

Submission

to the

Finance & Expenditure Select Committee

on the

Taxation (Land Information & Offshore Persons) Bill

9 July 2015

Submission by the New Zealand Bankers' Association to the Finance and Expenditure Select Committee on the Taxation (Land Information and Offshore Persons) Bill

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA does not wish to make an oral submission to the Committee on this Bill.
4. If the Committee or officials have any questions about this submission, or would like to discuss any aspect of the submission further, please contact:

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Executive Summary

5. NZBA appreciates the opportunity to submit on the Taxation (Land Information and Offshore Persons) Bill.
6. Overall NZBA supports the Bill.
7. However, we do have concerns about the effectiveness of measures contained in the Bill requiring foreign buyers of New Zealand residential property to open a New Zealand bank account prior to the obligation to obtain an IRD number, and the compliance burden that this requirement will place on banks.
8. These measures are likely to cause significant compliance issues for banks as they will require additional procedures and processes in order to ensure that banks are complying with the requirements (such as Customer Due Diligence) imposed on them by the Anti-Money Laundering and Countering the Financing of Terrorism Act 2008.
9. While some foreign buyers captured by these proposed measures will be able to be handled by current bank systems a number will not. Some of these buyers are likely to be identified as high risk and therefore require enhanced due diligence, at increased cost to the bank involved in order to allow an AML compliant bank account to be opened.
10. This is especially so in the case of foreign based buyers who open a New Zealand bank account from offshore purely for the purposes of getting an IRD number and then have no further involvement with the bank.
11. In addition there is a high likelihood that after incurring the costs involved with the creation of these bank accounts a number of them will never actually be used. These effectively dormant accounts will then result in an administrative burden for banks to deal with.
12. NZBA also notes that the existing AML regime may not deliver on the intended outcomes for Government through this reform. The AML regime (s.16 (2) and (3) of the AML/CFT Act 2009) permits a reporting entity to establish a relationship with a customer (e.g. to open an account) without first having completed all due diligence, provided that:
 - it is essential not to interrupt normal business practice; and
 - the AML risks are effectively managed through procedures of transaction limitations and account monitoring; and

- verification is completed as soon as practicable once the relationship has been established.
13. Where a customer is overseas and they have sent through the required identity information, a reporting entity could reasonably open an account pending that person's arrival in New Zealand to verify that information (i.e. sight the person alongside the photo ID), provided that there is a restriction placed on that account which prevents any transaction being undertaken. This effectively manages the money laundering risk (because the customer cannot actually use the account for transaction purposes), but this does not provide the outcome that the Government is seeking, which is to ensure that the person is fully identified and verified. If the customer does not front to the bank in a reasonable time, the bank would be required to close the account and not provide any service to that person – in the meantime, the purchase transaction would have been completed and the verification has not been effectively completed.
14. The limitations of these provisions were recognised in the original regulatory impact statement prepared by Inland Revenue which did not recommend the proposal requiring bank accounts stating:
- *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;*
 - *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.*
15. NZBA strongly submits that the intention of the Bill would be better achieved by considering amendments that place the onus of identifying and verifying the participants in a transaction on those people who have the direct relationship with the prospective purchasers – in this case this may be parties such as real estate agents and lawyers. The key point here being that there are people who have a necessary and direct relationship with overseas purchasers, whereas banks do not. Real estate agents and lawyers already have some obligations under the Financial Transactions Reporting Act 1996 to collect and verify identity information which could be applicable here.
16. Given this it would seem to be a more effective approach to place the verification of information on parties who will be at the centre of the relevant property deals.

17. We are happy to discuss further with officials how these amendments could work.
18. Overall, we believe that the proposed measures may not be the most effective means by which to capture the desired information on foreign buyers, and in addition to the unnecessary compliance burden, may not actually deliver the outcome that the Government is seeking.