

Taxation (Land Information and Offshore Persons Information) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Land Information and Offshore Persons Information) Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Land Transfer Act 1952 and the Tax Administration Act 1994 with the aims of obtaining tax information from people buying and selling land, and improving the enforcement of non-residents' tax obligations.

The bill would require buyers and sellers of property to provide an IRD number (or an equivalent tax number in the case of residents of other countries). Individuals buying or selling their main home—other than people deemed to be offshore persons—would be exempt from the requirement unless they were selling a third home within a 2-year period. Offshore persons would be required to have a New Zealand bank account in order to obtain an IRD number, to ensure that they came within New Zealand's rules against money-laundering and the financing of terrorism.

Timing of the bill and future legislation

We note that some provisions in the bill, particularly the exception for a person's main home, would tie in with future legislation which the Government proposes to introduce to the House once public consultation is completed. It is intended that the proposed legislation would introduce a "bright-line" test, requiring income tax to be paid on gains from the sale of residential property bought and sold within two years, unless the property was a person's main home.

Several of the submissions we received on this bill commented on the proposed “bright-line” test; two submissions related entirely to this proposal. As such legislation has yet to be introduced, we did not consider the issue in our examination of this bill, but referred the comments we received to officials so they could take them into account in developing draft legislation.

Some of us are concerned about the short time frame allowed for the committee’s scrutiny of this bill, and consider that it should have been deferred so it could be considered alongside a proposed “bright-line” test.

Proposed amendments

The following parts of this commentary cover the main amendments we recommend to the bill. We do not discuss minor or technical amendments.

Transitional, savings, and related provisions

We recommend inserting new clauses 3A and 6A, and Schedule 1AA, to make it clear that the bill would not be retrospective in its effect, and none of the provisions would apply to transactions settled before 1 October 2015.

Main home exemption

The bill would exempt non-offshore individuals from the requirement to provide an IRD number if they were selling their main home, or buying what they intended to be their main home.

Several submitters commented on the proposed exemption. Some suggested that the same information should be required for all property transactions, without exception, while several indicated that the proposal in the bill as introduced was unclear and overly complex.

We acknowledge that making an exception for a person’s main home adds complexity to the rules, and would limit the information available about property transactions, as many involve the acquisition or sale of the family home. However, the majority of us accept that not making such an exception would greatly increase the volume of information to be managed by Land Information New Zealand and the Inland Revenue Department, and could lead people to worry needlessly that the transaction would be taxable, even though in most cases it would not be.

We support the proposed exemption, but propose some amendments, discussed below, to make the provisions simpler and clearer.

Definitions of “dwelling”, “farmland”, and “residential land”

Living arrangements vary widely, and a home can often be on land that is used for both residential and other purposes. This would be the case, for example, with a farmhouse, or an apartment above commercial premises. To address these situations, the bill as introduced would restrict the main home exemption to situations where the house was on land that was mainly used for residential purposes. This would mean that buyers and sellers of such mixed-use properties could potentially use the main

home exemption as long as the land was mainly used for residential purposes. However, in the light of concerns raised about the legislative complexity of the test, we believe the “residential land” requirement could be removed to make the proposed exemption clearer and easier to apply, without adverse consequences. In its place we are proposing an amendment—discussed later in this commentary—to clause 4, new section 156A(2)(a), to specify that the exemption would be available where most of the land was used for a home.

We therefore recommend deleting the definition of “residential land” in clause 4, new section 156A(1), and removing references to “residential” land in new section 156A(2).

As a consequence of this change, we also recommend that the definitions of “dwelling” and “farmland” in new section 156A(1) be deleted. They would be unnecessary if the definition of “residential land” was removed.

Definition of “main home”

We have thought carefully about the definition of “main home” in clause 4, new section 156A(1), as it is central to the exemption from this bill’s reporting requirements, and is also likely to be of particular importance in the proposed future “bright-line” test. We recommend some amendments to make the definition clearer.

The proposed definition has two parts. The first part is quite straightforward: the intention is that a person’s home is the dwelling that they mainly use as a residence. However, we recommend some minor amendment to the wording to make this clearer. It is irrelevant to the definition of “main home” whether or not a person’s family lives with them, and therefore we recommend removing the words “and any member of the person’s family living with the person” from this part of the definition.

The second part of the definition specifies that the “main home” is the one “with which the person has the greatest connection”. This is relevant in cases where a person owns more than one home, to provide guidance as to which one the “main home” exemption would apply to. We recommend an amendment in new section 156A(1) to make it clear that this part of the definition only applies where a person has more than one home.

We note that the term “greatest connection” is not used in New Zealand tax law at present. We understand that it is envisaged as an objective test, and that several factors would be relevant in determining which home was the one with which a person had the greatest connection. We expect the factors to include such things as where their personal property was kept, the time they occupied each dwelling, where their immediate family lived, where their social ties were strongest, and what employment, business interests, and economic ties they had with the area where each dwelling was located. We recognise that there could be some confusion about the rules, and have been assured that guidance material would be provided for buyers, sellers, and conveyancers, in addition to more detailed explanatory material provided in IRD’s tax information bulletins.

Definition of “exempt transfer”

We consider that use of the term “exempt transfer” in clause 4, new sections 156A(2), 156B, and 156C could be misleading, as it might imply that no income tax liability would ever arise in respect of a property if it qualified as an “exempt transfer”. We recommend amending the term to “non-notifiable transfer” to make it clear that the exemption relates only to the provision of information rather than to liability for tax.

We understand that the policy intent is that the exemption would be available only to individuals, and not to others such as a trust or a company. Accordingly, we recommend amending the definition to make it clear that the transacting party would need to be a natural person.

We consider that clarification is needed to cover situations where a piece of land has multiple uses (for example, an apartment above commercial premises, or a farmhouse). We recommend amending clause 4, new section 156A(2)(a), to specify that the main home exemption would be available when most of the land was used for a home by the owner, and when it was so used for most of the time the person owned it.

Our recommended amendments in new section 156A(2)(b) are for purposes of clarification. In particular, the changes to paragraph (iv) would make it clear that the exemption would not apply to a transfer to or from an offshore person.

Information to be supplied in tax statements

While we consider the definition of “offshore person” an appropriate way to identify who should provide information for tax purposes, we consider that the information to be supplied under the bill as introduced could be of limited use in understanding the housing market and making housing policy, and could potentially be misleading. For example, it could overstate the number of transactions that relate to people residing overseas. Also, it would not indicate whether a purchase or sale was of a home. This information is not gathered at present under New Zealand’s land transfer system, which does not make distinctions on the basis of land use.

We therefore propose that some additional questions be asked in the tax statements which would allow aggregate data to be reported on the number of homes purchased and sold, and on the number of purchases and sales by people with a connection to New Zealand.

In clause 4, new section 156C(1), we recommend inserting new paragraph (ca) to require tax statements to state whether a transfer relates to land that has a home on it. To clarify what is meant by a home we recommend a new subsection (6) stating that for the purpose of subsection (1)(ca) a home is a dwelling used as a residence.

We also recommend inserting new paragraphs (cb) and (cc) to require tax statements to state whether the buyer or seller, or a member of their immediate family, was a New Zealand citizen or a holder of a resident, work, or student visa, and if so, whether they intended to live in the property.

We believe these proposed amendments would make the information collected more useful for understanding the housing market and in developing housing policy. As we

note below, the privacy of individuals would be protected as the information collected could be released only in the form of aggregated data.

Tax residency

Clause 4, new section 156C(2), would require a person who was treated as tax resident in a jurisdiction other than New Zealand to provide a tax information number and the country code for that jurisdiction. We note that on occasion a person will be tax resident in more than one jurisdiction under the domestic laws of those countries, but treated as resident in only one of those jurisdictions under the provisions of a relevant double tax agreement. To provide guidance in such a situation, we recommend an amendment to make it clear that the relevant factor for the reporting requirements would be tax residence under the domestic laws of a foreign jurisdiction, and that double tax agreements could be ignored for this purpose.

Use of information from tax statements

In the bill as introduced, new section 156F(3) would allow the information collected by Land Information New Zealand to be published, and shared with anyone on request, provided it was given in aggregate form so that no specific person or transaction could be identified. We recommend amending clause 4, new section 156F, so that such aggregate data would include information collected under new sections 156C(1)(ca), (cb), (cc), and (d).

We note that the Domestic Violence Act 1995 prevents the public release of certain residential property information in order to protect the privacy of individuals in situations where a domestic protection order has been granted. We are satisfied that the protections afforded by that Act would remain if information gathered under this legislation were shared with the Inland Revenue Department. We therefore recommend inserting new section 156F(3) to allow information about property transfers held by Land Information New Zealand to be shared with the Commissioner of Inland Revenue even if the information was not publicly available because of protections afforded by the Domestic Violence Act 1995.

Regulations

In the bill as introduced, clause 6 would allow regulations to specify that a transfer could be exempt from the information requirements if they would be impractical or involve high compliance costs, or if there was a low risk of tax avoidance. We recommend amending this clause so that a transfer could be either fully exempt from the information requirements, or non-notifiable in respect of one or both of the parties involved. This would allow for situations in which provision of a limited tax statement (without an IRD number or other tax identification number) would be sufficient to manage any concerns relating to impracticality or high compliance costs.

We also recommend amending section 236(4) to make it clear that regulations would be made on the recommendation of the Minister for Land Information.

Offshore persons' bank accounts and IRD numbers

Clauses 9 and 10 would amend the Tax Administration Act to provide that an offshore person must provide the Commissioner of Inland Revenue with the number of a current bank account they hold with a New Zealand-registered bank or non-bank deposit-taker before they could be allocated an IRD number. This is intended to ensure that an offshore person who wished to obtain an IRD number had first been subjected to New Zealand's Anti-Money Laundering and Countering Financing of Terrorism rules (for example, to confirm their identity).

To ensure that these provisions work as intended, we recommend amending the definition of "bank account number" in clause 9, new section 3, to make it clear that only an account on which customer due diligence had been completed could be used to obtain an IRD number.

We recommend inserting in clause 9 a definition of "tax file number" (commonly known as an IRD number).

We also recommend amending clause 10, new section 24BA, so that an offshore person would not need to provide a bank account number if IRD already had a current bank account number on file for them. Another amendment we recommend to this section would make it clear that the bank account requirement would apply only when an offshore person requested an IRD number, and not in cases where the Commissioner of Inland Revenue assigned one to a person for administrative reasons.

Definition of "offshore person"

We considered carefully the definition of "offshore person" in clause 9, new section 3(3) of the Tax Administration Act. We note that the definition draws on a person's immigration status, rather than their tax residence. However, for the purposes of this bill, a New Zealand citizen would be considered an "offshore person" if they had been continuously out of New Zealand for three years, or, in the case of a residence class visa holder, for 12 months. We consider that this test would generally be clear and easy to apply, while tax residence could be more difficult to determine. We therefore support the proposed definition, and propose only minor drafting amendments.

New Zealand Labour Party minority view

Labour will support this bill, as we strongly back the policy objective to collect information on offshore residential home buyers. But we are concerned that this legislation in its current form will ultimately prove ineffective and inadequate as it has many loopholes that will result in the necessary data not being accurately collected. In addition the current bill imposes unnecessary compliance costs that will not improve the quality of the register. We agree with a number of submitters that have raised their concerns regarding the bill's numerous shortcomings and unnecessary obligations.

The Labour and Green view regarding this bill is that all parties involved in a residential property transaction should submit a New Zealand IRD tax number and any party that holds an active overseas tax number should also provide that information as part

of the transaction. The proposed exemption for a “main home” will increase compliance costs and create loopholes for avoidance of the data collection measures. It is highly unlikely that a party purchasing a “main home” will not hold a New Zealand tax number, while requiring other parties to the transaction to ascertain what is and is not a “main home” needlessly complicates the collection of information and increases compliance costs.

Labour and the Greens agree with submitters that the definition of a “main home” is vague and open to interpretation. A person’s “main home” should be their principal place of residence, regardless of whether they feel the “greatest connection” to the property. Yet, if a person’s “main home” is held in a trust, despite being their principal place of residence, the exemption does not apply. The inconsistencies regarding the “main home” exemption could be easily resolved if the provision was removed and parties to a residential property transfer were required to provide IRD numbers as part of the transaction.

Many trusts do not currently have IRD numbers as they have no taxable activity. This could increase compliance costs for trustees as they will then be required to file an annual return or notify IRD that they incurred no taxable activity for the year. This could be mitigated if a “non-active trust declaration” was implemented in a similar manner to that for non-active companies and trustees were made aware of their obligations by the department upon obtaining an IRD number for a trust.

We agree with submitters that the requirement for a New Zealand bank account for an offshore party to obtain a New Zealand IRD number is unnecessary and will provide no net benefit in comparison with the increased compliance costs involved. It is likely that offshore parties will obtain New Zealand bank accounts for any practical reason and make no use of the account other than to obtain a New Zealand IRD number. We agree with the IRD’s original advice provided in the Regulatory Impact Statement for this bill that it is unlikely that anti-money laundering checks carried out by a New Zealand financial institution would provide greater information than what the IRD will obtain as part of the application process for an IRD number, especially as Phase 2 of the Anti-Money Laundering process is implemented.

This bill creates new measures that will improve upon the current lack of information regarding overseas house purchases. But it is needlessly weak and is a half-measure with inadequately considered provisions compounded by the hastened period for submissions and committee consideration. It is disappointingly likely that Parliament and the committee will need to revisit the legislation again in the future to amend the inadequacies in the bill. Implementing a full and proper overseas home buyers register the first time around will prevent the wasting of Parliamentary time and taxpayers’ money. Labour will support this bill with reservations, as a first step to providing an accurate depiction of the true scale of offshore purchasing of New Zealand houses.

Appendix

Committee process

The Taxation (Land Information and Offshore Persons Information) Bill was referred to the committee on 25 June 2015. The closing date for submissions was 9 July 2015. We received and considered 13 submissions from interested groups and individuals. We heard oral evidence from six submitters, including holding hearings in Auckland.

We received advice from Land Information New Zealand, the Inland Revenue Department, and our specialist tax adviser, Therese Turner. The Regulations Review Committee provided comments on the powers contained in clause 6.

Committee membership

David Bennett (Chairperson)

Andrew Bayly

Chris Bishop

Hon Clayton Cosgrove

Julie Anne Genter

Stuart Nash

Rt Hon Winston Peters

Grant Robertson

Jami-Lee Ross

Alastair Scott

David Seymour

**Taxation (Land Information and Offshore Persons
Information) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Louise Upston

Taxation (Land Information and Offshore Persons Information) Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Amendments to Land Transfer Act 1952		
3	Principal Act	2
<u>3A</u>	<u>New section 2AA inserted (Transitional, savings, and related provisions)</u>	<u>2</u>
	<u>2AA</u> <u>Transitional, savings, and related provisions</u>	<u>3</u>
4	New sections 156A to 156I and cross-heading inserted	3
	<i>Tax statement required for registration of instrument to transfer some estates in land</i>	
156A	Interpretation	3
156B	Transferors and transferees must provide tax statement stating that transfer exempt non-notifiable or providing tax information	5
156C	Content of tax statement	5
156D	Omissions and errors	7
156E	Offence to provide false or misleading tax information	7
156F	Chief executive must supply tax information	8
<u>156F</u>	<u>Chief executive must supply tax information to Commissioner of Inland Revenue</u>	<u>8</u>
<u>156FA</u>	<u>Other provisions concerning use of tax information</u>	<u>8</u>
156G	Certifier and chief executive must hold tax statement and provide copies	9

**Taxation (Land Information and Offshore Persons
Information) Bill**

	156H	Status of tax information	9
	156I	Disclosure of information between authorised persons	9
5		Section 164B amended (Who may give certification)	10
6		Section 236 amended (Regulations)	10
<u>6A</u>		<u>New Schedule 1AA inserted</u>	<u>11</u>
7		Consequential amendment to Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002	11

Part 2

Amendments to Tax Administration Act 1994

8		Principal Act	11
9		Section 3 amended (Interpretation)	11
10		New heading and section 24BA inserted (Offshore persons' bank accounts and tax file numbers)	12

Offshore persons' bank account and tax file numbers

	24BA	Offshore persons' bank account and tax file numbers	12
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Offshore persons' bank accounts and tax file numbers

	<u>24BA</u>	<u>Offshore persons' bank accounts and tax file numbers</u>	<u>12</u>
11		Section 81 amended (Officers to maintain secrecy)	13

Schedule

New Schedule 1AA inserted

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

This Act comes into force on 1 October 2015.

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Part 1

Amendments to Land Transfer Act 1952

3 Principal Act

This Part amends the Land Transfer Act 1952 (the **principal Act**).

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3A New section 2AA inserted (Transitional, savings, and related provisions)

After section 2, insert:

2AA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

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

(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

chief executive means the chief executive of the department

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~~

~~**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~~

~~**main home** means, for a person, the 1 dwelling—~~

(a) ~~that is mainly used as a residence by the person (a **home**); and~~

(b) ~~with which the person has the greatest connection, if they have more than 1 home~~

~~**nominee** has the meaning given to it in **section YB 21(2)** of the Income Tax Act 2007~~

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offshore person	has the meaning given to it in section 3 <u>3(1)</u> of the Tax Administration Act 1994	
residential land	—	
(a)	means—	
	(i) land that has a dwelling on it; or	5
	(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	
specified estate in land	means—	10
(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	15
(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	
tax information	means the information specified in a tax statement in accordance with—	20
(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—	25
(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 <u>non-notifiable transfer</u> —	30
(a)	means,—	
	(i) in relation to a transferee <u>who is a natural person</u> , the transfer of residential land that is intended to be <u>used predominantly for a dwelling that will be the transferee's main home</u> ;	
	(ii) in relation to a transferor <u>who is a natural person</u> , the transfer of residential land that was <u>has been used predominantly, for most of the time the transferor owned the land, for a dwelling that was the transferor's main home</u> ;	35

(iii)	any other transfer specified in regulations made under this Act as being exempt from the requirements of section 156B a non-notifiable transfer; but	
(b)	does not include—	
(i)	a transfer described in paragraph (a)(i) if the transferee will own the residential land as a trustee:	5
(ii)	a transfer described in paragraph (a)(ii) if the transferor owned the residential land as a trustee:	
(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 <u>to claim that transfers were non-notifiable transfers</u> :	10
(iv)	any transfer by an offshore person transfer, in relation to a transferee or a transferor who is an offshore person.	
156B	Transferors and transferees must provide tax statement stating that transfer exempt non-notifiable or providing tax information	15
(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) .	20
(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.	25
(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.	30
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	35
(b)	be dated on the date on which it was signed; and	
(c)	state the transferor or transferee's full name; and	
<u>(ca)</u>	<u>state whether the transfer is of land that has a home on it; and</u>	

- (cb) state whether the transferor or, as the case may be, the transferee, or a member of that person's immediate family, is a New Zealand citizen or a holder of a resident visa, work visa, or student visa; and
- (cc) in the case of a transferee, if the transferee or a member of the transferee's immediate family is a holder of a work visa or student visa, state whether the transferee or a member of the transferee's immediate family intends living on the land; and 5
- (d) either—
- (i) state that the transfer instrument is for ~~an exempt~~ a non-notifiable transfer (or, as the case may be, is, in respect of the transferor or transferee making the statement, ~~an exempt~~ a non-notifiable transfer) and specify the category of that ~~exempt~~ non-notifiable transfer; or 10
- (ii) provide all of the information set out in **subsection (2)**. 15
- (2) The information must include all of the following: 15
- (a) the transferor or transferee's IRD number; and
- (b) whether the transferor or transferee (without taking into account any double tax agreement that would otherwise apply) is, or is not, treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement; and 20
- (c) if the transferor or transferee is (without taking into account any double tax agreement that would otherwise apply) 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 25
- (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 30
- (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 35
- (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~~ request one for the purpose of providing the information required by **subsection (2)(a)**.
- (5) In this section, **IRD number** has the meaning given to tax file number by ~~section YA 1 of the Income Tax Act 2007~~ section 3(1) of the Tax Administration Act 1994. 5
- (6) For the purpose of **subsection (1)(ca)**, **home** means a dwelling mainly used as a residence.

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: 10
- (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)**: 15
- (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:
- (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. 20
- (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— 25
- (a) affect the validity of any registration of an instrument to transfer a specified estate in land; or
- (b) give rise to any liability of, or claim for compensation from, the chief executive, the Registrar-General, or the Crown. 30

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. 35
- (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

- (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.~~ 5
- (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~~ 10
- (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—~~ 15
- (a) ~~in aggregate form only; and~~
- (b) ~~in a manner that prevents any particular person, estate in land, or transaction from being identified.~~

156F Chief executive must supply tax information to Commissioner of Inland Revenue 20

- (1) The chief executive must supply to the Commissioner of Inland Revenue tax information and details about the transfer or transfers to which the tax information relates that are held by Land Information New Zealand.
- (2) The chief executive and the Commissioner may, for the purpose of this section, determine by written agreement between them, in relation to the information that must be supplied under **subsection (1)**,— 25
- (a) the frequency with which the information must be supplied; and
- (b) the form in which the information must be supplied; and
- (c) the method by which the information must be supplied.
- (3) **Subsection (1)** applies despite anything in the Domestic Violence Act 1995. 30

156FA Other provisions concerning use of tax information

- The chief executive may release the information specified in **section 156C(1)(ca), (cb), (cc), and (d), (2)(b), and (c)(i) and (ii)** 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— 35
- (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

- (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 5
 - (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. 10
- (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. 15

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, 156FA, 156G, and 156I**, or as authorised or required by order of a court.
- (2) Tax information does not form part of the ~~land transfer~~ register and must not be made accessible to the public. 20

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—
- (a) an authorised person from disclosing tax information to another authorised person for the purpose of **sections 156B, 156D, 156F, 156FA, and 156G**; or 25
 - (b) an authorised person from disclosing to another authorised person any information for the purpose of verifying tax information; or
 - (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 30
 - (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**. 35
- (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
- (b) the chief executive, or an employee of the department who is authorised by the chief executive to disclose and receive information under this section

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Inland Revenue Acts has the meaning given in section 3(1) of the Tax Administration Act 1994.

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”.

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6 Section 236 amended (Regulations)

- (1) After section 236(1)(h), insert:

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~~(ha) for the purposes of **section 156A** (and where the conditions in **subsection (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:~~

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(ha) for the purposes of **sections 156A and 156B** (and where the conditions in **subsection (4)** of this section are satisfied),—

(i) 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:

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(ii) specifying transfers of specified estates in land that are non-notifiable transfers (which may be non-notifiable in relation to the transferee, the transferor, or both), including by reference to the nature of the transferor, transferee, transaction, type of estate in land, class of estate in land, or otherwise:

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(hb) declaring estates in land that are specified estates in land for the purposes of **section 156A**:

- (2) After section 236(3), insert:

(4) Regulations may be made under **subsection (1)(ha)** only on the recommendation of the Minister for Land Information, if the Minister is satisfied that—

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- (a) requiring persons to comply with the requirements of **section 156B** in the case of the transfers proposed to be specified as exempt or non-notifiable would be impractical or involve high compliance costs; or

- (b) there is a low risk of tax avoidance in relation to the transfers proposed to be specified as exempt or non-notifiable.

6A New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

5

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: 10

(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 15

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

9 Section 3 amended (Interpretation)

- (1) This section amends section 3(1).

- (2) ~~Insert, in its appropriate alphabetical order:~~

~~**bank account number** means, for a person, the identifying number of an account that the person holds with—~~ 20

- ~~(a) a registered bank; or~~

- ~~(b) a licensed NBDT, as defined in section 4 of the Non-bank Deposit Takers Act 2013~~

- (2) Insert, in its appropriate alphabetical order: 25

bank account means, for a person, the identifying number of an account—

- (a) that the person holds with a registered bank, or with a licensed NBDT as defined in section 4 of the Non-bank Deposit Takers Act 2013; and

- (b) for which the relevant reporting entity, under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act**), has obtained identity information and completed verification of identity in accordance with the Act, if customer due diligence is required under that Act for the person 30

- (3) Insert, in ~~its~~ their appropriate alphabetical order:

offshore person means,— 35

- (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:
- (ii) a person who holds a ~~resident~~ residence 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: 5
- (iii) a person who is not a New Zealand citizen and who does not hold a ~~resident~~ residence 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)~~ (f) 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 10
- tax file number** means an identification number that the Commissioner allocates to a person 15

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

After section 24 insert:

Offshore persons' bank account and tax file numbers 20

24BA Offshore persons' bank account and tax file numbers

- (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**.~~ 25

Offshore persons' bank accounts and tax file numbers

24BA Offshore persons' bank accounts and tax file numbers

- (1) The Commissioner must not allocate a tax file number in response to an offshore person's request unless the Commissioner first receives a current bank account number for the offshore person. 30
- (2) A person must give their current bank account number to the Commissioner immediately if—
- (a) the person has a tax file number; and 35
- (b) the person becomes, after 1 October 2015, an offshore person under **paragraph (b)** of the definition of **offshore person**; and

(c) the person has not yet provided their current bank account number to the Commissioner.

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. 5

Schedule
New Schedule 1AA inserted

s 6A

Schedule 1AA
Transitional, savings, and related provisions

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s 2AA

Part 1
Provisions relating to Land Transfer Amendment Act 2015

1 Application of sections 156A to 156I

Nothing in sections 156A to 156I applies in respect of a transfer of land that was settled before 1 October 2015.

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Legislative history

22 June 2015
25 June 2015

Introduction (Bill 34-1)
First reading and referral to Finance and Expenditure Committee