

9 April 2025

Tax Counsel Office  
Inland Revenue  
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Tēnā koe,

### [PUB00488 & PUB00460 - The bright-line test for selling residential land](#)

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on proposed changes to seven 'Questions we've been asked' (**QWBAs**) relating to the bright-line test for selling residential land.
2. The changes proposed are primarily intended to reflect the legislative changes enacted since the QWBAs were prepared, so that they focus on the current 2-year bright-line test that applies to residential land sold on or after 1 July 2024 (the '**bright line test**'). Overall, the Law Society considers the updated guidance accurately reflects the recent legislative changes and improves readability for the target audience. The feedback set out below focuses largely on minor drafting suggestions to improve clarity or include further explanation.
3. This feedback has been prepared with input from the Law Society's Tax Law Committee.

### [PUB00460: When is land acquired for a purpose or with an intention of disposal so that the amount derived from the sale is income?](#)

4. The Law Society considers the reference to section CB 6 applying to distributions from an estate is incorrect. A deceased person is not associated with their estate for the purpose of the land provisions (see paragraph 12.13 of IS 24/01), and so section CB 15(1) has no application to the estate. Even if the estate was subject to income tax under section CB 15(1), this would not result in a beneficiary of the estate being subject to income tax under section CB 15(1) when the beneficiary sells the land. Section CB 15(1) applies only where the associated transferor (the estate) is subject to income tax under sections CB 6 to CB 14 and will not apply where the estate is subject to income tax under section CB 15(1). It appears that the impact of IS 24/01 and IS 18/01, and the 2019 amendments to section CB 15(1), have been considered when updating this guidance.
5. In addition, the Law Society suggests the following minor changes:

Paragraph	Comment
3	Insert the words "under s CB 6" after "you will not be taxed".
6	Cross reference paragraph 9 re: regular pattern test.

8	Refer to <i>Parry v C of IR</i> (1984) 6 NZTC 61,820 as an example where a larger area of land was required for the reasonable occupation and enjoyment of the house.
11	Cross reference paragraph 14 re: regular pattern test.
18	Insert the words “to s CB 6” after “none of the exclusions”.
19	Insert the words “to s CB 6” after “none of the exclusions”.
32	Insert the words “under s CB 6” after “you will only be taxed”.
37	Also reference section GC 1.
42	Add a sentence to the effect that “disposal” occurs when the owner’s interest in the land ceases, typically on settlement. We suggest this as it may be helpful for IR to confirm that their interpretation of “dispose” applies not only in the context of land partitioning, but more generally for the purpose of the land provisions.
45	Could add “discussions with your accountant or financial adviser” to the list.

[PUB00488a: When do I have a “regular pattern” of transactions that prevents me from using exclusions from the land sale rules for my residence or for my main home?](#)

6. The following minor amendments are suggested:

Paragraph	Comment
Figure 1	The top left box does not accurately set out when the land sale taxation provisions apply. We suggest deleting reference to ‘building on land’ in the second bullet-point, and adding a third bullet point dealing with builders and persons associated with a builder (given the test and timing of association differs for builders and persons associated with builders).
7	It would be helpful to note that no residential exclusion applies where the disposal of land is taxed under section CB 15(1). Such a reference would reiterate that section CB 15(1) (as amended in 2019) is now a standalone taxing provision.
9	This paragraph could be made clearer. For example, after the first sentence, a new sentence could be added along the lines of; “In other words, a taxpayer is not prevented from using these exclusions even if a “regular pattern” of transactions can be discerned.”
18	Add “and before 29 March 2018” at the end of the first bullet point.
33	Given the reference to development work in the context of someone who renovates and sells houses, it may be helpful to add that ‘development work’ does not include building work. Alternatively, a more relevant example could be used to illustrate that someone who sells their house could also be taxed under section CB 12. Renovating a house is unlikely to involve division work, and development work is confined to preparing land for its intended use and does not include

	building work (see <i>Dobson v CIR</i> (1987) 9 NZTC 6,025, and IS 20/08). A person who renovates their house and sells it is unlikely to be taxed under section CB 12.
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PUB00488b: On what date is a person treated as acquiring land for the purposes of the land sale rules?

7. The following minor changes are suggested:

Paragraph	Comment
'Answer' (p. 1)	Replace "Section 15B" with "Section CB 15B" in the beginning of the third paragraph.
8	The word "may" in its second use is a typo and should be deleted.
13	<ul style="list-style-type: none"> <li>Delete first "that" in second sentence.</li> <li>It would be helpful to add "requires approval of the trustees of a trust" as an example of a condition precedent, as that is relatively common.</li> <li>It may also be helpful to note that IR will be providing further guidance on what constitutes a "condition subsequent" and a "condition precedent" (if that is still intended).</li> </ul>
47, Example 9	We suggest it be made clear that the bright-line start date is only relevant if the bright-line test applies, and that is unlikely in the given scenario, as ABC Dealing Ltd would be taxed on the sale under sections CB 7, CB 9 or even CB 1. Describing ABC Dealing Ltd as someone that carries on the business of dealing in land is confusing, and not necessary to the example. The example is intended to illustrate the bright-line start date for a disposal of an option and giving the disposing entity the persona of a land dealer introduces confusion.

PUB00488c: When is the bright-line start date for the 2-year bright-line test?

8. The following minor changes are suggested:

Paragraph	Comment
11	Insert "starts" after "your 2-year period".
18 & preceding subheading	Replace "transfers" with "disposals" in line with the new wording of section FD 1, as per clause 48B of the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill as reported back.
19	Replace "transfers" with "disposals" in line with the new wording of section FD 1, as per clause 48B of the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill as reported back. Consideration should also be given to replacing the

	reference to “transferor” and “transferor” (section FD 1 now refers to “person A” and “person B”).
22	Consider changing the reference to “transferor’s” and “transferee’s”, given that rollover relief is no longer limited to transfers. Also, note the transitional rule for change of terminology in section FD 1(4).
24 & preceding subheading	Replace references to “transfers” to “disposal” in line with the new wording of section FD 2, as per clause 48B of the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill as reported back
25	“Māori rollover trust” is now defined in section FD 2(6), not section FD 2(5).
26	Consider changing the reference to “transferor’s” and “transferee’s”, given that rollover relief is no longer limited to transfers. Also, note the transitional rule for change of terminology in section FD 2(5).
28	Note the transitional rule for change of terminology in section FD 3(5).

#### PUB00488d: How does the bright-line test apply to the sale of a subdivided section?

9. The following minor changes are suggested:

Paragraph	Comment
3	Replace “for the purpose or with the intention of disposal” with “for a purpose or with an intention of disposal”.
4	It is not clear why the third paragraph contains in brackets: ‘or one of the sections.’ This appears to be unnecessary.
6	We suggest noting that the same principles apply where the land is disposed by a trustee of a trust, but that the “main home exclusion” applies differently where land is held by a trust.
18	Insert “it” before “must” in second bullet point.
23, 24	Paragraph 24 seems to be inconsistent with paragraph 23, in that the latter states ‘used predominantly’ is an area based test, while the former states the importance of the use of the land could be relevant where the areas of the land used for competing purposes is close. This could perhaps be clarified by qualifying paragraph 23, to read ‘This is a question of fact and the test is generally a physical area test.’
28	Replace “most of the time” with “most of the bright-line period”.

PUB00488e: When is the sale of a lifestyle block excluded from the bright-line test?

10. The following minor changes are suggested:

Paragraph	Comment
'Answer' (p. 1)	The first sentence should be replaced with "The sale is excluded from the bright-line test when the lifestyle block is farmland or used as a business premises, or the main home exclusion applies". The answer should also include a short paragraph cross referencing QB xx/xx: When does the business premises exclusion to the bright-line test apply?
4	Replace "for the purpose or with the intention of disposal" with "for a purpose or with an intention of disposal".
7	We suggest noting that the same principles apply where the land is disposed by a trustee of a trust, but that the "main home exclusion" applies differently where land is held by a trust.
38, 41	Paragraph 38 seems to be inconsistent with paragraph 41, in that the former states that "used predominantly" is an area based test, while the latter states that the importance of the use of the land could be relevant where the areas of the land used for competing purposes is close. To address this, the second sentence of paragraph 38 could be qualified by inserting the word "generally" before "a physical area test".
Example 1	In the first sentence after the two bullet points delete the words "is used" after "more than 50% of the area of the property".

PUB00488f: When does the business premises exclusion to the bright-line test apply?

11. The following minor changes are suggested:

Paragraph	Comment
Title	There is no "business premises exclusion", as such, from the bright-line test, and the item should be renamed "When is land used predominantly as business premises for the purpose of the bright-line test?".
Question (p. 1)	Should be reworded "When is land used predominantly as business premises for the purpose of the bright-line test".
1	First sentence should be reworded as follows: "This QWBA explains when land is used predominantly as business premises for the purpose of the bright-line test".
8	Delete the word "exclusion" in the first sentence.
9	Replace the first part of the first sentence with "In most cases, a person selling business premises will not need to rely on the fact that the land is used predominantly as business premises...".
16	We suggest this could also include a scrap metal yard as an example of a business premises that does not include a building.

17	Reword the first part of the last sentence to: “For the purposes of the definition of “residential land”, the business premises may be those of the landowner...”.
18	Reword the first part of the first sentence to: “Once the land is found to have business premises on it, the carve out from the bright-line test requires that the land as a whole...”.
18, 20	Paragraph 18 seems to be inconsistent with paragraph 20, in that the former states that “used predominantly” is an area based test, while the latter states that the importance of the use of the land could be relevant where the areas of the land used for competing purposes is close. This could be addressed by qualifying the third sentence in paragraph 18, by inserting the word “generally” before “have been used predominantly”.
21	Replace the word “exclusion” with “carve out” in the first and third sentences.
Example 1	Replace title with “Whether land is used as business premises not relevant as requirements to be ‘residential land’ not met”. Also, replace the words “business premises exclusion to the definition of ‘residential land’” in the last sentence with “carve out from the definition of ‘residential land’ where the land is used predominantly as business premises”.
Example 4	In the last sentence of the first paragraph replace “meets the initial definition” with “the first part of the definition”.
Example 5	In the last sentence of the first paragraph replace “meets the initial definition” with “the first part of the definition”.
Appendix	Change first sentence along the lines of: “Figure / Hoahoa 1 sets out the steps to determine whether the carve out from the definition of “residential land” for land used predominantly as business premises applies for the purposes of the bright-line test.”.

### Further comment

12. Should you wish to discuss any aspect of this feedback, please contact Aimee Bryant, Manager Law Reform and Advocacy ([aimee.bryant@lawsociety.org.nz](mailto:aimee.bryant@lawsociety.org.nz)).

Nāku noa, nā



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