Regulatory Impact Statement

Sellers and purchasers of real property required to supply their IRD numbers and tax information numbers

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by Inland Revenue.

The primary question addressed in this RIS is whether requiring sellers and purchasers of real property to supply their IRD number and, if they are resident in another jurisdiction, their tax information number (TIN) (which is the overseas equivalent of an IRD number) would improve Inland Revenue's ability to effectively collect tax on property transactions.

Changes have been proposed as part of Budget 2015 to modify current tax laws and assist Inland Revenue in enforcing compliance with the current and new rules.

To support this work, the Government has proposed that all parties to a property transaction must have an IRD number and provide that number to LINZ before the sale and purchase transaction can proceed. Where the person is currently a tax resident of another jurisdiction, they will also be required to provide any TIN issued to them by the relevant government authority of that other jurisdiction. These requirements would not apply where the property is to be the purchaser's main home. This information will be supplied to Inland Revenue for the enforcement of any tax liabilities that may arise. Inland Revenue may also supply the information to overseas tax authorities along with details of the sale and/or purchase transaction, in accordance with existing New Zealand legislation (including New Zealand's tax treaties).

The initiative is intended to improve Inland Revenue's ability to enforce the income tax obligations of those who buy and sell New Zealand real property (including any potential income tax liabilities in relation to rental income). It is also intended to help prevent people who are resident in another jurisdiction from evading foreign tax on their New Zealand land sale or purchase by ensuring that the foreign tax authority can match the transaction with the taxpayer.

This RIS considers three options:

- option 1: not requiring IRD numbers and TIN numbers to be provided to LINZ upon sale or purchase of real property (the status quo and not Inland Revenue's preferred option).
- option 2: requiring IRD numbers and TIN numbers to be provided to LINZ (and passed on to Inland Revenue) upon sale or purchase of real property (Inland Revenue's preferred option).
- option 3: requiring IRD numbers and TIN numbers to be provided to LINZ upon sale or purchase of real property (and passed on to Inland Revenue), with an exception in the case of purchasers for whom the property will be their main home (not Inland Revenue's preferred option).

Inland Revenue expects that option 2 would enhance Inland Revenue's abilities to enforce the income tax obligations of those who buy and sell New Zealand real property by

ensuring that Inland Revenue can link the taxpayer with the relevant property transaction. In light of the new 'brightline' test for property bought and sold within two years that will apply from 1 October 2015, this ability will be even more important. Inland Revenue also expects that option 2 would help prevent non-residents from evading foreign tax on their New Zealand land sale or purchase by ensuring that the foreign tax authority can match the transaction with the taxpayer. The exact level of benefits has not been quantified. This is partially because Inland Revenue does not have accurate data and partially because of time constraints.

The actual compliance costs likely to be imposed by the proposal have not been accurately determined because of time constraints, but are not expected to be high given that information which verifies sellers' and purchasers' identities is already supplied to LINZ. There will be additional compliance costs for those who do not already have IRD numbers (which would generally be non-residents). The number of property transfers in the financial year ending 30 June 2014 was 176,500.

Inland Revenue has concerns in relation to option 3, which would provide for an exemption in the case of purchasers for whom the property will be their main home. Inland Revenue considers that compared to option 2, option 3 would not reduce compliance costs for such purchasers. This is because we expect that most of those purchasers will already have an IRD number. Adding an exemption also makes the rules more complicated as purchasers and conveyancers would also need to consider another rule.

Further, we have concerns that the benefits of collecting the information will be reduced under option 3 compared to option 2. For example, some individuals who are purchasing their main home could still be subject to tax if they have a regular pattern of buying, improving, and selling their main home. Another example is where the owner changes the use of the property (for example, after living in the house as their main home, they move into a different house and use the first house as an investment property, thus deriving a rental income stream from it). Under option 3 Inland Revenue would not be provided with the information that would help to investigate this.

On balance, Inland Revenue prefers option 2.

Inland Revenue has not consulted with sellers and purchasers of real property or their representatives on these options because of time constraints. The Treasury, LINZ, and the Office of the Privacy Commissioner were consulted on the policy proposal. LINZ and Inland Revenue will consult on regulations made under the new legislation which will provide the details of exemptions to the policy (such as the main home under option 3, and classes of land such as Maori freehold land where the compliance costs are likely to be high) and to describe detailed information to be collected. The design of the policy under these regulations could mitigate some of the compliance costs identified in this Statement.

The options identified would not impair private property rights or reduce market competition. However, we note that both options 2 and 3 (requiring IRD numbers and TIN numbers to be provided to LINZ upon sale or purchase) will impose compliance costs on sellers, purchasers, and conveyancers.

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Status quo and problem definition

1. The Income Tax Act 2007 (the ITA 2007) contains provisions that impose income tax on certain property transactions, and also on rental income earned from property. Examples of income tax provisions relating to certain property transactions are section CB 6, which taxes land purchased 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 ITA 2007 creates these obligations, the Government is concerned that compliance with these provisions may be relatively low.

2. In order to investigate compliance with the ITA 2007 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.

2. 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 does not have the data involving certain transactions means that the scope of the problem is not able to be quantified.

3. To address these concerns, Budget 2015 is introducing 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, such as if the property was the person's main home). This change is expected to apply from 1 October 2015.

4. In order to improve Inland Revenue's ability to enforce tax laws, including the proposed brightline rules, two changes are expected:

- Vendors and purchasers will be required to provide their IRD numbers (and, if they are also resident in another jurisdiction for tax purposes for tax purposes, their foreign TIN) at the time of transfer. This information will be provided to LINZ as part of the transfer documentation and then forwarded to Inland Revenue. All parties to a land transaction will be expected to have an IRD number, even if they are non-resident. Thus, non-residents intending to buy or sell New Zealand property will need to obtain an IRD number before they can finalise their property transaction. The Government proposes that those who are purchasing a property with the intention of that property becoming their main home should be exempt from the requirement.

- The second proposal is that a non-resident will be required to provide evidence of a New Zealand bank account as a prerequisite to obtaining an IRD number.

5. These proposals will apply from 1 October 2015 to align with the introduction of the brightline test.

6. This regulatory impact statement deals with the first proposal: the requirement for buyers and sellers to provide their IRD number (and, if they are also resident in another jurisdiction for tax purposes, their foreign TIN) at the time of transfer.

Status quo

7. Currently, the Land Transfer Act 1952 requires purchasers and sellers to provide identification information (such as their passport or drivers licence) upon sale or purchase of a house. There is currently no requirement for IRD numbers or TIN numbers to be provided. The Commissioner of Inland Revenue is able to obtain information about property sales from LINZ under her existing powers, but the taxpayer and the property transaction are not always clearly linked, which can make enforcement more difficult.

8. Further, under New Zealand's international treaties, Inland Revenue must supply tax information that it holds relating to non-residents to the tax authority in that other country. Where a non-resident has a foreign tax liability resulting from the sale or purchase of New Zealand real property and Inland Revenue does not hold the TIN, the correct matching of the taxpayer's identity to the transaction can be difficult for the tax authority of that person's home jurisdiction. This means that in some circumstances non-residents could potentially be evading foreign tax on their New Zealand land sale or purchase.

Objectives

9. The objectives of this reform are:

a) to increase the effective enforcement of current tax rules relating to property transactions, as supplemented by changes introduced as part of Budget 2015 (this is the primary objective).

b) to help prevent non-residents from evading foreign tax on their New Zealand land sale or purchase by ensuring that the foreign tax authority can link the transaction with the taxpayer (this is a secondary objective).

10. The proposal will apply from 1 October 2015. The reason for introducing the proposals at this time is to support the introduction of the brightline test, which also applies from 1 October 2015.

11. These objectives need 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 programme.

Regulatory impact analysis

12. This statement considers three options:

- Option 1: not requiring IRD numbers and TIN numbers to be provided to LINZ upon sale or purchase of real property (the status quo and not Inland Revenue's preferred option).
- Option 2: requiring IRD numbers and TIN numbers to be provided to LINZ (and passed on to Inland Revenue) upon sale or purchase of real property (Inland Revenue's preferred option).

- Option 3: requiring IRD numbers and TIN numbers to be provided to LINZ upon sale or purchase of real property (and passed on to Inland Revenue), with an exception in the case of purchasers for whom the property will be their main home (not Inland Revenue's preferred option).

Option 1 – Status quo

13. Under the status quo IRD numbers and TIN numbers do not need to be provided to LINZ (and passed on to Inland Revenue) upon sale or purchase of real property.

14. The Commissioner of Inland Revenue is able to obtain information about property sales from LINZ under her existing powers, but the taxpayer and the property transaction are not always clearly linked, which can make enforcement more difficult.

15. The problems with current enforcement would be exacerbated once the new brightline rules have been introduced if the status quo is retained. This is because taxpayers will be liable for tax in relation to the sale of their property in a wider range of circumstances, but Inland Revenue would have to rely on other tools to address enforcement issues.

16. Potentially less New Zealand tax revenue is collected as a result of information about the taxpayer and the property transaction not always being clearly linked. To the extent that this enables tax evasion, this could make property investment more attractive than other forms of investment.

17. To the extent that foreign tax jurisdictions cannot link the taxpayer and the New Zealand property transaction, the foreign taxpayer may be evading foreign tax (for example, a capital gains tax) in their home country. If they are evading their home country's tax on their New Zealand property transactions, this could make it cheaper and more attractive for non-residents to invest in New Zealand property.

18. These effects are not quantifiable as we do not have sufficient information about the problem.

19. This option is Inland Revenue's least preferred option.

Option 2 – Requiring IRD numbers and TIN to be provided to LINZ

20. Under this option, the Tax Administration Act 1994 and the Land Transfer Act 1952 would be amended to require all parties to a property transaction to have an IRD number and to provide that number to LINZ before the sale and purchase transaction can proceed. Where the person is currently a tax resident of another country, they will also be required to provide the TIN issued to them by the tax authority of that other country, and the relevant country code. This information will be supplied to Inland Revenue for the enforcement of any tax liabilities that may arise. Inland Revenue may also supply the information to overseas tax authorities along with details of the sale and/or purchase transaction, in accordance with existing New Zealand legislation (including our tax treaties).

21. Inland Revenue expects that option 2 would enhance Inland Revenue's ability to enforce the income tax obligations of those who buy and sell New Zealand real property. Inland Revenue also expects that it would help prevent non-residents from evading foreign tax on their New Zealand land sale or purchase by ensuring that the foreign tax authority can match the transaction with the taxpayer. The exact level of benefits has not been

quantified. This is partially because Inland Revenue does not have accurate data and partially because of time constraints.

22. The number of property transfers in the financial year ending 30 June 2014 was approximately 176,500. The actual compliance costs likely to be imposed by the proposal have not been accurately determined, but are not expected to be high given that identity verification information is already supplied to LINZ. A conveyancer is likely to spend an additional 1-5 minutes entering information into Landonline, resulting in an additional cost of between $4 and $20 for purchaser and seller. There will be additional compliance costs for those who do not already have IRD numbers (which would generally be non-residents).

23. Analysis is required to fully understand the administrative impacts. These have not yet been completed nor quantified due to time constraints. They would include but are not limited to:

- Customer contacts for LINZ and Inland Revenue.
- Processing time and staff costs to issue additional IRD numbers.
- Implementation costs which will include an evaluation of the IRD number application processes for non-residents.
- For LINZ, data entry for manual dealings received by LINZ, responding to information requests (e.g. data on numbers of overseas tax residents purchasing property), queries about the policy and servicing Ministerial queries.
- Implementation costs may also include an evaluation of other systems costs to ensure the right tax treatments are applied.
- Training materials, communications and website updates.
- Potentially for LINZ (and/or Inland Revenue) various costs associated with capture, transfer and storage of property/tax data.

24. This is Inland Revenue's preferred option.

Option 3 – Requiring IRD numbers and TIN numbers to be provided to LINZ unless the property is to be the main home

25. This option is a variation on option 2. Under option 3 there would be an exemption in the case of purchasers for whom the property will be their main home.

26. Inland Revenue considers that when considered against option 2, on balance option 3 would be unlikely to reduce compliance costs overall for such purchasers. This is because of the following factors:

- we expect that most of those purchasers will already have an Inland Revenue number, so they will not have additional compliance costs in obtaining an IRD number;
- as noted above for option 2, a conveyancer is likely to spend an additional 1-5 minutes entering the information into Landonline, resulting in an additional cost of between $4 and $20 for purchaser and seller. Under option 3, compliance costs will be at the lower end of the scale for those exempted from providing information;
- however, adding an exemption also makes the rules more complicated as purchasers and conveyancers would also need to consider whether another rule applies. (Although concerns regarding complexity could potentially be mitigated to an extent depending on the design of the exemption.)

27. Further, we are concerned that the benefits of collecting the information will be reduced under option 3 compared to option 2. For example, some individuals who are purchasing their main home could still be subject to tax if they have a regular pattern of buying, improving, and selling their main home. Another example is where the owner changes the use of the property (for example, after living in the house as their main home, they move into a different house and use the first house as an investment property, thus deriving a rental income stream from it). Under option 3 Inland Revenue would not be provided with the information that would help to investigate this.

28. Inland Revenue notes that these concerns regarding complexity could potentially be mitigated to an extent depending on the design of the exemption.

29. Option 3 is not Inland Revenue's preferred option. However, option 3 is preferred over option 1 (the status quo).

Impact analysis

30. The table below summarises our analysis of the options (including the status quo).

Table: Analysis

Option	*Meets objective?*	*Impacts*				*Net impact*
		Economic / revenue impact	***Administrative impact***	***Compliance impact***	***Fairness***	
1 - Not requiring IRD numbers and TINs to be provided to LINZ (and passed on to Inland Revenue) upon sale or purchase of property (status quo)	Meets objectives (a) and (b) in part at the moment.	Potentially less New Zealand tax revenue is collected as a result of information about the taxpayer and the property transaction not always being clearly linked. To the extent that there is evasion, this would make property investment more attractive, especially for non-residents. These effects are not quantifiable.	Inland Revenue continues to use the current powers, but will be limited to some extent in its ability to link the taxpayer and the property transaction.	Lowest compliance costs of the three options.	To the extent that taxpayers are able to evade tax because Inland Revenue is unable to link the taxpayer and the property transaction, the current situation is unfair to other taxpayers who have to bear the burden of the evaded tax.	The status quo partially meets the objectives at the moment. It will not meet the objectives to the same extent once the brightline rules have been introduced.

Option	*Meets objective?*	*Impacts*				*Net impact*
		Economic / revenue impact	***Administrative impact***	***Compliance impact***	***Fairness***	
2 - Requiring IRD numbers and TINs to be provided to LINZ (and passed on to Inland Revenue) upon sale or purchase of property.	Meets objectives (a) and (b). This would enable Inland Revenue to better link the taxpayer and the property transaction which will make enforcement easier.	This is expected to increase revenue collection and support the other property measures (particularly relating to the brightline test). To the extent that this prevents evasion, this could make property investment less attractive. To the extent that it helps the foreign tax jurisdiction to link the taxpayer and the NZ property transaction, it could help prevent the evasion of foreign tax. If so, this option could make it less attractive for non-residents to invest in New Zealand property. These effects are not quantifiable.	Analysis is required to fully understand the administrative impacts. These costs have not been quantified.	Compliance costs will be increased.	The proposal will enable Inland Revenue and tax authorities in other jurisdictions to link the taxpayer and the property transaction, which should help prevent taxpayers from evading tax. This will increase fairness for other taxpayers.	Meets objectives (a) and (b). This would enable Inland Revenue to link the taxpayer and the property transaction which will make enforcement easier. The exact level of benefits has not been quantified.

Option	*Meets objective?*	*Impacts*				*Net impact*
		Economic / revenue impact	*Administrative impact*	*Compliance impact*	*Fairness*	
3 - Requiring IRD numbers and TIN numbers to be provided to LINZ (and passed on to Inland Revenue) upon sale or purchase, but with an exemption for purchasers for whom the property will be their main home (variation on option 2)	Partially meets objectives (a) and (b) to a greater extent than the status quo. The benefits of collecting the information in relation to revenue and tax integrity will still exist but would be reduced under option 3 compared to option 2. For example, some individuals who are purchasing their main home could still be subject to tax if they are have a regular pattern of buying, improving, and selling their main home. Other taxpayers could have income tax obligations relating to the property if they subsequently use the property as a rental. Under option 3 Inland Revenue would not be provided with those taxpayers' IRD numbers that would help to investigate this.	Similar to option 2. However, the benefits of collecting the information in relation to revenue could be reduced under option 3 compared to option 2.	Similar to option 2. The administrative costs are likely to be slightly higher under option 3 compared to option 2 because of the complexity (although this might be able to be mitigated to an extent depending on the design).	Inland Revenue considers that compared to option 2, on balance option 3 would probably not overall reduce compliance costs for purchasers for whom the property will be their main home.	There will be a difference in treatment between those for whom the property will be their main home and those who are not. This could be considered unfair to other purchasers who have to provide their tax information even if they are unlikely to have a tax liability – for example, if the property is inherited.	This option partially meets the objectives. Compared to option 2, this option: - would still provide revenue and tax integrity benefits, although these will not be as high as option 2. - has broadly similar compliance costs overall.

Other impacts

31. There are no social, cultural or environmental impacts.

32. Fiscal impacts are likely to be positive, but are not able to be quantified.

CONSULTATION AND IMPACT

33. Apart from Inland Revenue and LINZ, impacted parties are likely to be purchasers and sellers of real property, and conveyancers. Inland Revenue has not consulted with purchasers and sellers of real property or their representatives because of time constraints. The Treasury, LINZ, and the Office of the Privacy Commissioner were consulted on the policy proposal.

CONCLUSIONS AND RECOMMENDATIONS

34. We recommend option 2. Inland Revenue expects that option 2 would enhance its ability to enforce the income tax obligations of those who buy and sell New Zealand real property. Inland Revenue also expects that it would help prevent non-residents from evading foreign tax on their New Zealand land sale or purchase by ensuring that the foreign tax authority can match the transaction with the taxpayer. The exact level of benefits has not been quantified. This is partially because Inland Revenue does not have accurate data and partially because of time constraints.

35. The actual compliance costs likely to be imposed by option 2 have not been accurately determined, but overall are not expected to be high given that information which verifies their identity is already supplied to LINZ. There will be additional compliance costs for those who do not already have IRD numbers (which would generally be non-residents).

36. Compared to option 2, option 3 would still provide revenue and tax integrity benefits, although these would not be as high as under option 2. Overall, we consider that option 3 would have similar or potentially higher compliance costs than option 2. This is because adding an exception makes the rules more complicated as purchasers and conveyancers would also need to consider another rule. (Inland Revenue notes that these concerns regarding complexity could potentially be mitigated to an extent depending on the design of the exemption). Accordingly, we do not consider that the potential benefits of option 3 outweigh the potential costs.

IMPLEMENTATION

37. Option 1 does not require legislation to implement. Legislative change would be required to implement either option 2 or 3.

38. Any legislative amendments required to implement option 2 or 3 could be included in a bill to amend the Land Transfer Act 1954 and the Tax Administration Act 1994, and could be implemented from 1 October 2015. Regulations are likely to be included as part of this work to provide the details of exemptions to the policy (such as the “main home” under option 3, and classes of land such as Maori freehold land where the compliance costs are likely to be high) and to describe detailed information to be collected.

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

40. LINZ will be required to make administrative and system changes to the Landonline electronic land transfer service, consult with conveyancers on the changes, and conduct a change management process to ensure the policy and requirements are understood.

41. It is proposed that regulations will provide the details of exemptions to the policy (such as the "main home" under option 3, and classes of land such as Maori freehold land where the compliance costs are likely to be high) and to describe detailed information to be collected. The design of the policy under these regulations could help to mitigate some of the compliance costs identified in this analysis.

MONITORING, EVALUATION AND REVIEW

42. There are no specific plans to monitor, evaluate, and review the changes to give effect to any legislative amendment required to implement options 2 or 3. 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).