

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

## **COLLECTION OF IRD NUMBERS FOR THE TRANSFER OF MAIN HOMES**

### **Proposal**

1. This paper seeks the Cabinet Economic Development Committee's agreement to remove the main home exemption from the requirements to provide IRD and tax identification numbers (TINs) when transferring a property.

### **Executive Summary**

2. Currently, transferors (sellers) and transferees (purchasers) must each complete a Land Transfer Tax Statement when a property is transferred. This statement collects tax information relating to property ownership for the purpose of improving compliance with the tax rules around property, including the rules targeting property speculation.
3. The tax information required for a Land Transfer Tax Statement includes the transferor or transferee's IRD number and, if applicable, any overseas TINs and the jurisdiction of tax residence. The IRD number and property details are then supplied to Inland Revenue for use in its property tax compliance work. The TIN is reported to other countries to help prevent global tax evasion.
4. Transferors and transferees are not currently required to include their IRD number or TIN if the property sale qualifies as a "non-notifiable" transfer. The most common reason a property sale is a non-notifiable transfer is when the property being transferred is used as the transferor or transferee's main home.
5. The exemption from providing an IRD number for the transfer of a main home means that Inland Revenue does not receive complete information regarding property ownership relevant to potential tax obligations. This impacts on Inland Revenue's ability to enforce compliance with property tax rules, including making it more difficult to identify property speculators. The exemption from providing the TIN means that the current rules are not as effective as they could be at deterring global tax evasion.
6. The Tax Working Group recently reported to the Government with recommendations for improving the tax system. One of the Tax Working Group's recommendations was to require the disclosure of IRD numbers on the Land Transfer Tax Statement when the transfer involves a main home. The Government agreed that this recommendation should be considered as a high priority item for inclusion on the Tax Policy Work Programme.
7. In line with the recommendation made by the Tax Working Group, I propose to amend the tax statement to require transferors and transferees to provide their IRD number and, if applicable, any TIN and jurisdiction of tax residence, when there is a

property transfer involving their main home. The transferor or transferee should continue to be asked if the property is their main home.

8. I consider the proposal will enhance Inland Revenue's ability to enforce the tax rules for property. By improving and aligning the information disclosure rules for property transactions with the rules for bank accounts, it helps to reduce tax evasion being facilitated through holding property. The proposal is likely to have minor compliance costs for transferors and transferees as more IRD numbers will be required to be collected as part of the land transfer process.
9. Further, I consider it is appropriate to respond swiftly to the recommendation made by the Tax Working Group and signal to property speculators that the Government wants to improve compliance with the property tax rules.
10. LINZ notes that the primary purposes of the land registration system are to record ownership of land and facilitate dealings with land. The efficiency of New Zealand's land registration system is well regarded internationally (for example, New Zealand was ranked first for registering property in the World Bank's "Doing Business 2019" report). Collecting information for other purposes does not fit within the core purposes of the Land Transfer Act 2017 and therefore the impact of any further information requirements must be carefully considered. I have asked my officials to work with Land Information New Zealand (LINZ) with a view to streamlining the land transfer forms if possible.
11. To bring this proposal into effect, amendments to the Land Transfer Act 2017 will be required. I propose to include this in the Taxation (Annual Rates for 2019-20, GST Offshore Suppliers and Remedial Matters) Bill by way of a Supplementary Order Paper at the Committee of the whole House stage. I propose a commencement date of 1 January 2020; this would allow time to make required changes to Landonline. A consolidated and simplified form will be developed in consultation with key stakeholders.

## **Background**

12. On 1 October 2015, the Land Transfer Act 1952 was amended to require transferors and transferees to provide tax statements for all transfers of property. This was aimed at providing more useful information to Inland Revenue to assist in its enforcement of property tax rules and to support the bright-line test<sup>1</sup>.
13. Under these changes, transferors and transferees of real property are required to provide their IRD numbers unless an exemption applies. If they are not eligible for an exemption and are also resident in another jurisdiction for tax purposes, they must also provide their foreign TINs at the time of transfer.
14. This information is filled out by transferors and transferees and must be provided to LINZ in order for the property title to be transferred. This information is then provided to Inland Revenue to improve compliance with the tax rules around property. Relevant information is also provided by Inland Revenue to Statistics New Zealand, to enable the production of property transfer statistics.

<sup>1</sup> In 2018, the bright-line test on residential property was extended from two years to five years to help ensure residential property speculators pay tax on gains from property sales. Accordingly, gains from the sale of residential property purchased on or after 29 March 2018 may be taxable if sold within five years of purchase.

15. Information required by the Land Transfer Tax Statement is prescribed in the Land Transfer Act 2017 and includes identity and property details and parties' IRD numbers (and TINs if applicable). Currently a transferor or transferee is only required to provide their IRD number if there is no "non-notifiable" reason. The most common reason for a non-notifiable transfer is where the property being transferred qualifies as a main home. Trusts cannot claim the main home exemption and therefore must always provide their IRD number for property transfers.
16. There was a total of 179,178 property transfers during the year ended 30 June 2018. Data from the commencement of the Land Transfer Tax Statement to 28 February 2019 shows the main home exemption was claimed by sellers 27% of the time and by purchasers 37% of the time.
17. Initial analysis of property transactions by Inland Revenue to determine compliance with the bright-line rule has indicated that there is currently a level of non-compliance. The fairness of the tax system is undermined where taxpayers don't comply with their tax obligations. Where Inland Revenue suspects instances of non-compliance with the property tax rules, it follows these up. However, having many transactions for which an IRD number is not supplied, based upon a non-notifiable reason which is self-determined makes it more difficult to detect and therefore remedy the true levels of non-compliance.
18. The Tax Working Group, which was established by the Government to examine further improvements in the structure, fairness and balance of the tax system, reported back to the Government on 21 February 2019 with recommendations to improve the tax system, including the recommendation to require the disclosure of IRD numbers on the Land Transfer Tax Statement when the transfer involves a main home. The Government released its response to the Tax Working Group's recommendations in April and agreed that this recommendation should be considered as a high priority item for inclusion on the Tax Policy Work Programme.

### **Removing the main home exemption for providing an IRD number**

19. The main home exemption for IRD numbers creates a gap in information provided to Inland Revenue and consequently decreases the enforcement benefits from collecting tax information at the point of property transfer.
20. The sale of a property may be taxable even when a person acquired the property intending to use it as their main home. For example, the sale of these properties can be taxable if:
  - 20.1 The person changes their use of the property from being their main home to being an investment property or similar (and the sale is taxable under the brightline test or other land-sale rules).
  - 20.2 The person engages in a regular pattern of selling main homes (for example, habitual renovators).
21. Not requiring IRD numbers for people's main homes means Inland Revenue does not have visibility of these situations and means Inland Revenue is unable to obtain a full picture around overall compliance with the property rules. This limits Inland Revenue's ability to enforce the property tax rules. Further, we also consider that a

simple, clear rule to require an IRD number at the point of property transaction could have some deterrent effect on people who may be considering tax evasion through property.

### **Removing the main home exemption for providing a TIN and overseas jurisdiction of residence**

22. Transferors and transferees who are tax resident<sup>2</sup> in another country must include on the Land Transfer Tax Statement their TIN<sup>3</sup> and the name of the jurisdiction in which they are tax resident unless an exemption applies.
23. This information is reported to other countries to help prevent global tax evasion. It is well known internationally that the provision of TINs generally in third party reporting has a strong deterrent effect to tax evasion.
24. If a tax resident of another country claims the main home exemption, they are not required to provide their TIN and the name of the jurisdiction when transferring property except in limited circumstances (for example, if the person is not a New Zealand citizen nor a resident for immigration purposes then they cannot claim the main home exemption).
25. Requiring the provision of TINs when transferring main homes without exemptions will help ensure that data provided to treaty partners is easily able to be matched to the correct person. Requiring the reporting of TINs for property sales would go beyond current international requirements, but would be consistent with the Automatic Exchange of Information/Common Reporting Standard financial reporting requirements<sup>4</sup> that apply when individuals open new bank accounts, and would position New Zealand favourably as a leader in international efforts to combat tax evasion.

### **Main home indicator**

26. I consider that the transferor or transferee should still be asked if the property being transferred is their main home. This main home indicator allows Inland Revenue to identify taxpayers who should be sent follow up information and correspondence advising of property tax rules and those who are unlikely to have tax obligations arising from the property transfer.
27. If Inland Revenue does not receive indicators as to whether a property is the main home of a taxpayer, Inland Revenue will be unable to distinguish the taxpayers who should be included in property compliance campaigns from those who are unlikely to have tax consequences under the property tax rules.
28. However, I note that requiring transferors and transferees to indicate whether the property is their main home will involve some compliance cost. I have asked Inland Revenue and LINZ to explore options to simplify the definition of 'main home' for the purpose of this indicator to help reduce these costs.

2 Generally, a person is tax resident in another country if that country imposes income tax obligations on the person's worldwide income.

3 A TIN is the unique identifier that is given to a taxpayer by a jurisdiction's tax authority. A person's IRD number is a TIN in the context of New Zealand.

4 AEOI/CRS is a global framework for the detection and prevention of offshore tax evasion, which involves the collection, reporting, and exchange of financial account information relating to people and entities investing outside of the jurisdiction in which they are tax resident.

### **Expected impact on compliance costs**

29. Requiring tax information as part of a property transfer involves compliance costs for parties to the transaction. These compliance costs were considered alongside analysis of the policy introducing the requirements for tax statements in 2015. However, recent changes to the Overseas Investment Act have subsequently increased compliance obligations for property transfers and conveyancers and I am mindful that each additional compliance step must be viewed in the context of the overall process of the property transaction rather than in isolation.
30. The additional requirement to provide an IRD number for main home transfers would result in a minor increase in compliance costs. Data shows that as at 28 February 2019, 37% of purchasers and 27% of sellers have used the main home exemption since the commencement of the Land Transfer Tax Statement requirements in 2015. This shows that the majority are currently providing their IRD number as part of tax information requirements. Approximately a third of those claiming the main home exemption currently provide their IRD number even though it is not required.
31. For persons buying or selling their main home, the proposal would increase compliance costs as they would be required to provide their IRD number and any TINs. However, the vast majority of transferors and transferees will already have an IRD number prior to entering into a property transaction. There are many circumstances where taxpayers are required to provide their IRD number, for example, when starting employment, applying for social policy entitlements, or opening up a bank account or other accounts with financial institutions. IRD numbers are often provided on employment payslips, tax statements on interest bearing accounts and are included in a taxpayer's information on their myIR account.
32. The cost for each person will vary depending on how readily available their IRD number is. However, I consider the overall increase in compliance costs is likely to be low for the reasons outlined above.
33. LINZ notes that the primary purposes of the land registration system are to record ownership of land and facilitate dealings with land. The efficiency of New Zealand's land registration system is well regarded internationally (for example, New Zealand was ranked first for registering property in the World Bank's "Doing Business 2019" report). Collecting information for other purposes does not fit within the core purposes of the Land Transfer Act 2017 and therefore the impact of any further information requirements must be carefully considered.
34. Several different information gathering requirements for transfers of property have been introduced in recent years, each with their own form to be completed. This increases the paperwork associated with every land transaction. There are three forms required for property transfers; the Land Transfer Tax Statement, the Residential Land Statement and the Residential Land Withholding Tax Declaration which create compliance costs for property transfers. For example, the Land Transfer Tax Statement has three pages to be filled out and is 10 pages long in total, including notes.
35. To mitigate any increase in compliance costs, there is merit in exploring how we can streamline and simplify the current process for providing information at the time of property transfers. I have requested Inland Revenue work with LINZ to explore

options for simplifying and combining these forms. This should also involve consultation with Statistics New Zealand given their role in providing property transfer statistics.

36. The proposed amendment would require changes to the Landonline workspace, including appropriate transitional arrangements. The changes might require a new Landonline release, which would necessitate up to a six month period for coding and testing, so sufficient time will need to be allowed to implement the changes.
37. Slight modifications would need to be made to the current LINZ/Inland Revenue data interface to reflect the changes in the data being collected, and Inland Revenue may also need to make some minor system changes to enable more efficient use of the data for compliance purposes; however, these are not expected to be significant.
38. Any new information requirements have the potential to affect processes. For this reason, it is important that key stakeholders, such as the New Zealand Law Society, are consulted to understand the practical implications of the changes.
39. Inland Revenue would need to ensure that the new requirements were adequately communicated to conveyancers ahead of the application date. Early passage of the legislation will enable this to occur.

### **Implementation**

40. It is proposed that these amendments should come into force from 1 January 2020. This would allow sufficient time to develop the required changes to Landonline. A consolidated and simplified form will be developed, in consultation with key stakeholders.
41. Transitional provisions will be necessary to allow for contracts that have been entered into but not settled at commencement. People will have contracted on the basis of the rules at the time of signing and there is the potential for the legislative amendments to affect existing contracts and therefore impose compliance costs if transitional provisions are not enacted. The transitional provisions in Schedule 1AA of the Land Transfer Amendment Act 2015 (which introduced the Land Transfer Tax Statements) could serve as a model. For example, it could provide that transfers entered into on or before 1 January 2020 and registered before 1 July 2020 are still eligible for the main home exemption.

### **Consultation**

42. The Treasury and LINZ have been consulted in the preparation of this Cabinet paper. The Office of the Privacy Commissioner and Statistics New Zealand have been consulted on this proposal.
43. I consider that further consultation on design of forms will be required with stakeholders including the New Zealand Law Society and Auckland District Law Society, before the legislation comes into force. Officials are undertaking consultation with these organisations on the details and drafting of the proposal. At the time of lodgement, officials had discussed the proposal with a major stakeholder who noted the proposal to remove the main home exemption would simplify the process because it would provide a standardised approach to transactions. This stakeholder also noted that the process would benefit from having the forms streamlined.

## Financial Implications

44. There are no direct financial implications from this proposal. To the extent that the provision of IRD numbers improves compliance with the current rules there will be an increase in tax revenue collection; however this impact is unquantifiable at this stage.

## Legislative Implications

45. Implementing these proposals requires changes to the Land Transfer Act 2017. The Land Transfer Act includes provisions relating to the collection of tax information in the form of a Land Transfer Tax Statement. These provisions would require amendment to remove the use of the property as a main home from qualifying for a non-notifiable transfer.
46. If approved, I propose including the legislative changes resulting from these recommendations in a Supplementary Order Paper to the Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill at the Committee of the whole House stage.
47. I propose the amendments to remove the main home non-notifiable reason should have a commencement date of 1 January 2020.

## Impact Analysis

48. A regulatory impact assessment has been prepared by Inland Revenue, and is attached to this paper. The Quality Assurance reviewer at Inland Revenue has reviewed the Collection of IRD numbers for the transfer of main homes prepared by Inland Revenue, and considers that the information and analysis summarised in the RIA partially meets the quality assurance criteria.
49. The Key Limitations or Constraints on Analysis statement notes that due to time constraints a full consultation with external parties has not been undertaken. The RIA does note that consultation is intended to be undertaken on the legislative drafting and the views of submitters on the 2015 changes have been taken into account. While the RIA identifies that analysis of compliance with the brightline rule has detected some non-compliance, it does not identify how significant the level of non-compliance is that the proposed option is attempting to address.

## Publicity

50. I will make an announcement on the contents of the SOP, when the SOP is released. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

## Proactive Release

51. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers in whole within 30 working days of Cabinet making final decisions.

## Recommendations

The Minister of Revenue recommends that the Cabinet Economic Development Committee:

1. **note** that the Land Transfer Act 2017 contains tax statement requirements which must be completed by both transferors and transferees when land is transferred.

2. **note** that the Tax Working Group recommended the disclosure of IRD numbers as part of the tax statement when the transfer involves a main home.
3. **agree** to remove the exemption from providing a person's IRD number and if applicable any tax identification numbers (and jurisdiction of tax residence) when the transfer of property relates to the person's main home.
4. **agree** to retain an indicator on the Land Transfer Tax Statement to identify where it is a person's main home.
5. **agree** that the amendments giving effect to the recommendations 3 and 4 above should come into effect from 1 January 2020.
6. **agree** to a transitional provision to address situations where transfers have been entered into on the basis of the current requirements.
7. **note** that regulatory impact analysis on the proposal has been completed and is attached to this paper.
8. **note** that this Cabinet paper, the associated Cabinet minute, and key advice papers will be released on Inland Revenue's website.

Authorised for lodgement

Hon Stuart Nash  
Minister of Revenue