

Impact Summary: Collection of IRD numbers for the transfer of main homes

Section 1: General information

Purpose

Inland Revenue is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.

Key Limitations or Constraints on Analysis

The Government decided to implement the Tax Working Group's recommendation for the disclosure of IRD numbers on transfers of main homes as soon as possible. Therefore, there has been a relatively short time available to prepare this analysis, and consultation with key external stakeholders has been limited.

There has however been previous analysis of the current proposal. The requirement for an IRD number and overseas tax information to be provided upon transfer of property (with an exemption for the main homes of individuals) was introduced in 2015. The proposal to require IRD numbers and tax information numbers from main home owners was the preferred approach of Inland Revenue, as stated in the Regulatory Impact Statement that was prepared for the 2015 change¹.

Further, this recommendation was made by the Tax Working Group in its final report. The Group's recommendations to the Government to improve the fairness, structure and balance of the tax system were made following their consideration of public submissions.

There has been limited consultation specifically on the current policy proposal. One of the important reasons for consultation is identifying likely impacts of a policy proposal. We consider that this is a less complex proposal than most tax policy proposals, and therefore unintended consequences are less likely to occur. We have also considered the comments raised by submitters who commented in 2015 on the Land Transfer Act Amendment Bill which introduced the requirement to provide IRD numbers and overseas tax information upon transfer of property. Some of those submissions noted disadvantages with the main home exemption, which included the fact that the exemption was relatively complex. We intend to consult with key stakeholders on the legislative drafting and the design of the forms.

¹ The RIS prepared for the 2015 change can be found at: <http://taxpolicy.ird.govt.nz/publications/2015-ris-liopi-bill/overview>

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Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Currently, transferors (sellers) and transferees (purchasers) must each complete a Land Transfer Tax Statement when a property is transferred. The Land Transfer Tax Statement collects information relating to property ownership, for statistical purposes and the purpose of improving compliance with the tax rules around property, including the rules targeting property speculation.

The tax information required for a Land Transfer Tax Statement includes the transferor or transferee's IRD number and, if applicable, information about the person's overseas tax residence (the person's overseas tax information number (TIN) and the jurisdiction in which they are tax resident). The IRD number and property details are then supplied to Inland Revenue for use in its property tax compliance work. The overseas tax information is supplied to Inland Revenue to share with other countries in accordance with New Zealand's tax treaties to help prevent global tax evasion.

Transferors and transferees are not currently required to include their IRD number and overseas tax information if the property transfer qualifies as a "non-notifiable transfer". The most common reason a property transfer is a non-notifiable transfer is because the property being transferred is used as the transferor or transferee's main home.²

However, trusts must still provide IRD numbers and overseas tax information, even if it is the settlor's main home.

Problem

Initial analysis of property transactions by Inland Revenue to determine compliance with the bright-line rule³ has detected some non-compliance. (The level of non-compliance cannot be accurately determined owing, in part, to the incomplete tax information collected for transfers of main homes.)

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 transfer which is self-determined, makes it more difficult to detect and therefore remedy the true levels of non-compliance.

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.

² A transfer cannot be a non-notifiable transfer if the transferor or transferee is an "offshore person" (for example, if they are a non-New Zealand resident and they do not have a residence class visa, or they are a citizen or hold a residence class visa but have not physically been in New Zealand for a certain period of time).

³ The bright-line rule was introduced in 2015 and originally deemed the disposal of residential land to be taxable if disposal occurred within 2 years of acquisition. It was amended in 2018 to now apply to residential property disposed of within 5 years of acquisition.

The transfer 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:

- 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 bright-line test or other land-sale rules).
- The person engages in a regular pattern of selling main homes (for example, habitual renovators).

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, and ability to enforce, the property tax rules.

The exemption from providing information about the person's overseas tax residence means that the current rules are not as effective as they could be at deterring global tax evasion. It is well known internationally that the provision of TINs generally in third party reporting has a strong deterrent effect on tax evasion.

2.2 Who is affected and how?

The affected parties are property conveyancers and transferors and transferees of main homes. Property conveyancers would be required to include their clients' IRD numbers and any TINs on Land Transfer Tax Statements even if the property was or will be a client's main home. Transferees and transferors of main homes will need to ensure their IRD number and any TINs are provided to their property conveyancer.

2.3 Are there any constraints on the scope for decision making?

Due to the timelines we have been only been able to undertake limited consultation with external stakeholders. Therefore, we are unable to consider additional options stakeholders may have raised before seeking a Cabinet decision on the proposal.

Section 3: Options identification

3.1 What options have been considered?

The following criteria have been used to assess the options:

- Enforcement – the option should increase the effective enforcement of current tax rules relating to property transactions and help prevent non-residents from evading foreign tax on their transfer of New Zealand property.
- Compliance costs – the option should not unnecessarily increase compliance costs for property conveyancers and transferees and transferors of properties.
- Administration costs – the option should not unnecessarily increase administration costs for LINZ and Inland Revenue.

Option 1: Status Quo

Under the status quo, IRD numbers and overseas tax information (TINs and country of residence) are not required on the Land Transfer Tax Statement if the property was the transferor's main home or will be the transferee's main home.

Option 2: Require IRD numbers and TINs to be provided on the Land Transfer Tax Statement with an indicator of whether the property was or will be a main home (proposed option).

Under this option, IRD numbers and TINs would be required to be provided on the Land Transfer Tax Statement even if the property was or will be a main home. Under this option, transferees and transferors of property would still need to indicate on the Land Transfer Tax Statement whether the property was or will be a main home. However, it is intended to re-draft this test to make it simpler to apply than the existing "main home test".

This option would be the best from an enforcement perspective. The provision of IRD numbers on all property transactions means Inland Revenue will have visibility of situations in which a transaction may be taxable despite involving a main home. Furthermore, the requirement to provide an IRD number on the Land Transfer Tax Statement for main homes may have a deterrent effect on people who may be considering tax evasion through property.

Requiring the provision of TINs when transferring main homes without exemptions will help to ensure that data provided to treaty partners is easily available to be matched to the correct person.

The retention of an indicator on the Land Transfer Tax Statement for whether a property is a main home would allow 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.

This option would result in a slight increase in compliance costs relative to the status quo as property conveyancers would need to obtain their client's IRD number and any TINs and include these on the Land Transfer Tax Statement even if the property is a main home.

The RIS that was prepared for the 2015 change commented in relation to this option that: *“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.”* We do not have further information to suggest whether or not this assessment was correct.

In the year ended 30 June 2018 there were 179,178 property transfers. Since the Land Transfer Tax Statement was introduced until 28 February 2019 the main home exemption has been claimed by transferors 27% of the time and by transferees 37% of the time.

While this option would increase compliance costs for the 27% of transferors and 37% of transferees who claim the main home exemption (and their respective conveyancers), the provision of IRD numbers or overseas tax information is not an onerous compliance cost. We expect that the vast majority of individuals who own, or will own homes, will already have an IRD number, and be able to find it out relatively simply. Furthermore, the provision of IRD numbers is already required in many other situations such as when a person starts a new job, opens a bank account or switches KiwiSaver provider. Likewise, for homeowners who have a tax residence in another country, and who are not offshore persons, the provision of their TIN and country of tax residence is not expected to be an onerous compliance cost given that this information is now required in other circumstances when dealing with financial institutions (e.g. in order to open a New Zealand bank account).

However, there is a risk that as IRD numbers and overseas tax information would be required in more circumstances there may be an increase in instances of property transfers being held up owing to this information not being provided.

This option would result in a one-off increase in administration costs for Inland Revenue and LINZ compared to the status quo. These include updating relevant forms, changes to Landonline⁴ and slight modifications to the data interface between LINZ and Inland Revenue. Inland Revenue may also need to make some minor system changes to enable more efficient use of the data for compliance purposes.

The increased volume of IRD numbers provided will have a corresponding increase on the manual work required by Inland Revenue to correct any IRD numbers provided in error (which may involve checking with the conveyancer).

The option may also result in some small one-off administration costs for Statistics New Zealand related to updating systems to handle the changes to the Land Transfer Tax Statement. Inland Revenue and Statistics New Zealand may also need to alter the interface used to transfer some additional or altered Land Transfer Tax Statement information.

The total increase in administration costs from this option is not expected to be significant.

Option 3: Require IRD numbers and TINs to be provided on the Land Transfer Tax Statement with no indicator of whether the property was or will be a main home.

⁴ Landonline is an online transaction centre where property professionals can securely search, lodge and update title dealings and survey data.

Under this option, IRD numbers and TINs would be required to be provided on the Land Transfer Tax Statement even if the property was or will be a main home. However, unlike option 2, there would be no indicator on the form as to whether a property is or will be a main home.

While this option would likely be better from an enforcement perspective than the status quo, the lack of an indicator of whether a property was or will be a main home would make it difficult for Inland Revenue to distinguish between taxpayers who should be included in property compliance campaigns from those who are unlikely to have tax consequences under the property tax rules.

Like option 2, this option would result in a slight increase in compliance costs relative to the status quo as property conveyancers would need to obtain their client's IRD number and/or TIN and include this on the Land Transfer Tax Statement even if the property is a main home.

Where it is not clear whether a person's property is a main home, this option would likely reduce compliance costs slightly relative to the status quo as property conveyancers would not need to determine whether a property is a main home. While in many cases it will be obvious whether a property was or will be a main home, it can be difficult to determine in cases when a person owns multiple homes.

The administration costs of this option are comparable to option 2.

3.2 Which of these options is the proposed approach?

The proposed approach is option 2 as it would best enhance the effective enforcement of current tax rules relating to property. While this option would increase compliance and administration costs relative to the status quo, these increases in costs are likely to be low and are justified by the improvements to Inland Revenue's enforcement of tax rules relating to property.

The proposed approach is generally aligned with the Government's expectations for the design of regulatory systems. However, there has been limited opportunity for affected parties to comment on the proposal before it is formally proposed.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties (<i>identify</i>)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties	Small increase in on-going compliance costs for conveyancers and transferees and transferors of main homes due to the requirement to include tax information on the Land Transfer Tax Statement even if the property is a main home.	Low
Regulators	Small one-off administration costs for Inland Revenue and LINZ related to updating forms, Landonline and the data interface between LINZ and Inland Revenue. Small one-off administration costs for Statistics New Zealand related to updating systems to handle changes to the Land Transfer Tax Statement.	Low
Wider government	N/A	N/A
Other parties	N/A	N/A
Total Monetised Cost		N/A
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	N/A	N/A
Regulators	Increase in the quality of data provided to Inland Revenue leading to an increase in Inland Revenue's ability to enforce tax rules relating to property transactions.	Medium
Wider government	N/A	N/A
Other parties	Increased ability of overseas tax authorities to detect evasion, deterrence of tax evasion.	Low
Total Monetised Benefit		N/A
Non-monetised benefits		Medium

4.2 What other impacts is this approach likely to have?

There might be a small increase in the data quality available to Statistics New Zealand due to Inland Revenue's improved ability to verify data that has been provided. Acquiring IRD numbers for more transferors and transferees may also improve the ability for additional data to be linked to information gathered from Land Transfer Tax Statements to provide further statistical insights.

We do not anticipate that the proposed approach would have any other impacts.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

The Government decided to implement the Tax Working Group's recommendation as soon as possible. Limited consultation on this proposal has been undertaken on the proposed approach owing to these timelines.

Feedback from stakeholders has been mixed but all acknowledged the rationale for removing the main home exemption.

One stakeholder commented that the proposal would be an improvement on the current process by moving towards a standardised approach for transfers. Another stakeholder commented that the proposal would provide Inland Revenue with richer data on which to enforce the brightline property rules.

One stakeholder noted that the current rules had bedded down and that there would be some compliance cost for conveyancing lawyers having to explain the change to clients who would now have to provide their IRD number. They commented that the increase in the number of IRD numbers received would also increase the compliance costs and time involved by Inland Revenue and lawyers to validate and correct any errors in the IRD numbers provided.

One stakeholder commented that given the proposal requires more people to provide IRD numbers, this process should be simplified as much as practicable. Two stakeholders also commented that it would be desirable to have the current forms streamlined.

A number of submissions were received when the requirement to provide IRD numbers to LINZ as part of the land registration process, but with an exemption for the main home, was being considered in 2015 by the Finance and Expenditure Select Committee (FEC). Several submitters to FEC commented that the exemption from providing IRD numbers and overseas tax information for transfers of main homes was problematic. Reasons for this lack of support were that it would increase complexity of the rules and reduce the usefulness of the information for Government. No submitters to the 2015 Bill expressed support for the exemption from providing tax information for transfers of main homes.

The proposed option would address those submitters' concerns that the exemption for transfers of main homes reduces the usefulness of the information for Government. It would address submitters' concerns around the complexity of the rules to some degree, as the

main home indicator is intended to be less complex than the current question relating to whether a property is a main home.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Following Cabinet approval of the proposed approach, the required amendments to the Land Transfer Act 2017 will be drafted for inclusion as 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. The amendments to the Land Transfer Act 2017 would have a commencement date of 1 January 2020.

The proposed option would require new forms to be developed in consultation with key stakeholders and for the required changes to be made in Landonline.

Transitional provisions would 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 unexpected 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 exemption from providing IRD numbers and overseas tax information for transfers of main homes.

Slight modifications would need to be made to the current LINZ/Inland Revenue data interface to reflect the proposed changes in the data being collected. Inland Revenue may also need to make some minor system changes to enable more efficient use of the data for compliance purposes. However, these changes are not expected to be significant.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Inland Revenue will monitor the outcomes to confirm that they match the policy objectives.

Monitoring the impact of the new arrangements will be done through assessing how the additional data collected assists with the effective enforcement of the tax rules relating to property.

7.2 When and how will the new arrangements be reviewed?

Officials from Inland Revenue expect that, once the proposals are enacted, affected stakeholders will raise with them and/or LINZ any concerns they have with how the rules are working in practice. Any necessary changes identified as a result could be considered for addition to the Government's tax policy work programme.