

Taxation (Land Information and Offshore Persons Information) Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 263(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

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 1994 are wider than just tax compliance in land dealings. They are intended to promote the enforcement of tax obligations of offshore persons generally (offshore persons 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 to 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 2-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 3 years. A person with a resident class visa can be an offshore person if they have not been to New Zealand for 1 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 licensed non-bank deposit taker. Lists of these entities are maintained on the Reserve Bank of New Zealand 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.

Departmental disclosure statement

Inland Revenue and Land Information New Zealand are required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=34>.

Regulatory impact statement

Inland Revenue produced regulatory impact statements on 5 June 2015 and 18 June 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause. It is intended that the Bill will be divided into the following 2 separate Bills at the committee of the whole House stage:

- *Part 1* will become the Land Transfer Amendment Bill.
- *Part 2* will become the Tax Administration Amendment Bill.

Clause 2 is the commencement clause. It provides for the Bill to come into force on 1 October 2015.

Part 1

Amendments to Land Transfer Act 1952

Clause 3 provides that *Part 1* amends the Land Transfer Act 1952 (the **principal Act**).

Clause 4 inserts *new sections 156A to 156I and a new cross-heading*.

New section 156A defines terms that are used in that section and in *new sections 156B to 156I*. A significant definition is the definition of exempt transfer in *subclause (2)*. The Bill provides for the main home exemption and also provides for other exemp-

tions to be specified in regulations. In relation to the main home exemption, in general terms (with the exceptions set out in *subclause (2)(b)*,—

- in relation to a transferee, the transfer is exempt if it is a transfer of residential land that is intended to be the transferee's main home (as defined in *subclause (1)*):
- in relation to a transferor, the transfer is exempt if it is a transfer of residential land that was the transferor's main home, unless the transferor is selling the transferor's third main home in a 2-year period.

New section 156B provides that an instrument to transfer a specified estate in land is not in order for registration unless each transferor and transferee has completed a tax statement, and some of the information set out in that statement (defined in *new section 156A* as tax information) is given to the chief executive of Land Information New Zealand (LINZ).

Different processes are set out for providing the tax information to the chief executive of LINZ, depending on whether the instrument is an electronic instrument or a paper instrument.

If the instrument is an electronic instrument, the tax information must be lodged by the person who certifies the transaction for the transferor or transferee in an electronic workspace facility when the instrument is lodged for registration.

If the instrument is a paper instrument, the tax statement must be attached to the instrument when it is lodged for registration.

New section 156C sets out the information that must be included in a tax statement. The statement must either state that the transfer is exempt or include the transferor's or transferee's IRD number and (if applicable) the equivalent of the transferor's or the transferee's overseas tax information number and country code. *New section 156A(2)* defines an exempt transfer.

New section 156D provides a procedure for an omission or error in any tax information to be corrected. It also provides that an omission or error in any tax information that is provided, or any other failure to comply with *new sections 156B and 156C*, does not affect the validity of any registration of transfer instrument or give rise to any liability of, or claim for compensation from, the chief executive of LINZ, the Registrar-General, or the Crown.

New section 156E provides that a person commits an offence if the person gives a tax statement that, to the person's knowledge or with intent to deceive, contains false or misleading tax information. The penalty is a maximum of \$25,000 for a first offence and \$50,000 for a subsequent offence.

New section 156F requires the chief executive of LINZ to supply the tax information and details about the transfer or transfers to which the tax information relates that are held by LINZ to the Commissioner of Inland Revenue. The chief executive and the Commissioner may agree between them how that transfer of information is to take place.

This section also permits the chief executive of LINZ to release or to give tax information to any person who requests it, provided that the information is given in aggregate form only and in a manner that prevents any person, estate in land, or transaction from being identified.

New section 156G requires a certifier and the chief executive of LINZ to retain a tax statement given to him or her for 10 years and to give a copy of that statement to the Commissioner of Inland Revenue as soon as practicable after receiving a request in writing from the Commissioner.

New section 156H provides that the chief executive of LINZ and certifiers must not use tax information, or disclose tax information to any person, except as required by *new sections 156B, 156D, 156F, 156G, and 156I*, or as authorised or required by order of a court.

New section 156I permits tax information or related information to be disclosed between certain authorised persons in specified circumstances.

Clause 5 makes consequential amendments to section 164B of the principal Act. It adds to the grounds specified in section 164B on which the Registrar may revoke or reinstate a person's right to give a certification under section 164A by adding a reference to a failure to comply with *new section 156B(2)(b), 156D(1)(b), or 156G*.

Clause 6 amends section 236 of the principal Act by inserting new regulation-making powers in order to give effect to *new sections 156A to 156I*.

Clause 7 makes a consequential amendment to the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002. Section 23 of that Act specifies when an electronic instrument is in order for registration. *Clause 7* adds to the list of requirements by cross-referencing the requirements of *new section 156B(2)*.

Part 2

Amendments to Tax Administration Act 1994

Clause 8 provides that *Part 2* amends the Tax Administration Act 1994 (the **principal Act**).

Clause 9 amends section 3 of the principal Act. *Subclause (2)* inserts a new definition of *bank account number* for the purpose of the proposal to require bank account numbers in relation to certain offshore people. *Subclause (3)* inserts a new definition of *offshore person* for the purpose of the proposal to require bank account numbers in relation to certain offshore people.

Clause 10 inserts a *new heading* and *new section 24BA* into the principal Act to require bank account numbers in relation to certain offshore people.

Clause 11 amends section 81 of the principal Act by adding the circumstances listed in *new section 156I* of the Land Transfer Act 1952 to the list of circumstances in which the Commissioner of Inland Revenue may communicate information.

Hon Louise Upston

Taxation (Land Information and Offshore Persons Information) Bill

Government Bill

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**Part 2
Amendments to Tax Administration Act 1994**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Taxation (Land Information and Offshore Persons Information) Act **2015**.
- 2 Commencement** 5
This Act comes into force on 1 October 2015.

**Part 1
Amendments to Land Transfer Act 1952**

- 3 Principal Act**
This Part amends the Land Transfer Act 1952 (the **principal Act**). 10
- 4 New sections 156A to 156I and cross-heading inserted**
After section 156, insert:
- Tax statement required for registration of instrument to transfer some estates
in land*

156A Interpretation 15

(1) For the purpose of this section and **sections 156B to 156I**, unless the context otherwise requires,—

certifier means a person who provides the certification for a transferor or a transferee in accordance with section 164A for a transfer of a specified estate in land 20

dwelling—

(a) means any place used predominantly as a place of residence or abode including any appurtenances belonging to or enjoyed with the place; but

(b) does not include—

- (i) a hospital:
- (ii) a hotel, motel, inn, hostel, or boardinghouse:
- (iii) a convalescent home, nursing home, or hospice:
- (iv) a rest home or retirement village:
- (v) a camping ground

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farmland means land that because of its area and nature is capable of being worked as an economic unit as a farming or agricultural business

main home means, for a person, the 1 home—

- (a) that is mainly used as a residence by the person and any member of the person's family living with the person; and
- (b) with which the person has the greatest connection

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offshore person has the meaning given to it in section 3 of the Tax Administration Act 1994

residential land—

- (a) means—
 - (i) land that has a dwelling on it; or
 - (ii) land for which there is an arrangement that relates to erecting a dwelling; but
- (b) does not include land that is used predominantly as business premises or as farmland

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specified estate in land means—

- (a) freehold estates, including fee simple and life estates; and
- (b) leasehold estates; and
- (c) stratum estates in freehold within the meaning of the Unit Titles Act 2010; and
- (d) stratum estates in leasehold within the meaning of the Unit Titles Act 2010; and
- (e) licences to occupy (as defined in section 121A(1)); and
- (f) any other estate in land declared to be a specified estate in land by regulations made under this Act

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tax information means the information specified in a tax statement in accordance with—

- (a) **section 156C(1)(b) to (d) and (if applicable) (2)**; and
- (b) if applicable, **section 156D**

tax statement means a statement that is completed and given in accordance with—

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- (a) **sections 156B and 156C**; and

- (b) if applicable, **section 156D**.
- (2) For the purpose of this section and **sections 156B to 156I**, exempt transfer—
- (a) means,—
- (i) in relation to a transferee, the transfer of residential land that is intended to be the transferee’s main home: 5
 - (ii) in relation to a transferor, the transfer of residential land that was the transferor’s main home:
 - (iii) any other transfer specified in regulations made under this Act as being exempt from the requirements of **section 156B**; but 10
- (b) does not include—
- (i) a transfer described in **paragraph (a)(i)** if the transferee will own the residential land as a trustee:
 - (ii) a transfer described in **paragraph (a)(ii)** if the transferor owned the residential land as a trustee: 15
 - (iii) a transfer described in **paragraph (a)(ii)** if the transferor has relied on the exemption in that paragraph at least 2 times within the 2 years immediately preceding the date of the transfer:
 - (iv) any transfer by an offshore person.
- 156B Transferors and transferees must provide tax statement stating that transfer exempt or providing tax information** 20
- (1) An instrument to transfer a specified estate in land is not in order for registration unless—
- (a) each of the transferors and transferees completes a tax statement; and
 - (b) the tax information in that statement is given to the chief executive in accordance with **subsection (2) or (3)**. 25
- (2) If the instrument is an electronic instrument,—
- (a) the transferor or transferee must give the tax statement to the certifier; and
 - (b) the certifier must give the tax information in that statement to the chief executive by lodging the information in an electronic workspace facility approved by the Registrar under section 22 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 when lodging the instrument for registration. 30
- (3) If the instrument is a paper instrument, the tax statement must be attached to the instrument when the instrument is lodged for registration in accordance with section 47. 35

156C Content of tax statement

- (1) A tax statement completed by or on behalf of a transferor or transferee must—
- (a) be signed by the transferor or transferee; and
 - (b) be dated on the date on which it was signed; and
 - (c) state the transferor or transferee’s full name; and 5
 - (d) either—
 - (i) state that the transfer instrument is for an exempt transfer (or, as the case may be, is, in respect of the transferor or transferee making the statement, an exempt transfer) and specify the category of that exempt transfer; or 10
 - (ii) provide all of the information set out in **subsection (2)**.
- (2) The information must include all of the following:
- (a) the transferor or transferee’s IRD number; and
 - (b) whether the transferor or transferee is, or is not, treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement; and 15
 - (c) if the transferor or transferee is treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement,—
 - (i) the name of that jurisdiction; and
 - (ii) the country code for that jurisdiction as prescribed by the Commissioner of Inland Revenue; and 20
 - (iii) the equivalent of the transferor or transferee’s IRD number in that jurisdiction.
- (3) However, if a transferor or transferee is—
- (a) acting in the capacity of the trustee of a trust, the information must relate to the trustee in that capacity; or 25
 - (b) acting as a nominee or under a power of attorney, the information must relate to the person who made the nomination or granted the power of attorney; or
 - (c) acting in the capacity of a partner in a partnership, the information must relate to the partnership; or 30
 - (d) a person acting on behalf of an unincorporated body, the information must relate to the unincorporated body.
- (4) To avoid doubt, a transferor or transferee who does not have an IRD number must acquire one for the purpose of providing the information required by **subsection (2)(a)**. 35
- (5) In this section, **IRD number** has the meaning given to tax file number by section YA 1 of the Income Tax Act 2007.

156D Omissions and errors

- (1) An omission or error in any tax information provided in accordance with **section 156B(2) or (3)** must be corrected as follows:
 - (a) if the tax information in a tax statement was incorrect, the transferor or transferee must complete a corrected tax statement in accordance with **section 156C** and, if applicable, give it to the relevant certifier in accordance with **section 156B(2)(a)**: 5
 - (b) if the incorrect tax information was given to the chief executive by lodging the information in an electronic workspace facility in accordance with **section 156B(2)(b)**, the certifier must lodge the corrected tax information in an electronic workspace facility: 10
 - (c) if the incorrect tax information was given to the chief executive by attaching a tax statement to an instrument in accordance with **section 156B(3)**, the corrected tax statement must be given to the chief executive. 15
- (2) An omission or error in any tax information provided in accordance with **section 156B(2) or (3)**, or any other failure to comply with **sections 156B and 156C**, does not—
 - (a) affect the validity of any registration of an instrument to transfer a specified estate in land; or 20
 - (b) give rise to any liability of, or claim for compensation from, the chief executive, the Registrar-General, or the Crown.

156E Offence to provide false or misleading tax information

- (1) A person commits an offence if the person gives a tax statement to a certifier or the chief executive in accordance with **section 156B(2) or (3) or section 156D** that, to the person's knowledge or with intent to deceive, contains false or misleading tax information. 25
- (2) A person who commits an offence under **subsection (1)** is liable,—
 - (a) the first time the person is convicted, to a fine not exceeding \$25,000; and 30
 - (b) on every other occasion the person is convicted, to a fine not exceeding \$50,000.

156F Chief executive must supply tax information

- (1) The chief executive must supply the tax information and details about the transfer or transfers to which the tax information relates that are held by Land Information New Zealand to the Commissioner of Inland Revenue. 35
- (2) The chief executive and the Commissioner may, for the purpose of this section, determine by written agreement between them—
 - (a) the frequency with which the tax information must be supplied; and

- (b) the form in which the tax information must be supplied; and
 - (c) the method by which the tax information must be supplied.
- (3) The chief executive may release the information specified in **section 156C(2)(b) and (c)** that is held by Land Information New Zealand, or give that information to any person as soon as practicable after receiving a request in writing from the person, provided that information is given— 5
- (a) in aggregate form only; and
 - (b) in a manner that prevents any particular person, estate in land, or transaction from being identified.
- 156G Certifier and chief executive must hold tax statement and provide copies** 10
- (1) A certifier must—
- (a) retain each tax statement given to him or her in accordance with **section 156B(2) or 156D** for 10 years; and
 - (b) give a copy of that statement to the Commissioner of Inland Revenue as soon as practicable after receiving a request in writing from the Commissioner. 15
- (2) The chief executive must—
- (a) retain each tax statement given to him or her in accordance with **section 156B(3) or 156D** for 10 years; and
 - (b) give a copy of that statement to the Commissioner of Inland Revenue as soon as practicable after receiving a request in writing from the Commissioner. 20
- 156H Status of tax information**
- (1) The chief executive and certifiers must not use tax information, or disclose tax information to any person, except as set out in **sections 156B, 156D, 156F, 156G, and 156I**, or as authorised or required by order of a court. 25
- (2) Tax information does not form part of the land transfer register and must not be made accessible to the public.
- 156I Disclosure of information between authorised persons**
- (1) No obligation as to secrecy or other restrictions imposed by an enactment or otherwise on the disclosure of information prevents— 30
- (a) an authorised person from disclosing tax information to another authorised person for the purpose of **sections 156B, 156D, 156F, and 156G**; or
 - (b) an authorised person from disclosing to another authorised person any information for the purpose of verifying tax information; or 35
 - (c) an authorised person from disclosing to another authorised person any information for the purpose of administering the Inland Revenue Acts, to

	the extent that the administration of those Acts concerns tax information; or	
	(d) an authorised person from disclosing to another authorised person any information for the purpose of detecting, investigating, or prosecuting a potential offence under section 156E .	5
(2)	In this section,— authorised person means—	
	(a) the Commissioner of Inland Revenue or an Inland Revenue officer who is authorised by the Commissioner to disclose and receive information under this section; or	10
	(b) the chief executive, or an employee of the department who is authorised by the chief executive to disclose and receive information under this sec- tion	
	Inland Revenue Acts has the meaning given in section 3(1) of the Tax Admin- istration Act 1994.	15
5	Section 164B amended (Who may give certification)	
(1)	In section 164B(2)(c), replace “section 164C” with “ section 156B(2)(b), 156D(1)(b), 156G , or 164C”.	
(2)	In section 164B(4)(b), replace “section 164C” with “ sections 156B(2)(b), 156D(1)(b), 156G , and 164C”.	20
6	Section 236 amended (Regulations)	
(1)	After section 236(1)(h), insert:	
	(ha) for the purposes of section 156A (and where the conditions in sub- section (4) are satisfied), specifying transfers of specified estates in land that are exempt from the requirements of section 156B , including by reference to the nature of the transferor, transferee, transaction, type of estate in land, class of estate in land, or otherwise:	25
	(hb) declaring estates in land that are specified estates in land for the purpo- ses of section 156A :	
(2)	After section 236(3), insert:	30
(4)	Regulations may be made under subsection (1)(ha) only on the recommen- dation of the Minister, if the Minister is satisfied that—	
	(a) requiring persons to comply with the requirements of section 156B in the case of the transfers proposed to be specified as exempt would be impractical or involve high compliance costs; or	35
	(b) there is a low risk of tax avoidance in relation to the transfers proposed to be specified as exempt.	

7 Consequential amendment to Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

- (1) This section amends the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (2) After section 23(1)(b), insert: 5
- (ba) the instrument is associated with the information required under **section 156B(2)** of the principal Act; and

Part 2

Amendments to Tax Administration Act 1994

8 Principal Act 10

This Part amends the Tax Administration Act 1994 (the **principal Act**).

9 Section 3 amended (Interpretation)

- (1) This section amends section 3.
- (2) Insert, in its appropriate alphabetical order: 15
- bank account number** means, for a person, the identifying number of an account that the person holds with—
- (a) a registered bank; or
- (b) a licensed NBDT, as defined in section 4 of the Non-bank Deposit Takers Act 2013
- (3) Insert, in its appropriate alphabetical order: 20
- offshore person** means,—
- (a) for an individual,—
- (i) a New Zealand citizen who is outside New Zealand and has not been in New Zealand within the last 3 years: 25
- (ii) a person who holds a resident class visa granted under the Immigration Act 2009, and who is outside New Zealand and has not been in New Zealand within the last 12 months:
- (iii) a person who is not a New Zealand citizen and who does not hold a resident class visa granted under the Immigration Act 2009:
- (b) for a body corporate or an unincorporated body of persons, including a trust or a unit trust, a person who would be an overseas person under section 7(2)(b) to (e) of the Overseas Investment Act 2005, treating references to an overseas person or persons in that section as including a person or persons described in **paragraph (a)** of this definition 30

10 New heading and section 24BA inserted (Offshore persons' bank account and tax file numbers)

After section 24 insert:

*Offshore persons' bank account and tax file numbers***24BA Offshore persons' bank account and tax file numbers**

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- (1) The Commissioner must not allocate a tax file number to an offshore person unless the Commissioner first receives a bank account number for the offshore person.
- (2) If a person already has a tax file number, the person must give their bank account number to the Commissioner immediately when the person becomes an offshore person under **paragraph (b)** of the definition of **offshore person**.

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11 Section 81 amended (Officers to maintain secrecy)

After section 81(4)(u), insert:

- (v) communicating to the chief executive, or an authorised employee, of Land Information New Zealand under **section 156I** of the Land Transfer Act 1952 any information specified in **subsection (1) of that section** for the purpose set out in that subsection.

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