

Tax Talk | April 2018

Overseas buyer restrictions on their way

The Overseas Investment Amendment Bill (**the Bill**) is currently working its way through Parliament. When enacted, the Bill will significantly restrict the ability of overseas persons to purchase residential land in New Zealand and will act as a de facto foreign buyer ban.

While media commentary suggested that the Bill needed to be enacted prior to the signing of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**TPP**), the text of the TPP indicates that the TPP will not come into force until New Zealand has completed its applicable legal procedures. Accordingly, this means that the Bill does not need to be rushed through Parliament. The Bill is set to come back from the Finance and Expenditure Select Committee in May.

We outline the Bill as it currently stands.

Who

The restriction will apply to overseas persons. Overseas persons are defined in the Overseas Investment Act, but generally speaking, for the purposes of the new rules will include:

- Persons who are not New Zealand or Australian citizens
- Persons who are not New Zealand or Australian permanent residents
- Persons who are New Zealand or Australian permanent residents, but have not resided in New Zealand for at least 183 days in the past year
- Companies with more than 25% overseas shareholding

Generally, persons that are not natural persons are overseas persons if there is 25% or more control from outside New Zealand.

What

The land affected will be residential land. This is defined as “land that has a property category of residential or lifestyle in, or for the purpose of, the relevant district valuation roll”. This definition differs from the definition of residential land used in other areas such as the bright-line test.

Overseas persons will be able to buy residential land, but only in one of the following situations:

- If they will be developing the land and adding to New Zealand's housing supply, with a requirement to sell the property within 12 months of development.
- If they will convert the land to another use and are able to demonstrate this would have wider benefits to the country
- If they hold an appropriate visa and can show they have committed to reside in New Zealand

These requirements are very rigid and generally require the overseas person to either buy the land and move to New Zealand, or to buy the land, develop it and then on-sell it.

Given that land greater than 5 hectares in area is already treated as sensitive, this will mean that overseas persons wanting to buy land in New Zealand will generally be subject to the provisions of the Overseas Investment Act unless purchasing commercial land.

When

The Bill will come into effect ten days following the date of royal assent. Note that any land owned prior to the enactment of the Bill will not be affected.

Comment

The Bill appears to be poorly developed with the likelihood of unintended consequences. There has already been comment in the media by New Zealand listed companies such as Spark, and subsidiaries of Australian companies such as Progressive Enterprises, that if the Bill were enacted, it would have serious implications on their business operations. It does not help that the Bill in its current form gives government no discretion around granting an overseas person the ability to purchase residential land beyond the terms and conditions specified in the legislation.

If enacted, the Bill will also be considerably stricter than the equivalent Australian legislation. This is because our legislation, unlike the Australian legislation, will force overseas persons that build new homes to sell them within a period following the completion of construction.

We hope that the Finance and Expenditure Select Committee make appropriate amendments to the Bill to enable it to meet the government's objectives, while also mitigating the practical issues already identified.

Trusts with international connections - Information changes

From 1 July 2017, Inland Revenue joined with over 100 Tax Authorities around the world to automatically exchange information about financial assets which are held or controlled by non-residents.

This information exchange is called common reporting standard (**CRS**), and gives Tax Authorities visibility of the global financial asset holdings of their resident taxpayers.

CRS can be illustrated as:



New Zealand Inland Revenue's first bulk information exchange is scheduled to occur by 30 September 2018.

Kiwi Trusts with foreign connections

The automatic information exchange rules can also apply to Kiwi Trusts with foreign connections. These rules are covered in a new Inland Revenue guide, ***Family Trust Obligations under the CRS***.

In the briefest possible terms, where a New Zealand trust has non-resident connections including non-resident settlors, trustees or beneficiaries, and the Trust has financial assets including shares and bonds, then CRS reporting obligations may apply.

Tax snippets

Five-year bright-line test enacted

Legislation extending the bright-line test on residential investment property from two years to five years was enacted on 29 March 2018.

See our Tax Talk of 20 February 2018 for more detail, but in short:

- Where a person first acquires an interest in a residential property on or after 29 March 2018, the property will be subject to the new five-year bright-line rule.
- Where a person first acquires an interest in a residential property on or after 1 October 2015 but before 29 March 2018, the property is subject to the old two-year bright-line rule.

Your Baker Tilly Staples Rodway Tax Expert knows the ins and outs of this mini capital gains tax.

PIES and compulsory exit

Under new rules, New Zealand resident PIE investors who do not supply their IRD number within a required period, will be compulsorily exited from the PIE. This also applies to persons who become resident and fail to provide an IRD number within the required period.

This requirement to provide an IRD number does not apply to persons are non-resident.

This rule change started on 1 April 2018.