

Regulatory Impact Statement

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

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

The question addressed in this statement is whether requiring non-residents that apply for an IRD number to first have a New Zealand bank account would improve Inland Revenue's ability to verify the identity of the non-resident.

Currently, there is no statutory requirement for any IRD number applicant to have a New Zealand bank account.

There are changes being proposed as part of Budget 2015 that will seek to modify current tax laws related to property transactions and assist Inland Revenue in enforcing compliance with these rules. This is because the Government is concerned that there is potentially low compliance in respect of tax on property transactions. However, by its nature, the scope of the problem cannot be accurately quantified.

In particular, a Budget 2015 proposal would require all parties to a property transaction to obtain an IRD number and provide that number to Land Information New Zealand as part of the transaction process.

In order to buttress this initiative and improve Inland Revenue's ability to enforce tax laws on non-residents that buy and sell New Zealand residential property, the Government has directed that non-residents should, as a prerequisite to getting an IRD number, be required to have a New Zealand bank account. Therefore, this statement considered two options:

- Option 1 - Not requiring evidence of a New Zealand bank account as a prerequisite to a non-resident obtaining an IRD number (the status quo and preferred option).
- Option 2 - Legislating to require evidence of a New Zealand bank account as a prerequisite to a non-resident obtaining an IRD number.¹

Although it is finely balanced, Inland Revenue has concluded that option 1 is preferable. Inland Revenue's specific concerns with option 2 are that:

- It is not apparent that, for individuals, the general anti-money laundering (AML) checks that a New Zealand financial institution would carry out would yield significantly more information than Inland Revenue collects as part of the current IRD number application process;

¹The remainder of this statement, consistent with the draft legislation, uses the term "offshore person" in preference to "non-resident" where appropriate. This is because, "non-resident" has a specific meaning in a tax context and that meaning is not completely synonymous with the target group for this measure. Note also that this statement uses the term "bank account" as shorthand for the types of account covered by the draft legislation.

- It is likely that the information obtained on bank account opening will be collected in any event once Phase 2 of the planned AML roll-out occurs. Any advantage that is obtained is therefore only likely to be temporary in nature.

In saying this, Inland Revenue has considered the options largely from a tax policy perspective. As highlighted by the Treasury comment in paragraph 36 of this statement, there may be other “whole of government” reasons for preferring Option 1 that Inland Revenue is not best placed to comment on.

Inland Revenue has consulted with the Treasury, the Reserve Bank of New Zealand and the Ministry of Justice in relation to these options. No public consultation was undertaken on the proposal because of time constraints. The rule is to take effect from 1 October 2015. Public consultation will therefore take place in the usual way during the Select Committee process.

The options identified would not impair private property rights or reduce market competition. However, we note that requiring offshore persons to have a bank account would impose additional costs on those people.



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Status quo and problem definition

1. The Government is concerned with high house prices, particularly in the Auckland area. Property speculation is seen as one of a number of causes of the current prices. Other possible causes, both on the supply and demand sides, are being separately considered. The attractiveness of property speculation, when compared with other forms of investment, will increase if the gains are able to be realised untaxed, when gains from other investments are taxed.
2. The Income Tax Act 2007 contains provisions that impose income tax on certain property transactions. Examples are section CB 6, which taxes land bought with the intention of disposal and section CB 7, which taxes land acquired for the purposes of a business dealing in land. However, although the Act creates these obligations, the Government is concerned that compliance with these provisions is relatively low.
3. In order to investigate compliance with the Income Tax Act provisions, Inland Revenue does have the capacity to access records of land transfers in New Zealand - but this process is historic, rather than in real-time. Information received may also, depending on the nature of the request, not give a complete picture of the activities of a particular taxpayer.
4. Further, the Government considers that compliance by non-residents might be particularly low. This may come about as a result of ignorance of the tax rules. However, it is recognised that enforcing tax rules on non-residents is very difficult, especially those with only limited involvement with New Zealand. The fact that Inland Revenue is not aware of certain transactions means that the scope of the problem is not able to be quantified.
5. To address these concerns, the Government, as part of Budget 2015, announced a suite of measures aimed at providing clearer rules and providing more useful information to Inland Revenue to assist in its enforcement of the rules, including increased funding to Inland Revenue to investigate property compliance. The main legislative change is the introduction of a “brightline” test that will, in general terms, make the disposal of residential property taxable if the property is bought and sold within a two-year window (subject to certain exemptions). A regulatory impact statement for that change will accompany the enabling legislation, expected in the second half of 2015.
6. In order to improve Inland Revenue’s ability to enforce the tax laws, two further changes were announced:
 - Vendors and purchasers will be required to provide their IRD numbers (and, if they are tax residents of another jurisdiction, also provide their foreign tax identification number) at the time of transfer. This information will be provided to Land Information New Zealand (LINZ) as part of the transfer documentation and then forwarded to Inland Revenue. As such a requirement would be given effect by changes to the Land Transfer Act, Inland Revenue has prepared a separate regulatory impact statement on this proposal: *Sellers and purchasers of real property required to supply their IRD numbers and tax information numbers*. An important feature of the proposal to provide IRD numbers is that all parties to a relevant land transaction will be expected to have an IRD number, even if they are offshore persons.
 - The second proposal is that an offshore person will be required to provide evidence of a New Zealand bank account as a prerequisite to obtaining an IRD number.

7. This regulatory impact statement deals with the second proposal: the requirement to have a New Zealand bank account. The Government considers that requiring offshore persons to have a New Zealand bank account will assist in improving compliance by providing Inland Revenue with more confidence that it knows who it is dealing with by first ensuring that a person has first satisfied a financial institution's anti-money laundering (AML) verification of identity requirements.

8. The net effect of these changes will be that in order to purchase property, an offshore person must have an IRD number and in order to get the IRD number they must first have a New Zealand bank account.

Status quo

9. Under section 35 of the Tax Administration Act 1994, the Commissioner of Inland Revenue has a power to prescribe forms. Section 35 has a broad ambit – unless the forms are prescribed elsewhere (such as in regulation), the content of the form is simply required to be related to the administration of the Inland Revenue Acts. The current IRD number application form is prescribed under this authority, as are other standard forms that taxpayers are familiar with, such as income tax and GST returns.

10. Under this authority, the Commissioner has previously determined that a person applying for an IRD number must provide documentation to support their assertion of identity. The relevant IR595 (application for IRD number by an individual) requires the applicant to provide at least one "Category A" document and one "Category B" document. Category A documents are formal government-issued documents such as a passport or birth certificate. Category B documents are identification documents of a slightly less formal variety, such as a student identification card or an "offer of employment letter". In order to cater for offshore applicants, Inland Revenue will accept "non-New Zealand" documentation such as foreign passports and drivers' licences.

11. Similar requirements exist for "non-individuals" (such as companies and trusts) that apply for an IRD number.

12. The current administrative practice is not to issue an IRD number to an applicant unless the relevant documentation is in order.

13. Under current AML rules, financial institutions are required to perform customer due diligence and report suspicious transactions. There is a proposed Phase 2 of the AML that will cover other relevant professionals such as real estate agents, conveyancers and solicitors.

Objectives

14. The key objective is to increase the effective enforcement of current tax rules related to property transactions, as supplemented by changes announced as part of Budget 2015. The requirement for a New Zealand bank account could achieve this by providing increased confidence that Inland Revenue knows who it is dealing with by first ensuring that a person has satisfied a financial institution's anti-money laundering (AML) verification of identity requirements.

15. This objective needs to be considered in light of the additional constraint faced by Inland Revenue at the present time, which is its inability to make significant system changes in advance of the relevant stage of development of its Business Transformation.

Regulatory impact analysis

16. The Government has directed that the bank account option be considered as part of the package of Budget 2015 changes. Therefore, the options considered are:

- Option 1 - Not requiring evidence of a New Zealand bank account as a prerequisite to an offshore person obtaining an IRD number (the status quo and preferred option).
- Option 2 - Legislating to require evidence of a New Zealand bank account as a prerequisite to an offshore person obtaining an IRD number.

Option 1 – Status quo

17. Under the status quo the Commissioner of Inland Revenue will continue to use her power under section 35 of the Tax Administration Act 1994 to prescribe forms to collect the information she feels necessary to fulfil her statutory obligation to protect the integrity of the tax system.²

18. This is the option preferred by Inland Revenue.

Option 2 – Legislating a bank account requirement

19. Under this option the Tax Administration Act 1994 would be amended to specifically provide that evidence of a New Zealand bank account must be provided by an offshore person to the Commissioner as a prerequisite to obtaining an IRD number.

20. On balance, this option is not preferred, principally because:

- It is not apparent that, for individuals, the general anti-money laundering checks that a New Zealand financial institution would carry out would yield significantly more information than Inland Revenue collects as part of the current IRD number application process;
- It is likely that the information obtained on bank account opening will be collected in any event once Phase 2 of the planned AML roll-out occurs. Any advantage that is obtained is therefore only likely to be temporary in nature.

Impact analysis

Option 1 – Status quo

21. The status quo does not require an offshore person to be subject to the AML rules before obtaining an IRD number.

22. The Commissioner has an ability to prescribe forms necessary for the administration of the tax system. This means she can collect information she considers necessary,

² Inland Revenue considers that the Commissioner could, in theory, require a bank account under her existing statutory powers, but has not chosen to exercise her authority to impose such a requirement.

including information that a New Zealand financial institution would ordinarily collect under its AML obligations.

23. It is Inland Revenue's view that there is no impediment to the Commissioner requiring evidence of a bank account under the current law. However, it is not considered a desirable requirement given the extra compliance burden it would impose for relatively little gain in terms of the administration of the tax system.

24. As mentioned above, an individual applying for an IRD number currently has to provide at least one "Category A" document and one "Category B" document. It is Inland Revenue's view that this form of identity verification is broadly similar to that undertaken by financial institutions as part of its standard AML customer due diligence.

25. Non-individual applicants also have to provide identity documents related to the applicant. A company, for example, will need to provide their certificate of incorporation. In saying this, it is recognised that the information gathered by Inland Revenue on the underlying controllers or shareholders of a non-individual applicant is not currently comprehensive. This is because such information is not strictly necessary to the administration of the tax system – the applicant (in this case, the trust or company) is a New Zealand tax resident and it is at that level that any tax liability will arise.

26. The identity of individuals that control other entities may not be easy to obtain in the event of default on tax obligations – especially if publically available records, such as the Companies Register, did not contain information on these individuals. The information that a financial institution would obtain in respect of natural persons that control a "non-individual", such as a trust or company, is therefore likely to be more complete than that obtained by Inland Revenue.

Option 2 – Legislating a bank account requirement

27. As set out in the preceding paragraphs, the degree to which the bank account requirement provides additional verification of identity depends on whether the bank account holder will be an individual or non-individual.

28. In the case of individuals, there is the benefit that identity is verified against an independent source under AML procedures. However, the information that a financial institution obtains under its standard AML procedures would not provide materially more information than the standard IRD number application would yield in any event.

29. On the other hand, the case for the bank account requirement seems to be stronger for non-individuals. AML procedures require a financial institution to also conduct customer due diligence on the "beneficial owners" (which is a defined term in the AML rules) of such entities including, in the case of companies, individuals with effective control over the company and individuals that ultimately own more than 25% of the company. This information is greater than that required by Inland Revenue as part of its standard IRD number application process for non-individuals.

30. On this basis, there is a strong argument for imposing the bank account requirement, at least in respect of non-individual IRD number applicants. However, there are other important considerations that factor against that argument:

- Land Information New Zealand's "Standard for verification of identity for registration under the Land Transfer Act 1952" document similarly requires the

practitioner giving effect to a land transaction to verify the identity of the interested party;

- Phase 2 of the AML roll-out has yet to occur. Inland Revenue understands that Phase 2 will impose AML obligations on a broader group of professional bodies, including solicitors, conveyancers and real estate agents. As the majority of land transactions occur with the assistance of one of these professionals, AML requirements will in the future be applied to parties to a land transaction in any event.

31. Finally, there is a proposal to impose a positive obligation on a person that becomes an “offshore person” to provide the Commissioner with a bank account at that point. Although this provides a theoretical robustness to the rules, there is a risk that this obligation will not be complied with and therefore the proposed rule will be circumvented.

32. After taking these factors into account, Inland Revenue considers that the proposed bank account requirement would:

- for individuals, be of no real benefit; and
- for non-individuals, be of benefit, but this would only be temporary.

33. Although information obtained, particularly on non-individuals, may be useful during that window, on balance, it is not considered desirable to introduce rules to address an issue that will almost certainly be addressed through other means in the near future.

34. The table below summarises our analysis of the options (including the status quo) and includes comments on the impacts of the options on Inland Revenue and affected persons.

Table: Analysis

<i>Option</i>	<i>Meets objective?</i>	<i>Impacts</i>			<i>Net impact</i>	
		<i>Economic / revenue impact</i>	<i>Administrative impact</i>	<i>Compliance impact</i>		<i>Fairness</i>
1 - Not requiring evidence of a New Zealand bank account as a prerequisite to an offshore person obtaining an IRD number (status quo)	Meets objective in part. Inland Revenue has powers to enforce tax obligations and some comfort as to the identity of IRD number applicants obtained by Inland Revenue, but there are recognised deficiencies in respect of non-individual applicants.	None, other than those identified as part of the broader suite of property tax measures announced as part of Budget 2015.	No change. Inland Revenue continues to use the current application forms and processes.	No change. Applicants must provide documentation set out in the relevant IRD number application form.	Applicants are required to provide relevant documentation, some of which is tailored for offshore applicants (such as foreign passports).	Addresses the problem definition in part because Inland Revenue already collects information on IRD number applicants. Meets the objective in part. For individuals it is considered that the Commissioner already obtains adequate verification of identity as part of the current IRD number application process.

<i>Option</i>	<i>Meets objective?</i>	<i>Impacts</i>			<i>Net impact</i>	
		<i>Economic / revenue impact</i>	<i>Administrative impact</i>	<i>Compliance impact</i>		<i>Fairness</i>
2 - Legislating to require evidence of a New Zealand bank account as a prerequisite to an offshore person obtaining an IRD number.	Meets the objective in part. As discussed above, will provide more complete information on individuals that control entity/trust structures, but this information deficit seems likely to be filled in the near future in any event when AML Phase 2 takes effect	No direct impact other than those identified as part of the broader suite of property tax measures introduced as part of Budget 2015.	<p>Increased administration costs for Inland Revenue. The existing forms would need to be altered to reflect the legislative requirement. The primary legislation will need to be amended.</p> <p>The requirement for a person to provide a bank account to the Commissioner in the event that they become an “offshore person” will require a separate process to be established to process and record these disclosures.</p>	<p>Increased. Offshore persons would need to establish a New Zealand bank account that meets the statutory requirements and provide evidence of that account to Inland Revenue.</p> <p>These costs are not expected to be significant, but will require an offshore person to at least either go through the standard AML checks with a New Zealand institution or find a foreign agent of a New Zealand bank in order to have the relevant AML checks performed.</p>	It is potentially arguable that imposing a requirement on offshore persons that does not apply to residents is discriminatory. However, the bill introducing these changes has been subject to the standard Bill of Rights vetting process that applies to all legislation and no issues have been raised. However, Inland Revenue has looked at international precedent and is not aware of any comparable jurisdiction that requires evidence of a domestic bank account as a prerequisite to obtaining a tax identification number.	Addresses the problem definition in part because it will increase information potentially available to Inland Revenue – particularly for non-individuals. However, it will increase compliance and administration costs and will likely only be of temporary benefit in practice.

CONSULTATION AND IMPACT

35. Inland Revenue has not consulted with potentially impacted parties (such as financial institutions) because of time constraints. The Treasury, The Reserve Bank of New Zealand and Ministry of Justice were consulted on the policy proposal.

36. Treasury agrees with Inland Revenue's conclusion that the requirement for an offshore person to have a New Zealand bank account as a prerequisite to obtaining an IRD number provides limited benefit from a tax compliance perspective. However, Treasury notes that the requirement may have housing market benefits by adding stricter AML checks for entities that are "offshore persons" purchasing properties in New Zealand. The requirement also provides the option to later require offshore persons to use the bank account to purchase property in New Zealand should future analysis show that purchasers using funds from dubious sources is a problem.

37. No public consultation was undertaken on the proposal because of time constraints. Public consultation will therefore take place in the usual way during the Select Committee process.

CONCLUSIONS AND RECOMMENDATIONS

38. Although it is finely balanced, we recommend Option 1: status quo. In order to be justified, the benefits to the tax system of requiring a New Zealand bank account would need to outweigh the compliance costs imposed on IRD number applicants and administration costs on Inland Revenue itself. Our view is that, although there may be short-term gains, these are difficult to quantify and there will be no net benefit to the tax system in the long run. Any advantage is likely to be limited to non-individuals, and even then only until such time as AML Phase 2 is implemented.

39. We consider that any legislation that implements option 2 should be reassessed at the time AML Phase 2 takes effect to ascertain whether it is, at that stage, only duplicating information available through the expanded AML obligations.

40. Option 2 increases compliance costs for affected persons and administration costs for Inland Revenue and, in practice, is likely to provide only a short term material benefit in terms of meeting the stated objective.

41. In reaching this conclusion, we note that we have considered the options largely from a tax policy perspective. As highlighted by the Treasury comment in paragraph 36 of this statement, there may be other "whole of government" reasons for preferring Option 1 that Inland Revenue is not best placed to comment on.

IMPLEMENTATION

42. Option 1 does not require legislation to implement. Legislative change is required to implement option 2.

43. Any legislative amendments required to implement option 2 will be included in the Taxation (Land Information and Offshore Persons Information) Bill and are intended to take

effect from 1 October 2015. Material will be provided as part of the standard bill introduction process.

44. Inland Revenue will be required to update forms and communication material prior to the proposed implementation date of 1 October 2015.

MONITORING, EVALUATION AND REVIEW

45. Other than the review mentioned in paragraph 32, there are no specific plans to monitor, evaluate and review the changes to give effect to any legislative amendment required to implement option 2. If any detailed concerns are raised in relation to these changes, Inland Revenue will determine whether there are substantive grounds for review under the Generic Tax Policy Process (GTPP).