

Submission by



to the

**Finance and Expenditure Select Committee**

on the

**Overseas Investment Amendment Bill (No.3)**

September 2020

**OVERSEAS INVESTMENT AMENDMENT BILL (No. 3)  
SUBMISSION BY BUSINESSNZ<sup>1</sup>**

**1.0 INTRODUCTION**

- 1.1 BusinessNZ welcomes the opportunity to comment on the Overseas Investment Amendment Bill (No. 3) ("the Bill"). BusinessNZ notes the Bill's purpose is to ensure risks posed by foreign investment can be managed effectively and that productive investment is better supported by reducing the regulatory burden of the screening process.
- 1.2 The Bill amends the Overseas Investment Act 2005, was one of two Bills produced as a package to replace the Overseas Investment Amendment Bill (No. 2), introduced on 19 March 2020 and contains measures the Government considers are not urgently needed to manage the economic effects of Covid-19. BusinessNZ has previously noted that with the Bill's companion, the Overseas Investment (Urgent Measures) Amendment Bill, interested parties were given little or no time to submit meaningfully.
- 1.3 Because of the limited time provided, BusinessNZ did not submit on the Overseas Investment (Urgent Measures) Amendment Bill as, effectively, only one day was allowed for submission provision through the Select Committee process. However, it appears any changes made in the Urgent Measures Bill considered to be problematic can potentially be addressed through the current Bill. While making no further comment on the earlier Bill - which has already passed into law - BusinessNZ wishes to stress that given our wide membership base and stretched resources during and post-Covid-19 lockdown, at minimum, 3-4 weeks would have been required to ensure meaningful membership input both into it, or for that matter any other significant, Bill. This is an issue that BusinessNZ stresses needs future reconsideration if genuine engagement is truly sought and valued.
- 1.4 BusinessNZ understands the significant benefits of foreign direct investment (FDI) and these were pointed out in our submission to Treasury last year and so are not repeated here.<sup>2</sup> Suffice to say, NZ has been built largely on the back of foreign investment.

---

<sup>1</sup> Background information on BusinessNZ is attached as Appendix 1.

<sup>2</sup> Submission by BusinessNZ to the Treasury on The Reform of the Overseas Investment Act 2005 Consultation Document (May 2019).

- 1.5 FDI has been critically important for New Zealand's success. In the absence of domestic savings, overseas investors have put up venture capital and funding for projects that might otherwise have gone unfunded.
- 1.6 Markets dislike risk and require higher compensation to reflect it. If not, potential investors will simply exit the market and seek better and more consistent investment opportunities somewhere else. To some extent, the earlier Treasury Consultation Document (2019) reflects this reaction, noting that international surveys rank NZ well down the list of countries welcoming foreign investment, an indication NZ struggles to attract the most valuable forms of investment.
- 1.7 BusinessNZ would point out that the economic and political landscape, both domestically and internationally, has changed enormously since the Treasury released its Consultation Document early last year.
- 1.8 Arguably now more than ever, NZ needs to attract FDI to help rebuild our economy ravaged by the impact of Covid-19. Covid-19 has adversely affected business confidence resulting in significant rises in business closures, unemployment and dislocation. NZ will be reliant on both domestic and international capital to get the country up and running again.
- 1.9 It is through this lens that BusinessNZ believes the Government should revisit some of the Bill's proposed changes.
- 1.10 Given this organisation's broad membership, members of the wider BusinessNZ network will have a range of views on specific issues and/or points of interest. Many will provide their own separate submissions on matters of concern and areas where they have specific expertise.
- 1.11 In terms of positives, BusinessNZ supports many of the changes intended to reduce the need for screening, noting Treasury's view that around 14 percent of cases seen as requiring screening in the past will now be given the green light.
- 1.12 On the other hand, BusinessNZ is concerned at the inclusion of some additional requirements e.g. in respect to water extraction, and more particularly, water bottling for export, alongside compliance cost concerns arising from taxation changes, two specific issues discussed in more detail below.

- 1.13 BusinessNZ wishes to appear before the Select Committee to speak to its submission.

### **RECOMMENDATIONS**

BusinessNZ **recommends** that:

**In clause 9 (Section 17 replaced (Factors for assessing benefit of overseas investment in sensitive land), subsections (3) and (4) of section 17 be deleted.**

For clarity these are:

“(3) If the overseas investment involves extraction of water for bottling, or other extraction of water in bulk for human consumption, -

(a) an additional factor is whether the overseas investment will, or is likely to, result in a negative impact on water quality or sustainability; and

(b) the relevant Ministers must determine the relative importance to be given to this factor and deduct that from any overall benefit to New Zealand that has been determined under **section 16A(1)(a)**.

(4) **Subsection (2)(b)(ii) and (iv)** is subject to **subsection (3)**.

BusinessNZ **recommends** that:

**The regulation-making power in clause 16 (New section 38A inserted (Information for tax purposes) be deleted. The proposed power is unnecessary given Inland Revenue’s already extensive power to obtain information relevant to the enforcement of tax law.**

If the Select Committee does not accept the above recommendation, then, in the alternative:

BusinessNZ **recommends** that:

**If the regulation-making power is introduced, proposed section 38A (Information for tax purposes) be amended to apply the requirement to disclose tax-related information only to investors new to New Zealand. An overseas person carrying on a business, or with investments in New Zealand will already be subject to Inland Revenue’s compliance processes. Therefore, there is no justification**

**for also requiring such a person to provide tax-related information in connection with a proposed new investment.**

## **2.0 GENERAL DISCUSSION**

- 2.1 BusinessNZ welcomes several changes proposed in the Bill, particularly those targeted at simplifying the overseas investment process to ensure some investments are subject to a much more streamlined procedure.
- 2.2 The Bill provides a range of initiatives targeted at reducing the compliance costs associated with relatively low-risk investments. For example, the Bill simplifies consenting requirements and excludes lower-risk investments from the overseas investment process. Amongst other things, the Bill also removes from the definition of "sensitive land" certain categories of adjoining land and leasehold interests of under 10 years.
- 2.3 The Treasury estimates that around 14% of applications will be eliminated from screening as a direct result of these initiatives, something BusinessNZ strongly supports.

### **Additional requirements for bottled water**

- 2.4 While BusinessNZ understands the Government's position - that it is a privilege to own NZ's most sensitive assets - it is very concerned moves to provide for greater ministerial discretion could result in more investor uncertainty, with a potentially chilling effect on investment.
- 2.5 The public perception of "bottled water" is a classic case in point, the amount of water bottled and sold on to overseas markets being trivial in the context of total freshwater use in NZ. According to the Treasury, water bottling is a small industry in NZ, and in 2016 accounted for less than 0.02% of total water use.
- 2.6 Treasury's Regulatory Impact Assessment (March 2020) states in respect to Water Extraction (p.83) that: *"Public concerns about overseas investment involving water extraction (particularly for water bottling for export) include the potential environmental effects, and that overseas persons may profit from a high-value resource without paying a charge."*
- 2.7 As freshwater use/extraction issues are already covered under the Resource Management Act (RMA) there is no justification for treating foreign investors any differently from domestic users of freshwater. What is proposed could result in a double standard since, under the normal RMA natural resource

allocation process, the Minister could simply overturn consents provided for freshwater use

- 2.8 BusinessNZ does not see the relevance of imposing what are in effect, additional requirements on overseas investors in respect to freshwater allocation, given water allocation is already covered under the RMA and water quality and sustainability issues are addressed by the normal RMA resource consent process. There is express direction in the RMA for such issues to be dealt with through regional plans and that applies whether the person or business involved is domestic or foreign.
- 2.9 Clearly, the issue of profiting from a high-value resource is the same whether the fresh water allocation applies to foreign investors or to other potential water use, agricultural irrigation, broader industry activity or the numerous other activities for which water is valued, e.g. recreational purposes.

### **Freshwater allocation issues**

- 2.10 As has been pointed out, why largely overseas investors should be treated differently from other water users (either foreign companies or domestically owned) in respect to bottled water defies logic. If there is a problem with water allocation mechanisms, the correct response is to deal with the allocation regimes, not single out a particular form of water use for extra constraints when the issue of environmental effects is already addressed under the RMA.
- 2.11 Moreover, the Treasury noted in its Regulatory Impact Assessment of the Bill, the Government is already looking at water allocation issues as part of its "*Essential freshwater: healthy water, fairly allocated*" regime. Ad hoc changes before wider water allocation issues have been considered and understood are not ideal policymaking. Water allocation issues are complex and where possible, need thorough and consistent treatment across all water users.
- 2.12 Surely, if water is scarce in some parts of the country there will likely be incentives on individuals, businesses and the community to look at increasing the water supply through mechanisms such as improved community storage.
- 2.13 Water takes are subject to consent requirements under the RMA, with most allocated on a first-come-first-served basis, but there may be justification for reviewing current allocation mechanisms. Those responsible for allocation (generally Regional Councils with delegated powers from central Government)

could be asked to adopt a more market (price)-based approach to new water allocation, either through tendering or some other price mechanism.

- 2.14 A sound water allocation policy regime should ultimately ensure that within a sustainable framework, current and future generations gain the greatest economic, social, environmental and cultural benefits from water use. From a business perspective this means allocating scarce resources to their most highly valued and productive use and employing them efficiently, taking into consideration such matters as reasonable security of water use rights and the ability to transfer those rights where appropriate.
- 2.15 The first come first-served principle has for some time been the subject of criticism, particularly as there are those who consider it does not facilitate the movement of water to its highest use. Nevertheless, the first come first-served approach has enabled large areas of the economy to function with some degree of assurance that water resources will not be confiscated without compensation to users.
- 2.16 Any move away from first come first served to a transfer or tradeable water rights regime will need to involve an orderly transition with compensation payable if rights are taken, particularly in catchments where water use rights are at present fully- or over-allocated.
- 2.17 There must be agreed mechanisms for dealing with current or potential cases of water over-allocation and here, other jurisdictions provide an indication of the range of options available. In Australia, for example, where water has been over-allocated, Federal and State Governments have purchased permits on the open market thus compensating users for any losses incurred.

BusinessNZ **recommends** that:

**In clause 9 (Section 17 replaced (Factors for assessing benefit of overseas investment in sensitive land), subsections (3) and (4) of section 17 be deleted.**

For clarity these are:

“(3) If the overseas investment involves extraction of water for bottling, or other extraction of water in bulk for human consumption, -

(a) an additional factor is whether the overseas investment will, or is likely to, result in a negative impact on water quality or sustainability; and

(b) the relevant Ministers must determine the relative importance to be given to this factor and deduct that from any overall benefit to New Zealand that has been determined under **section 16A(1)(a)**.

(4) **Subsection (2)(b)(ii) and (iv)** is subject to **subsection (3)**.

**Clause 16 (New section 38A inserted (Information for tax purposes))**

- 2.8 Clause 16 of the Bill provides for a new regulation-making power to enable the making of regulations to impose requirements under which overseas persons who make, or apply to make, an overseas investment in sensitive NZ assets must provide certain information the Commissioner of Inland considers necessary.
- 2.9 BusinessNZ strongly agrees with the comprehensive submission of the Corporate Taxpayers Group (CTG) which states, for a variety of reasons, why the proposed regulation-making power in clause 16 is unnecessary and would increase compliance costs. BusinessNZ commends the submission of the CTG for consideration by the Select Committee.

BusinessNZ **recommends** that:

**The regulation-making power in clause 16 (New section 38A inserted (Information for tax purposes)) be deleted. The proposed power is unnecessary given the extensive powers Inland Revenue already has to obtain information relevant to the enforcement of the tax laws.**

If the Select Committee does not accept the above recommendation then, as an alternative:

BusinessNZ **recommends** that:

**If the regulation-making power is introduced, proposed section 38A (Information for tax purposes) be amended to apply the requirement to disclose tax-related information only to investors new to New Zealand. An overseas person carrying on a business, or with investments in New Zealand will already be subject to Inland Revenue's compliance processes. Therefore, there is no justification for also requiring such a person to provide tax-related information in connection with a proposed new investment.**

## **Appendix One - Background information on BusinessNZ**



[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).