represent an expansion of Australia's tax base for non-resident investors, capturing land-related asset classes and transactions (mainly in mining and infrastructure) that have historically been outside the scope of non-resident CGT. Additionally, other than the concession for renewable energy assets, no transitional relief would be available for other newly captured investments held by non-residents.

8 The Australian Government gave a short consultation period for the changes, with submissions closing on 24 April, 14 days after the draft legislation was released.

Australia's objectives

9 The draft explanatory material states that the policy intent of these amendments is to provide certainty and clarity, and to protect the revenue base. When the changes were announced in the 2024-25 Budget, they were estimated to increase the Australian Government's receipts by $600.0 million while increasing payments by $8.0 million over the 5 years from 2023-24.[4]

10 The explanatory material justifies the retrospective application of some measures as a clarification of the original intent of the rules when introduced in 2006. However, the Australian Tax Office (ATO) has made a statement that in practice they will only review disposals in the last four years.[5]

11 Recent court losses (described in the explanatory material as identifying "a gap between the intended and actual operation of the foreign resident CGT base") may have also accelerated these changes. Late last year, the Federal Court of Australia ruled against the ATO in two cases involving whether infrastructure assets affixed to the land are TARP and therefore subject to CGT.[6]

[3] Renewable energy asset discount capital gains for foreign residents, Explanatory materials.

[4] Budget 2024-25, Budget Paper No.2.

[5] ATO statement: Strengthening the foreign resident capital gains tax regime | Australian Taxation Office.

[6] In *YTL Power Investments Limited v Commissioner of Taxation of the Commonwealth of Australia* [2025] FCA 1317, the assets were electricity transmission infrastructure; in *Newmont Canada FN Holdings ULC v Commissioner of Taxation (No 2)* [2025] FCA 1356, the assets were mining related.

Comment

Effect and impact

12 The proposed changes expand the scope of land related assets treated as TARP (and so subject to CGT). The changes mostly affect infrastructure, energy and mining investments. The changes apply both to direct investments in land-related assets and to indirect investments through shares, although in the latter case only where a foreign shareholder holds more than 10% interest.

13 A notable impact is on renewable energy assets such as wind turbines, solar panels, and large-scale battery energy storage systems. Under existing law, these assets have generally not been treated as TARP. However, the expanded definition (covering assets fixed or installed on land for the majority of their useful life) brings them into scope, along with utilities infrastructure and transmission lines. Accordingly, the changes make foreign investments in these types of assets become subject to CGT for the first time.

14 Many commentators note that investors are likely to be dissatisfied with the lack of transitional concessions, such as grandfathering in existing investments, meaning investors who invested based on prior tax settings will have their entire expected return reduced by the tax (rather than just the return from the date of the changes). The only concession is for renewable energy assets, which ends in 2030. Commentators consider it to be inconsistent with the Australian Government's renewable energy goals.

15 Commentators warn that the changes, particularly if made without transitional relief, may lead to decreased confidence in Australia as a location for long-term investment. The proposed changes follow several other recent measures tightening Australia's investment settings for non-residents. Accordingly, the changes exacerbate existing concerns in this regard.

16 Further, the changes increase the tax differential between foreign investors (now taxed at 30%), compared to Australian institutional investors (often taxed at 10% or 15%).[7] Commentators are concerned that this will reduce the competitiveness of foreign investors relative to Australian institutional investors.

Impact on New Zealand

17 The proposed changes are most relevant for large New Zealand institutional and other sophisticated direct investors in Australian mining infrastructure. Inland Revenue has met with New Zealand Superannuation Fund (NZ Super) and Deloitte to understand stakeholder concerns. s 6(a)

18 s 6(a), s 9(2)(i)

19 Ordinary New Zealand investors are not expected to be directly impacted by the changes. The CGT rules around assets such as an investment property or smaller

[7] The Australian company tax rate (and therefore non-resident company CGT rate) is 30%. The concessionary tax rate for Australian superannuation funds is 15%, which may be further reduced by 33% if the investment has been held for at least 12 months, resulting in an effective rate of 10%.

Australian shareholdings (i.e. less than 10%) have not changed. Assets captured in the broadened definition of TARP are very unlikely to be held by ordinary investors.

20 However, direct investment in New Zealand often follows as a second step from direct investment into Australia. If Australia adopts policies that reduce the level of direct international investment it receives, this may also negatively impact international investment into New Zealand as a consequence.

Effect on the New Zealand-Australia Double Tax Agreement (DTA)

21 As part of the proposed changes, Australia would insert a clarifying rule in its domestic law to ensure "real property" and "immovable property" in its DTAs have the same meaning as TARP under Australian law.

22 s 6(a), s 9(2)(j)

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International reactions

25 s 6(a)

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New Zealand investors' reactions

27 NZ Super has made a joint submission with the Public Sector Pension Investment Board (a Canadian government-owned pension fund). The submission notes that the proposals – particularly their retrospective elements – risk weakening Australia's reputation as a stable and predictable investment jurisdiction. They also point to competitiveness issues, noting a widening tax differential between foreign investors and Australian superannuation funds.

Consultation

28 The Ministry of Foreign Affairs and Trade was consulted on this briefing note.

29 The Treasury was consulted on this briefing note.

30 Officials from Inland Revenue and the Ministry of Foreign Affairs and Trade have met with NZ Super and Deloitte regarding these changes.

Next steps

31 s 6(a)

32 While Inland Revenue will continue to liaise with stakeholders and monitor the progress of the changes, they do not appear to be inconsistent with Australia's obligations to New Zealand under our bilateral tax treaty and do not necessitate any change in New Zealand's policy settings.

33 Any unanticipated adverse effect on New Zealand investors or our tax treaty with Australia will be brought to Ministers' attention, but at this stage it is the view of officials that the changes remain an Australian domestic policy matter that does not require escalation by Inland Revenue.

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s 9(2)(a)