

**EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA  
– MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **13 June 2023**

Please quote reference | Whakahuatia te tohutoro: **PUB00397-1**

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**QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI**

# **Income tax – bright-line test – main home exclusion – renting to flatmates**

Issued | Tukuna:

**QB XX/XX**

This Question We've Been Asked clarifies the Commissioner's view on how the main home exclusion to the bright-line test applies where a person rents out a room in their home to a flatmate.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A, CB 16A, CZ 39, CZ 40 and YA 1

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## Question | Pātai

If a person lives in their home and rents out a room to a flatmate and then sells the land within the bright-line period, can they qualify for the main home exclusion to the bright-line test?

## Answer | Whakautu

Yes, a person can qualify for the main home exclusion if they live in their home and rent out a room in their home to a flatmate.

The main home exclusion is different for land acquired:

- on or after 27 March 2021; and
- between 29 March 2018 to 26 March 2021.

The main home exclusion applies for land acquired on or after 27 March 2021, if during the bright-line period all of the days are main home days.

Whether the dwelling is the person's "main home" is a matter of fact and requires consideration of where a person resides and has a fixed presence.

The fact a person rents out a room in their home to a flatmate does not preclude the home being the person's main home.

For land acquired between 29 March 2018 to 26 March 2021, the main home exclusion applies if, for most of the days in the bright-line period, the land is mainly used as a residence by the person. Generally, in situations where the person rents out a room in their home to a flatmate, the home will be mainly used as a residence by the person. However, there may be situations where the person's residence in their home is incidental to their main purpose of carrying on a rental activity.

## Explanation | Whakamāramatanga

### Introduction

1. The bright-line test taxes residential land sold within the bright-line period. Generally, the bright-line test does not apply when the land was used predominantly for a dwelling that was the person's main home. This is known as the main home exclusion.

2. This Question We've Been Asked (QWBA) explains how the main home exclusion to the bright-line test applies where the owner rents out a room in their home to a flatmate.
3. We have been asked to consider:
  - whether a home is a person's "main home" if the person shares their home with one or more flatmates; and
  - how to apply the main home exclusion where the person rents out space in their home to one or more flatmates.
4. This item assumes the:
  - renting activities do not constitute the carrying on of a business;
  - person disposing of the land is not the trustee of a trust;
  - land has an existing single dwelling constructed on it<sup>1</sup>; and
  - property is the person's only home.
5. For a discussion about how to apply the greatest connection test, see *If a person has two or more homes, which one is their main home for the purpose of the main home exclusion to the bright-line test?* (PUB004289, Question We've Been Asked, draft for external consultation, Wellington, Inland Revenue, 2023).
6. All legislative references are to the Income Tax Act 2007 unless otherwise stated.

## Bright-line test

7. The bright-line test taxes residential land sold within the bright-line period. The length of the bright-line period depends on when the land was acquired (as shown in Table | Tūtohi 1).

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<sup>1</sup> Different issues will need to be considered where there is more than one dwelling situated on the land

**Table | Tūtohi 1: Length of the bright-line period**

When the land was acquired	Bright-line period
Between 29 March 2018 to 26 March 2021	5 years
On or after 27 March 2021	10 years
	5 years (for new build land)

8. The bright-line test applies only where none of the other land taxing rules in ss CB 6 to CB 12 apply (for example, s CB 6, which applies to the sale of land acquired for the purpose or with the intention of resale).

## Main home exclusion – land acquired on or after 27 March 2021

9. The bright-line test for land acquired on or after 27 March 2021 (s CB 6A) does not apply if all the days in the relevant bright-line period are “exempted predominant main home days” (referred to in this QWBA as “main home days”) (s CB 16A).<sup>2</sup>
10. A “main home day” is a day within the bright-line period where the land has:
- been used predominantly for a dwelling that was the main home for the person; or
  - not been used as a main home, provided those days do not exceed 365 consecutive days (referred to as the buffer period) and both the start and the end of the buffer period adjoin, either a period during which the land was used as a main home, or the start or end of the bright-line period.
11. To determine whether a day is a main home day, a person needs to consider two elements – whether the:
- land was used predominantly for a dwelling; and
  - person used the dwelling as a “main home”.

<sup>2</sup> If not all the days are main home days, there is an apportionment mechanism whereby a home owner is not taxed to the extent it was their main home. While have assumed in this QWBA that the dwelling is an existing structure, the same principles would apply if the dwelling was a new build.

12. Further, a person should ensure the exceptions to the main home exclusion do not apply.

### Land was used predominantly for a dwelling

13. For the main home exclusion to apply, the first element is that the land must have been “used predominantly for a dwelling”.
14. A “dwelling” includes any place configured as a residence or abode.
15. In the phrase “used predominantly for a dwelling”, the word “predominantly” qualifies the extent to which the residential land must be used for a dwelling for the exclusion to apply. Predominantly in this context means more than 50%. Land will have been used predominantly for a dwelling where the physical area of the land used for a dwelling is more than 50% of the total land area.
16. The Commissioner has concluded that land that is “used ... for a dwelling” is not limited to the land on which the dwelling is situated or to the surrounding curtilage (such as a yard or garden). Land used for a dwelling can also include other areas the person uses frequently, repeatedly or customarily in connection with or for the benefit of the dwelling: “[QB 18/17](#): Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks”, *Tax Information Bulletin* Vol 31, No 1 (February 2019): 48, at 52.
17. Where there is only one dwelling on the land and the land is not used for any other purpose, it is likely the land is used predominantly for a dwelling. This is illustrated in Example | Tauria 1 (at [35]).

### Dwelling was used as a “main home”

18. The second element is whether the dwelling was the person’s main home. “Main home” is defined in s YA 1 as<sup>3</sup>:

**main home** means, for a person, the 1 dwelling—

- (a) that is used as a residence by the person (a **home**); and
- (b) with which the person has the greatest connection, if they have more than 1 home

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<sup>3</sup> For property acquired between 29 March 2018 to 26 March 2021, the relevant definition is “bright-line grandparented home” in s YA 1 (see [28]).

19. The definition provides that for a person the main home is the one dwelling they use as a residence. The focus of the main home definition is on the nature of the place and the relationship between the person and that place.
20. The Commissioner has concluded that “residence” means a place where a person has a fixed presence and a degree of permanence. It is a place the person uses as a base for their daily activities and the seat of their domestic life and interests. “Used” means actual physical use of the dwelling as a residence and not intended use. Therefore, a dwelling is used as a residence when it is customarily or repeatedly physically used for this purpose.<sup>4</sup>
21. The definition of main home does not contain any restrictions that preclude a dwelling being a person’s main home due to the presence of flatmates.
22. Generally, if a person lives in their home and rents out a room to a flatmate, the person still uses the dwelling as their residence.
23. Where considerable areas of the dwelling are for the exclusive use of flatmates, it might be argued that the owner does not reside in the entire dwelling. However, the definition does not require the owner to have full use and enjoyment of the dwelling nor does it include language of apportionment.

## Exceptions to the main home exclusion

24. Two exceptions that may prevent the main home exclusion applying are if the:
  - person has used the main home exclusion twice within the two years immediately preceding the bright-line date (s CB 16A(3)(a)); and
  - person or a group of persons has engaged in a regular pattern of acquiring and disposing of their main home (s CB 16A(3)(b) and (4))<sup>5</sup>.
25. A “group of persons” means two or more people when they occupy or have occupied the residential land together as their main home. It also includes a non-natural person (such as a trustee of a trust or another entity) if at least one of the people who

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<sup>4</sup> IS xx/xx: *Income tax – how absences affect the main home exclusion to the bright-line test* (PUB00429, Interpretation Statement, draft for external consultation, Wellington, Inland Revenue, 2023)

<sup>5</sup> “QB16/07 Income Tax – Land Sale Rules – Main Home and Residential Exclusions – Regular Pattern of Acquiring and Disposing, or Building and Disposing, [Tax Information Bulletin Vol 28 No 9 \(October 2016\): 4](#)”

occupies the main home has significant involvement in or control of the activities of the non-natural person (s CB 16A(5)).

## Main home exclusion – land acquired between 29 March 2018 to 26 March 2021

26. The bright-line test for land acquired between 29 March 2018 to 26 March 2021 (s CZ 39) does not apply if, for most of the bright-line period, the land has been used predominantly for a dwelling that was the person's "bright-line grandparented home" (referred to in this QWBA as the "grandparented home") (s CZ 40).
27. The main home exclusion in the grandparented provision operates as an "all or nothing" exclusion. If the main home exclusion does not apply to the person (and none of the other exclusions apply), the person is subject to tax on the disposal of their property. There is no apportionment for any period during the bright-line period where the property was the person's main home if the "most of the bright-line period" criterion is not satisfied. The phrase "most of the bright-line period" means for more than 50% of the bright-line period.
28. The "grandparented home" is defined in s YA 1:

**bright-line grandparented home** means, for a person, the 1 dwelling—

- (a) that is mainly used as a residence by the person (a **home**); and
- (b) with which the person has the greatest connection, if they have more than 1 home

29. The grandparented home is defined in a similar way to main home. However, the person is required to use the dwelling "mainly" as a residence for most of the bright-line period.
30. The dwelling will be "mainly" used as a residence where it is principally used by the owner as their residence and not for other more significant purposes. In most situations involving renting to flatmates this test will be satisfied. However, in situations where the owner has rented out a sizable area of the dwelling for the exclusive use of their flatmates, this may suggest that the owner's residence is incidental to their primary purpose of deriving rental income. This will be a question of fact and degree.
31. As for the 10 year rule, two exceptions that may prevent the main home exclusion applying are if the:

- person has used the main home exclusion twice within the two years immediately preceding the bright-line date (s CZ 40(3)(a)); and
  - person or a group of persons has engaged in a regular pattern of acquiring and disposing of their main home (s CZ 40(3)(b)).
32. In the context of a flatmate arrangement, the same principles apply as set out at [19] to [22]. The grandparented main home exclusion may apply to a person's grandparented home.
33. Example | Taurira 2 (at [35]) illustrates how the grandparented main home exclusion applies to a person sharing their home with flatmates.

## Examples | Taurira

34. The following two examples illustrate the application of the law.
35. In both examples:
- the person is assumed to have only one home; and
  - none of ss CB 6 and CB12 applies.

### Example | Taurira 1 – sharing home with a flatmate – land acquired on or after 27 March 2021

Rita acquires a two-bedroom property on 17 September 2021. She decides to live in the house and rent out the spare bedroom to a flatmate.

On 25 March 2023, Rita sells her house. She lived in the house with her flatmate for the entire time she owned the property.

As the property was purchased after 27 March 2021 and disposed of within 2 years, the 10-year bright line test applies.

The main home exclusion applies to Rita if all of the days during the bright-line period (17 September 2021 to 25 March 2023) are main home days.

A day is a main home day if the land was used predominantly for a dwelling that was Rita's main home.

The dwelling is Rita's main home as she used it as her residence. The fact Rita shared the dwelling with a flatmate did not prevent the dwelling being Rita's main home during the bright-line period.



The land has been used predominantly for a dwelling that was Rita's main home because, under the physical area test, more than 50% of the land is used for the dwelling – in this case 100% of the land is used for a dwelling.

Rita qualifies for the main home exclusion and any gain on the property is not taxable under the bright-line test, because all of the days during the bright-line period are main home days.

### **Example | Tauira 2 – sharing home with flatmates – land acquired between 29 March 2018 and 26 March 2021**

Seilala acquires a three-bedroom apartment on 16 February 2020. The apartment is in a unit title complex. Seilala owns the apartment and has shared ownership in the common areas (e.g., lifts, lobby and driveway).

Seilala lives in the apartment and rents out two bedrooms to flatmates. Seilala occupies the largest of the three bedrooms and his flatmates each occupy a standard double room. The apartment has a large open plan living and dining space that is used by all the occupants.

Seilala continues to live in the apartment with his flatmates until he sells it on 11 November 2023.

The apartment was acquired between 29 March 2018 and 26 March 2021 and disposed of within 4 years, so the 5-year bright line test applies.

As the apartment consists of a single dwelling Seilala's land has been used predominantly for a dwelling.

Seilala has use of most of the apartment and decided to share with flatmates to reduce some of the costs of home ownership. As the apartment has been mainly used as Seilala's residence, the property is Seilala's grandparented home.

As the land was used by Seilala as his grandparented home for most of the days in the bright-line period (in fact, all of the days in the bright-line period), Seilala qualifies for the main home exclusion. The gain on the property is not taxable under the bright-line test.

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*In draft form these items may not be relied on by taxation officers, taxpayers, and practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, CZ 39, CZ 40, YA 1 (“bright-line grandparented home”, “exempted predominant main home days” “main home”)

### Other references | Tohutoro anō

*If a person uses two or more homes as a residence, which home is their main home for the purpose of the main home exclusion to the bright-line test?* (PUB004289, Question We’ve Been Asked, draft for external consultation, Wellington, Inland Revenue, 2022)

*IS xx/xx: Income tax – how absences affect the main home exclusion to the bright-line test* (PUB00429, Interpretation Statement, draft for external consultation, Wellington, Inland Revenue, 2022)

“QB 18/17: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks”, *Tax Information Bulletin* Vol 31, No 1 (February 2019): 48.

[www.taxtechnical.ird.govt.nz/tib/volume-31---2019/tib-vol31-no1](http://www.taxtechnical.ird.govt.nz/tib/volume-31---2019/tib-vol31-no1)

“[QB 16/07: Income tax – land sale rules – main home and residential exclusions – regular pattern of acquiring and disposing, or building and disposing](#)” *Tax Information Bulletin* Vol 28 No 9 (October 2016): 4

[www.taxtechnical.ird.govt.nz/tib/volume-28---2016/tib-vol28-no9](http://www.taxtechnical.ird.govt.nz/tib/volume-28---2016/tib-vol28-no9)

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