

The Treasury

Overseas Investment in Forestry Information Release

September 2019

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Information withheld

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Key to sections of the Act under which information has been withheld:

- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [2] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [5] 9(2)(h) - to maintain legal professional privilege
- [6] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Reference: T2018/1343 IM-5-1-1

Date: 15 May 2018

To: Minister of Finance (Hon Grant Robertson)
Associate Minister of Finance (Hon David Parker)

Deadline: DEV Meeting on Wednesday 16 May at 11am

Aide Memoire: Talking points for DEV - Overseas Investment Regulations 2005: Minor Changes to Exemptions

You are taking a paper to DEV on Wednesday 16 May relating to the Overseas Investment Regulations 2005. This Aide Memoire provides you with talking points for this meeting.

Background

The Cabinet paper to be discussed seeks agreement to a number of minor and technical changes to the Overseas Investment Regulations 2005. These changes will:

- improve the functioning of the existing regime; and
- improve the implementation of the residential housing changes to ensure there is consistency with the overall policy intent of the Act.

The proposed changes and relevant talking points are provided in the table below.

Next steps

Subject to Cabinet approval, Officials will issue drafting instructions to PCO.

| Proposal | Talking Points |
|--|---|
| <p>Proposal 1: exempt registered charities operating in New Zealand who have 'donee status' under the Income Tax Act, and who are not a 'schedule 32 charity' from the consent requirements for residential land;</p> | <ul style="list-style-type: none"> • Charities are not intended to be captured by the policy. <ul style="list-style-type: none"> ○ If charities were not exempted, money from non-overseas persons intended to benefit NZ may be used to meet OIO administrative costs. ○ Further, given charities tend to have limited funds and the fees may be a barrier to their work. • We are only exempting specific charities whose core purpose is to benefit New Zealand and are likely funded by New Zealand taxpayers. |
| <p>Proposal 2: allow couples where one partner is an overseas person to be exempt from screening requirements if they purchase sensitive land through a company that they together wholly-own as relationship property. This is designed in a way that avoids creating new avoidance avenues;</p> <p>A current exemption allows a couple, where one partner is an overseas person and the other is not, to acquire either an interest in sensitive land, or securities in a company that owns sensitive land, without consent provided it is relationship property. The same grounds for the exemption ought to apply where a couple choose to own the property directly, or through a company.</p> | <ul style="list-style-type: none"> • We see no reason for differentiating between direct ownership and wholly-owned company ownership scenarios in the context of relationship property. • This change will ensure that different New Zealanders are treated fairly irrespective of the nature of their relationship with overseas persons in comparison to those who are not. • This change will reduce compliance burden on OIO. |
| <p>Proposal 3: in specific circumstances, exempt a number of commonplace business transactions involving overseas persons, including:</p> <p><u>corporate restructures</u>: exempt all transactions from screening within a group where the ultimate ownership and control of the group by overseas persons does not change; and</p> <p><u>small changes in shareholdings</u>; exempt from screening all acquisitions by that overseas person (for up to 5 years after obtaining consent) of further identical securities:</p> <ul style="list-style-type: none"> • up to a limit of 10% of all securities in each relevant class (e.g. 50% to 60%); and • without the overseas person's overall ownership or control interest in the relevant entity hitting thresholds of 25%, 50%, 75% or 90%; <p>The proposed new exemption will work alongside the current exemption, but will not be cumulative. This will only be available where the overseas person has already obtained consent and will only be available for five years from the initial consent.</p> | <ul style="list-style-type: none"> • These changes respond to issues raised by stakeholders; • They will exempt small shareholding changes that occur as part of business-as-usual activities and that are not intended to be captured by the policy. • They will reduce burden on the OIO and investors, and help streamline the regime. |

| Proposal | Talking Points | | | | | | | | | | | | | |
|---|--|--------------------|--|--------------------------------|--------------------|----------------|---------|----------|------------|----------|----------|------------|----------|--|
| <p>Proposal 4: make minor changes to clarify existing exemptions relating to security arrangements (for example mortgages):</p> <ul style="list-style-type: none"> provide consistent definition of “permitted security arrangement”; extend exemptions to indirect acquisition of securities; and clarify that the exemption from screening for sensitive land of portfolios or bundles of security arrangements by removing the \$100m threshold and clarify | <ul style="list-style-type: none"> These minor changes clarify existing regulations and ensure there is consistency across the regime; These changes will be important once residential land is brought within the Act as this will increase the volume of transactions that involve sensitive land. | | | | | | | | | | | | | |
| <p>Proposal 5: clarify that exemptions do not apply for the acquisition of securities, either individually or as a portfolio, if either:</p> <ul style="list-style-type: none"> they are not acquired in “good faith” and in the ordinary course of business; or they are acquired as a means of acquiring the underlying sensitive land without consent; | | | | | | | | | | | | | | |
| <p>Proposal 6: amend the administrative penalty for retrospective consent applications (these penalties are only relevant where an investor has <u>inadvertently</u> failed to apply for consent). The new penalty schedule is as follows:</p> <table border="1" data-bbox="226 855 1077 1082"> <thead> <tr> <th rowspan="2">Consideration paid for the asset</th> <th colspan="2">Proposed penalties</th> </tr> <tr> <th>‘Commitment to reside’ pathway</th> <th>All other pathways</th> </tr> </thead> <tbody> <tr> <td>Less than \$2m</td> <td>\$5,000</td> <td>\$20,000</td> </tr> <tr> <td>\$2m-\$10m</td> <td rowspan="2">\$10,000</td> <td>\$30,000</td> </tr> <tr> <td>Over \$10m</td> <td>\$40,000</td> </tr> </tbody> </table> | Consideration paid for the asset | Proposed penalties | | ‘Commitment to reside’ pathway | All other pathways | Less than \$2m | \$5,000 | \$20,000 | \$2m-\$10m | \$10,000 | \$30,000 | Over \$10m | \$40,000 | <ul style="list-style-type: none"> This proposal increases the maximum penalty so it is better in line with recent fee increases and acts as an adequate deterrent; It replaces the existing variable penalty with a series of fixed penalties, which addresses the Law Commission’s concerns. |
| Consideration paid for the asset | | Proposed penalties | | | | | | | | | | | | |
| | ‘Commitment to reside’ pathway | All other pathways | | | | | | | | | | | | |
| Less than \$2m | \$5,000 | \$20,000 | | | | | | | | | | | | |
| \$2m-\$10m | \$10,000 | \$30,000 | | | | | | | | | | | | |
| Over \$10m | | \$40,000 | | | | | | | | | | | | |
| <p>Proposal 7: make two other minor technical changes: remove Trustpower from Schedule 4 companies, and make a minor word change (custodial property to custodial securities) in the regulations to fix a drafting oversight.</p> | <ul style="list-style-type: none"> Trustpower asked to be removed from Schedule 4 and there is no policy reason not to. It means they will no longer be exempt from screening requirements. | | | | | | | | | | | | | |

[4] Analyst, International, [6]
Thomas Parry, Team Leader, Overseas Investment, [6]