AUCKLAND DISTRICT LAW SOCIETY INC
INDEPENDENT VOICE OF LAW

ADLSI PROPERTY LAW COMMITTEE SUBMISSIONS ON TAXATION (LAND INFORMATION AND OFFSHORE PERSONS INFORMATION) BILL

156A Interpretation

'main home' – this is a new term developed for this bill and a departure from existing legislative definitions. Notably from the use of 'principle place of residence' in the GST Act and the Joint Family Homes Act which uses the term 'principally as a home'. Both of which are well understood and have been judicially interpreted.

The introduction of the new 'main home' will lead to uncertainty. For example, does a home cease to be a main home if family members move out and only one person remains? Different family members may have contrasting views as to where their main home was. Further, a property may not be the 'principle place of residence' for GST purposes but will be a 'main home' under this act. The opposite scenario will also arise. We submit that one of the more understood terms is inserted in place of 'main home'.

'greatest connection' - the term is imprecise and can be interpreted very subjectively. Perhaps factors could be listed for consideration as to what should be considered in assessing this such as the list of factors used in s2D Property (Relationships) Act 1976 to help you assess a relationship. Adjusted accordingly to deal with the different matter being assessed under this legislation.

'residential land' - the Bill defines residential land to include land for which there is 'an arrangement' that relates to erecting a dwelling. It is not clear what 'an arrangement' is. While sometimes land and building packages are purchased as one, usually a purchaser of land will not have entered into a building contract when the land is purchased as they will do that when they have resource consent and building consent. The current definition does not cover a residential section upon which a dwelling may be constructed in the future (as is often the case with beach front properties where a purchaser may acquire the land adjacent to his home to protect their view/privacy with no agreement to erect a dwelling upon it). More detail is required as to what 'an arrangement' is including the timeframes for expiry.

'specified estate in land' - refers to stratum estates in freehold and leasehold, but should also refer to cross lease properties, both freehold and leasehold.

156A (2)(b) – properties owned by trust will not be exempt transfers. Many trusts which own non-earning and/or residential properties will not have IRD numbers.

Trustee's details are included on the land register and not the trust's details (s128 Land Transfer Act 1952). However the property is effectively owned by the trust . The new bill requires the IRD number of a trust and not that of the individual trustee. It is submitted that a transaction that simply effects a change of independent trustee be classified as exempt transfer under the bill.

Will the IRD require sight of probate before issuing an IRD number for an estate? Depending on the size of the state probate is not necessarily obtained.

In most cases trusts, infants and estates will not have an IRD number as they are not conducting taxable activities. The IRD will need to be equipped for a significant increase in applications. To minimise the inevitable clog on the system it is submitting that applications should be able to be submitted online as with the incorporation of a company.

156B Transferors and transferees must provide tax statement stating that transfer exempt or providing tax information

156B(1)(b) – the term 'chief executive' is not defined and it is submitted that a definition be included.

156C Content of tax statement

156C(3)(b) – requires information relating to a person who made a nomination.
However, that person will not be registered on the title. Therefore, we submit that it is the information relating to the nominee which should be required, except where the nominee is to hold the property in trust, and the relevant information to be provided would be that of the trust which may be the person who made the nomination.

This clause requires amendment to reflect these two situations.

156E Offence to provide false or misleading tax information

The explanatory note prefacing the bill provides that –

"A conveyancer will be required to provide declared information before certifying the property transfer. Conveyancers will not be required to certify the accuracy of the information provided".

From this it is understood that the certifier is just a messenger for the information.
However, clause 156E does not make this clear and could imply that the certifier has to make enquiries of the person making the tax statement.
Clause 156E could also create an offence if the certifier gave information to the chief executive. In light of the intention set out in the explanatory note, it is suggested that this is

not appropriate and that the words 'to a certifier or the chief executive' be removed from clause 156E.

156G Certifier and chief executive must hold tax statement and provide copies

It is submitted that retention by electronic means should be permitted as opposed to only paper. The bill should specifically address this issue.

THE IMPACT OF THE BILL ON THE LAND TRANSFER SYSTEM

The lateness in the process in which the information is being extracted is likely to cause major disruption to the land transfer system in New Zealand. LINZ is ranked second in the world in the World Bank Doing Business Survey for 'ease of registering property'. This is likely to be compromised by the new requirements.

Given the practicality issues that could impact on our e-dealing registration system we would have thought that the responsible Crown Minister would have been prudent enough to have required more time for Land Information New Zealand officers to consult with "stakeholders" concerning this new information gathering regime. Following those consultations and only after those consultations had been completed should the parliamentary draftsmen have been instructed to draft the legislation, and then the regulations.

It is submitted that the bill represents a fundamental change to New Zealand conveyancing requirements and its implications extend far wider than the certifier including a tax statement or bank account details immediately prior to the electronic instrument being registered.

The requirements of Regulation 24BA which provides that the Commissioner of Inland Revenue may not allocate a tax file number without a bank account number may hold up settlements that involve "Offshore Persons". As the Committee will be aware opening a bank account with a trading bank these days can be a fraught exercise and lengthy time delays can occur. If delays occur and a bank account number is not available a tax file number can't be issued and an e-dealed "chain" of settlements involving a whole series of consequential transactions for third parties could be delayed or ultimately cancelled due to defaults in not settling

On a positive note, the Committee does congratulate the Government in putting in place (and some would say it is long overdue) the ability to statistically analyse foreign ownership of residential homes in New Zealand. That statistical data should enable more accurate information to be obtained about foreign ownership in New Zealand.

As an alternative to our above concerns perhaps a mandatory review of the regulations by way of an expiry date would allow for a comprehensive review to take place in perhaps three to five years from the date of passing of the legislation. In other words, if in five years' time it becomes abundantly clear that new regime is not working then a different legislative approach may well have been more productive.