

# LAURENT LORE

## BUSINESS AND INVESTOR NEWSLETTER

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Dear Reader,

Our Business and Investor Newsletter provides information about immigration which we consider to be relevant to potential business applicants under either the Investor or Entrepreneur programmes.

We produce a separate Corporate Newsletter which focuses on employers and a General Newsletter which offers advice to prospective and recent migrants to New Zealand.

You can subscribe to our [Corporate Newsletter](#) or our [General Newsletter](#) by following the links.

We also have a [firm blog](#) you can subscribe to for up to date commentary on immigration matters.

Sincerely,  
Bill Milnes

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### TESTIMONIALS

"I wish to express my sincere appreciation for the excellent service provided to me by the Laurent Law Firm and acknowledge James Turner for his professionalism while handling my special case regarding my deportation. James was a tremendous help for me, he is one of the shining examples of professional, caring and knowledgeable lawyers. He listened, advocated and kept me informed throughout the proceedings of my case. I am very pleased with the quality, responsiveness and extensive legal expertise of James. He went the extra mile to help and succeeded. I am staying in NZ, I am so happy and grateful. I would wholeheartedly recommend James and Laurent Law to any business or individual in need of legal help."

*Natalia*

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ASK AT RECEPTION**

## Tax on Offshore Sales is Coming

The Government plans to tax offshore people on the profit they make from selling a New Zealand house if it is sold within 2 years after it was bought. A Parliamentary Bill is now being considered by Select Committee. It is probably aimed at discouraging the kind of speculative property trading by overseas property buyers which has been blamed for helping to push Kiwi house prices through the roof.

This new law has not been passed yet, but it has been expected for a while. In October 2015 new Land Information rules required everybody buying or selling a property to register with the NZ Inland Revenue Department (IRD) and provide tax details, unless it is the sale or purchase of their "main home".

In particular, people with tax resident status in other countries are now required to provide their tax number for each country. Now that this information is being collected as a matter of course, it will be possible to chase down those who later sell their houses and who will be liable for the new tax when it comes in.

It is possible that the new law will be passed before the end of the year. The Government has been under pressure lately both to "do something" about the housing bubble, and to keep track of just how many foreign buyers are snapping up New Zealand houses.

### Who Pays?

The new tax will be payable by any "offshore person". This includes anyone who is not a New Zealand Citizen or Resident. That is, anyone on a Visitor, Student or Work Visa, or who is not in New Zealand at all, must pay withholding tax when they sell a property within 2 years after they bought it. Furthermore, it will also apply to:

- Residents who have been out of New Zealand for more than 12 months; and
- Citizens who have lived outside New Zealand for more than 3 years

A company will be taxed if it is not NZ-registered or any of its Directors has an offshore address; or more than 25% of its Shareholders are offshore. A lot of companies have offshore stakeholders, so that this will have far-reaching effects. Properties held by Trusts will also be taxed on sale if - basically - it has any connection with offshore persons - even to the extent that, if the Trust has distributed assets to an overseas beneficiary in the last 6 years, it will be treated as an "offshore Trust".

### How Much Tax?

The tax to be paid on the sale will be the smaller amount of:

- 33% of the profit earned from the sale (or 28% if the vendor is a company); or
- 10% of the entire purchase price.

For instance, if someone from overseas bought a house in 2015 for \$500,000 and sells it now for \$600,000, their profit is \$100,000. If they are an individual, they must pay \$33,333 in Residential Land Withholding Tax (RLWT). In another example, if they bought a house in 2015 for \$2 million and sell it now for \$3 million, then they pay \$300,000 (10% of the price) and not \$333,333 (33% of the profit on sale).

There is an exception that if there is not enough money left over to pay the tax after a mortgage has been repaid, then the tax is reduced to the amount which is left.

### Effect on Visa Holders

Anyone living in New Zealand on a temporary visa needs to consider their choices carefully even before they buy a house. For example, if they are forced to leave New Zealand because of (say) loss of their job here, then they could also be hit with a major tax burden when they try to cash up.

Investor 1 and 2 Resident Visa holders beware. Although you only need to be in New Zealand for a certain number of days each year in order to keep your Resident Visas, those minimal numbers of days will probably not be enough to avoid being classed an "offshore person" by IRD

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Entrepreneur Work Visa holders could face similar problems even after they get Residence. We see some business people who are setting up here, spending considerable time travelling back and forth both before and after they finally get Residence. They will need to keep track of their "time in New Zealand" records, so that they are aware of the risk of being hit with this tax if they sell up their house.

Remember, this tax is only applied to people who sell a house within 2 years after they buy it. Those who buy to hold the property for the long term are not the target here. Rather, it is those who want to make a quick buck on the back of climbing house values, and those who may find themselves caught up in the process because of unforeseen circumstances; who need to do their sums carefully.

## Business/Investor Residence Programmes Updates

This section discusses current information on the Investor and Entrepreneur categories.

**Investor 1** is the top priority category for high value investors investing \$10 million for 3 years. It imposes minimal policy conditions and receives priority processing, with the application being allocated to an immigration officer as soon as it is received by Immigration New Zealand (INZ).

There are currently 19 applications in process.

**Investor 2** is a capped, two-stage, points-based category for those investing a minimum of \$1.5 million for 4 years, and who have a further NZD 1 M available in settlement funds, which do not need to be transferred to NZ. Further criteria apply.

Stage 1 involves lodging an Expression of Interest (EOI) identifying the basis of the intended investment and calculating the points achieved. If the EOI meets the current points pass mark, the applicant will usually receive an Invitation to Apply for Residence (ITA).

Stage 2 is the collation of supporting documentation and preparation of the application.

In both investor categories, once the residence application has been approved in principle by INZ, the applicants have 12 months to arrange for the transfer of the **nominated** investment funds to NZ through a banking or recognised forex system.

### Current Processing statistics

The latest fortnightly draw of Investor 2 EOIs took place on Wednesday, 16 March 2016.

15 EOIs which claimed between 80 and 100 points were selected. The next draw will be 30 March 2016. Because of the restricted number of EOIs drawn, intending applicants should have their points assessed before submitting their EOI. The current number of points required to be drawn is at least 80, which may require an investment considerably above the minimum of \$1.5 million.

There are currently 45 Investor 2 EOIs in the pool and 145 applications in the queue, waiting to be allocated. The current period from receipt of an Investor 2 application to allocation is 370 days.

So those considering the Investor 2 option need to be aware of the more stringent criteria the greater level of investment and an all-up processing time approaching two years.

### Entrepreneur

In our opinion, this is the most difficult and risky category for immigration to New Zealand.

Entrepreneur is a two stage process in which a business proposal is presented to INZ which meets various 'benefit to NZ' criteria. If approved, a 3 year Entrepreneur Work Visa is granted.

Once the applicant has successfully operated the business for two years [or 6 months in some cases], an application for residence may be made based on evidence that the business has met **all** the terms identified in the original business plan.

## Processing Times

There are currently 36 Entrepreneur Work Visa applications waiting for allocation with up to 43 days between receipt and allocation.

There are 38 Entrepreneur residence applications with 84 days between receipt and allocation.

## Ownership and Transfer of funds

We have mentioned above the transfer of 'nominated' funds from source country to NZ and this applies to all categories - Investor and Entrepreneur.

Nominated funds are the specific funds/assets identified [nominated] in the original EOI or application documents. It is not permitted to transfer funds from a different asset. For example, if the nominated funds identify real estate owned by the applicant, those specific real estate holdings must be liquidated and the resulting funds transferred to NZ. The applicant may not liquidate any other asset as an alternative.

The nominated funds must be owned by the applicant/s at the time of the application. They cannot be held by other family members or a trust/company, with the intention of transferring to the applicant if the application is successful. The funds may not be borrowed or encumbered.

The exception to the above is that Investor 1 applicants may retain their nominated assets as collateral and borrow against them, transferring the borrowed funds to NZ. This would apply for example, if the asset was a factory or farm worth considerably more than the value of the nominated funds.