

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

Deadline for comment | Aukatinga mō te tākupu: **11 April 2025**

Please quote reference | Whakahuatia te tohutoro: **PUB00488b**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

On what date is a person treated as acquiring land for the purposes of the land sale rules?

Issued | Tukuna: Issue date style

QB xx/xx

This question we've been asked explains when a person acquires land for the purposes of the land sale rules. The date that someone acquires land relevant to many of the land sale provisions.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 6A and CB 15B

REPLACES (FOR DISPOSALS ON OR AFTER 1 JULY 2024):

- **QB 17/02:** Income tax – Date of acquisition of land, and start date for 2-year bright-line test

All legislative references are to the Income Tax Act 2007 (the Act) unless otherwise stated.

Question | Pātai

On what date is a person treated as acquiring land for the purposes of the land sale rules?

Answer | Whakautu

Some of the land provisions require identifying of the date that someone acquired land.

The date a person is treated as acquiring land for the purposes of the land sale rules depends on the type of land, the parties to the transaction, and what was done with the land.

Section 15B sets out the main rules about when a person is treated as acquiring land for income tax purposes. The general rule in s CB 15B is that someone acquires land on the date that they first have an estate or interest in the land or first have an option to acquire the land. There are different dates land is treated as acquired in other situations.

Table | Tūtohi 1 shows the date on which land is acquired in different situations, for the purposes of the land sale rules.

Note that the date from which the 2-year bright-line test starts is usually different from the date of acquisition of land for the purposes of the other land sale provisions in the Act. For more information, see QB [xx/xx](#): When is the bright-line start date for the 2-year bright-line test?

Table | Tūtohi 1 – When land is acquired for the purposes of the land sale rules

Circumstances	The date on which the land is acquired for the purposes of the land sale rules
Standard purchase of land	The date a binding contract to purchase the land is formed (even if some conditions still need to be met – see further from [12]).
Land other than freehold (eg, a leasehold estate, an equitable interest in land, or an option to acquire land)	The date on which the person first had an interest in the land (subject to the rest of the rules in this table).
Land acquired from the exercise of an option	The date the person exercised the option.
Agreement to acquire land on behalf of a company not yet formed	The date the agreement was entered into.
Land that a person subdivides	The date the person acquired the original undivided piece of land.
Land acquired from an associated person	For ss CB 7 to CB 12 and CB 14 only, the date the associated person acquired the land. The other rules in this table apply to land acquired from an associated person for the purpose of other land sale provisions.
<p>Separate rules about when land is treated as acquired (see [50] and [51]) might apply if a person acquired the land by way of a:</p> <ul style="list-style-type: none"> ▪ settlement of relationship property; ▪ distribution on someone’s death; ▪ distribution from a trust; ▪ transfer of value from a company; ▪ gift; or ▪ resident’s restricted amalgamation. 	

Explanation | Whakamāramatanga

Why we have been asked to clarify the date of acquisition of land

1. Section CB 15B was enacted to clarify when a person acquires land for tax purposes. Section CB 15B applies for all the land provisions in subpart CB, except the 2-year bright-line test. The Commissioner has been asked to confirm when a person will acquire an estate or interest in land for the purposes of s CB 15B, and to provide examples of the date of acquisition of land in different scenarios.

Date of disposal of land

2. In most cases, the date that land is acquired for the purposes of the land sale rules will not be the date it is disposed of by the vendor or transferor. This question we've been asked (QWBA) does not consider the date of disposal of land.

Definition of "land"

3. "Land" is defined in s YA 1 as including any estate or interest in land, and as including an option to acquire land or an estate or interest in land:

YA 1 Definitions

In this Act, unless the context requires otherwise,—

...

land—

- (a) includes any estate or interest in land:
- (b) includes an option to acquire land or an estate or interest in land:
- (c) does not include a mortgage:

...

4. Section YA 1 defines "estate", "interest", "estate or interest in land" and similar terms as meaning:

YA 1 Definitions

In this Act, unless the context requires otherwise,—

...

estate in relation to land, **interest** in relation to land, **estate or interest in land**, **estate in land**, **interest in land**, and similar terms —

- (a) mean an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder; and
- (b) include a right, whether direct or through a trustee or otherwise, to—
 - (i) the possession of the land (for example: a licence to occupy, as that term is defined in section 122 of the Land Transfer Act 2017);
 - (ii) the receipt of the rents or profits from the land;
 - (iii) the proceeds of the disposal of the land; and
- (c) do not include a mortgage

5. Any estate or interest in land (whether legal or equitable, and whether vested or contingent) is “land”. An option to acquire land or an estate or interest in land is also “land”.
6. The land sale rules in the Act can apply to the disposal of any estate or interest that is “land” as defined in s YA 1.

When land is acquired for purposes of the land sale rules

7. A person will often acquire different estates or interests (each being “land”) in the same piece of underlying physical land at different times. For example, during the typical course of acquiring a freehold estate in fee simple, a person will usually acquire an equitable interest in the estate before acquiring the legal interest in the estate.
8. A person may acquire different interests that are each “land” in their own right may at different times. However, the relevant date of acquisition is that for **the land that is disposed of**, as this is the land that is potentially subject to tax under one of the land provisions in subpart CB. For example, if someone is disposing of a freehold estate in fee simple and the date of acquisition is relevant to a particular taxing provision, the question is – when did they acquire *that land* (ie, the freehold estate)? Any other interest they have had in the land (for example, a leasehold interest) is not relevant.

The general rule

9. Section CB 15B sets out the general rule about when land is acquired for the purposes of the land sale rules:

CB 15B When land acquired

General rule

- (1) For the purposes of this subpart, a person acquires an estate, interest, or option that is land (the **land**) on the date that begins a period in which the person has an estate or interest in, or an option to acquire, the land, alone or jointly or in common with another person.

10. Under this general rule, a person acquires land on the date that they first have an estate or interest in the land, or first have an option to acquire the land. When land is acquired, different interests will typically arise at different times, and then ultimately merge when the full title is conferred. The fact that s CB 15B refers to the date that “begins a period” in which the person has an estate or interest in the land, or an option to acquire it, indicates that it is the **first** estate or interest in the land in question that is relevant.
11. As the High Court noted in *AAA Developments (Ormiston) Ltd v CIR* (2015) 27 NZTC 22,026 (HC), under s CB 15B a person is treated as acquiring land at the stage in the process of acquisition when they have a right or an interest in the land and are entitled to apply to a court for protection of that right.

When does someone first have an estate or interest in land under a sale and purchase agreement?

12. The Act does not specify when someone is considered to first have an estate or interest in land. However, in *Bevin v Smith* [1994] 3 NZLR 648 (CA) the court held that a purchaser has an equitable interest in land from the time a binding contract exists, even if it is conditional. This is when equitable remedies are available to protect the purchaser’s rights under the contract, though specific performance in the strict sense (ie, for the transfer of title) would not yet be available.
13. The most common conditions in contracts for the sale and purchase of land (eg, the need to obtain finance, a building report or a LIM) would not prevent there being a binding contract. But sometimes conditions that will mean that there is not yet a binding contract, so the land is not considered to be acquired yet. For example, there may not be a binding contract if a condition requires the approval of a company’s directors or requires due diligence to be carried out. It is necessary to consider the


terms of the particular contract and the nature of the conditions to determine whether there is a binding contract.¹

14. As noted at [10], under s CB 15B, the date a person acquires land is the date they first have an estate or interest in the land, or an option to acquire the land. In a typical land purchase, this is the date at which a binding contract to purchase the land is formed (even if some conditions still need to be met).
15. This is supported by the extrinsic materials from the time of the introduction of s CB 15B. Those materials make it clear that a person is treated as acquiring land at the time a binding agreement for the acquisition is formed, even if there are conditions that still need to be fulfilled. See, for example, *Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Commentary on the Bill* (Inland Revenue, November 2013).
16. What is relevant is the time that the person acquires the first interest in **the land in question** – that is, the land they are disposing of. Other interests in the same underlying physical land will not be relevant. For example, if the sale of a freehold estate may give rise to taxation and the date of acquisition is relevant, the fact that the person previously had a leasehold interest in the land will not be relevant. The date on which their first interest in the freehold estate arose will be the date they acquired that land.
17. The following two examples illustrate when land is acquired under the general rule in s CB 15B(1). They also note when the 2-year period for the bright-line test starts. See QB [xx/xx](#) for more detailed guidance on the bright-line start date.

¹ See *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 (CA), *Willets v Ryan* [1968] NZLR 863 (CA), and *Barrett v IBC International Ltd* [1995] 3 NZLR 170 (CA).


Example | Tauria 1 – Binding sale and purchase agreement

Date the land is acquired for the purposes of the land sale rules



Binding S&P agreement entered into

S&P agreement unconditional



Settlement / transfer of title registered

The 2-year period for the bright-line test starts

Sally entered into a sale and purchase agreement (S&P) to purchase some land (the freehold estate). The agreement was subject to Sally obtaining satisfactory LIM and building reports within a specified timeframe. She met those conditions, and the sale was settled in due course. When Sally sold the property sometime later, one of the land sale rules in subpart CB potentially applied, which meant that the date that she acquired the land was relevant.

For the purposes of the land sale rules, Sally acquired the land when she and the vendor entered into the binding sale and purchase agreement, even though that agreement was subject to conditions, because that was when Sally first had an equitable interest in the land.

If Sally sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date from which the 2-year period runs) is the date the transfer of title was registered to Sally. If Sally sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB xx/xx for more information.

Example | Taura 2 – Lease before acquisition of freehold

Date the land is acquired for the purposes of the land sale rules

The 2-year period for the bright-line test starts

Lease entered into

Binding S&P agreement entered into

S&P agreement unconditional

Settlement / transfer of title registered

ASAP

TITLE

Tony and Cleo were renting a house that the owner then decided to sell. Before putting the property on the market, the owner asked Tony and Cleo if they were interested in purchasing the property. They were, so entered into a sale and purchase agreement (S&P) for the property. The agreement was subject to finance. The couple met that condition, and the sale was settled in due course.

When Tony and Cleo sold the property sometime later, one of the land sale rules in subpart CB potentially applied, which meant that the date that they acquired the land (the freehold estate) was relevant.

For the purposes of the land sale rules, Tony and Cleo acquired the land (the freehold estate) when they and the vendor entered into the binding sale and purchase agreement, even though it was subject to finance, because that was when Tony and Cleo first had an equitable interest in the land. It is not relevant that they previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when they acquired the freehold estate.

If Tony and Cleo sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date from which the 2-year period runs) is the date the transfer of title was registered to Tony and Cleo. If Tony and Cleo sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB [xx/xx](#) for more information.

Date of acquisition for nominations, assignments of contractual rights, and novations of contracts

18. There are some common situations concerning contracts for land transactions that may affect the date of acquisition for the purposes of the land sale rules. The following outlines these situations and the relevant date of acquisition for each.

Nominations

19. There are two types of common nomination situation that may affect the date of acquisition.
20. The first is where the named purchaser is acting on someone else's behalf, and that person is subsequently nominated as the purchaser.
21. In this situation, s YB 21 applies. Under that provision, because the named purchaser was acting on the other person's behalf, the other person is treated as having done what the named purchaser did (ie, enter into the contract), and holding the resulting rights. The person acting on the other's behalf is ignored. Because of this, the person who the nominee is acting for will be treated as having acquired the land at the time the nominee first had an estate or interest in the land. In a standard purchase of land situation this will be when there is a binding contract between the vendor and the nominee to purchase the land.
22. The second common nomination situation is where someone enters into a binding sale and purchase agreement to purchase land and that person "and/or nominee" are named as the purchaser. Before settlement, the person may then choose to nominate someone else (a nominee) to complete the purchase. A common situation where this occurs is where, after entering into the sale and purchase agreement, the purchasers decide to hold the property in a trust or other entity.
23. In this second type of nomination situation, the nominee can enforce the contract through ss 12 and 17 of the Contract and Commercial Law Act 2017,² but the original contracting party (the nominator) remains a party to the contract and may also enforce its terms.
24. In this situation, the nominee acquires the land under s CB 15B (relevant for the land provisions in subpart CB except the 2-year bright-line test) on the date they are nominated as the purchaser. This is when the nominee first has an equitable interest in the land. This is because the nominee can enforce the contract through ss 12 and 17

² See for example, *Rattrays Wholesale Ltd v Meredyth-Young & A'Court* [1997] 2 NZLR 363 (HC) and *Laidlaw v Parsonage* [2010] 1 NZLR 286 (CA), concerning the predecessors to those sections.

of the Contract and Commercial Law Act 2017. While the original named purchaser remains a party to the contract, and may also enforce its terms (in addition to remaining liable for the performance of the burden of their promises under the contract), the nomination gives the nominee an equitable interest in the land too.³

25. Usually, in this type of nominee situation, the nominator and nominee are associated. Where land is transferred between associated persons, s CB 15(2) alters the date of acquisition for the transferee for the purposes of most of the land sale rules (ss CB 7 to CB 12, and s CB 14). Section CB 15(2) treats the transferee as having acquired the land on the date on which the transferor acquired it. However, s CB 15(2) will **not apply** to alter the date of acquisition for a nominee who is associated with the original named purchaser who nominated them. This is because the original named purchaser does not *transfer* their interest in the land to the nominee when they make the nomination. As noted at [23], they continue to have their rights under the contract and, therefore, their interest in the land. The nomination simply creates additional rights (for the nominee).
26. The nominee's date of acquisition is, therefore, established under the general rule in s CB 15B(1). As noted at [24], this will be the date they are nominated as the purchaser.

Assignment of contractual rights

27. Another scenario that can occur is that the named purchaser assigns their rights under the sale and purchase agreement to someone else. If there is an assignment of contractual rights, the assignor **transfers** their rights to the assignee, who is then entitled to the benefit of the contract and can enforce those rights against the other party to the contract.
28. An assignment of contractual rights occurs under a sale and purchase agreement to purchase land if there is a deed or other signed document that shows the intention is that the original named purchaser is transferring all of their rights under the sale and purchase agreement to the other person – whether absolutely, conditionally, or by way of charge.
29. A common example of an assignment of contractual rights is where someone purchases land off the plans and then on-sells it before settlement. Note that the document does not need to claim to be an assignment to be one. A document that is described as a nomination may, in fact, amount to an assignment of the contractual rights. That said, someone simply nominating a different person or entity as the

³ *Rivette v Atrax Group New Zealand Ltd* (2010) 11 NZCPR 723 (HC).

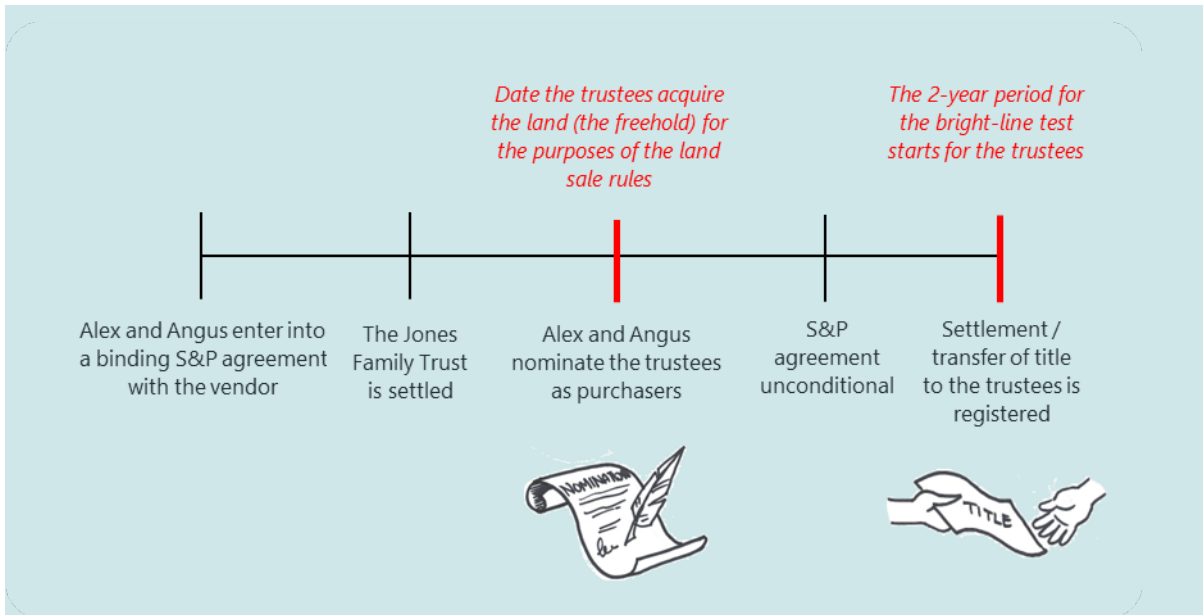
purchaser would not inadvertently create an assignment of the contractual rights, given the nature of the wording that would be needed for there to be an assignment.

30. In this situation, the assignee acquires the land under s CB 15B on the date of the assignment. This is when the assignee first has an equitable interest in the land.
31. If the assignor and assignee are associated, the assignee's date of acquisition for the purposes of most of the land provisions (ss CB 7 to CB 12, and s CB 14) will be the date that the assignor first had their equitable interest in the land (ie, typically, the date they entered into the contract to purchase the land, even if some conditions still needed to be met).
32. This is because, as above, s CB 15(2) treats someone who acquires land from an associated person as having acquired it on the date the associated person did. That means the assignee is treated as having acquired the equitable interest in the land that the assignor had at the date the assignor acquired it. If the assignee's subsequent disposal of the estate in fee simple is potentially subject to tax and the date they acquired the land is relevant, the question in terms of s CB 15B is when they first acquired an estate or interest in that land. Because they were associated with the assignor, so are treated as having acquired the equitable interest at the time the assignor did, they first had an interest in the estate in fee simple from that time.

Novation of the contract

33. It is also possible for there to be a novation, in which case the original contract is discharged, and a new contract with a different purchaser entered into. This requires the vendor to consent to both the cancellation of the original contract and the creation of the new contract. Consent may be inferred from the behaviour of the vendor, but a normal nomination situation is unlikely to be regarded as a novation. See, for example, *Karangahape Road International Village Ltd v Holloway* [1989] 1 NZLR 83 (HC) and *Stonne Ltd v Ronyx Holdings Ltd* (2005) 7 NZCPR 18 (HC).
34. If what has occurred is a novation of the contract (see [33]), there will be no implications under the land sale rules for the original purchaser. This is because their interest in the land is not disposed of – it simply ceases to exist when the original contract is discharged. The purchaser under the new contract will acquire the land under the rules discussed in this QWBA.
35. The following two examples illustrate when land is acquired under s CB 15B where there is a nomination (Example | Taura 3), and when there is an assignment of contractual rights (Example | Taura 4). They also note when the 2-year period for the bright-line test starts. See QB [xx/xx](#) for more detailed guidance on the bright-line start date.

Example | Taura 3 – Acquisition of land where there is a nominee



Alex and Angus entered into a sale and purchase (S&P) agreement to buy a property they thought would be a great investment. They planned to hold the property in a trust, but had not yet settled a trust when they found the property they wanted to buy. The sale and purchase agreement named “Alex and Angus and/or nominee” as the purchaser. Alex and Angus later settled a trust (the Jones Family Trust), and advised the vendor that they nominated the trustees of the Jones Family Trust to be the purchasers and take title at settlement. After they obtained a satisfactory building report and LIM, the sale and purchase agreement subsequently went unconditional.

The sale was concluded, and the title was registered in the names of the trustees of the trust. When the Jones Family Trust sold the property some years later, one of the land sale rules in subpart CB potentially applied and the date that the trustees of the trust acquired the land was relevant.

For the purposes of the land sale rules, the trustees of the Jones Family Trust acquired the land on the date Alex and Angus nominated the trustees as the purchasers. This was when they first had an equitable interest in the land.

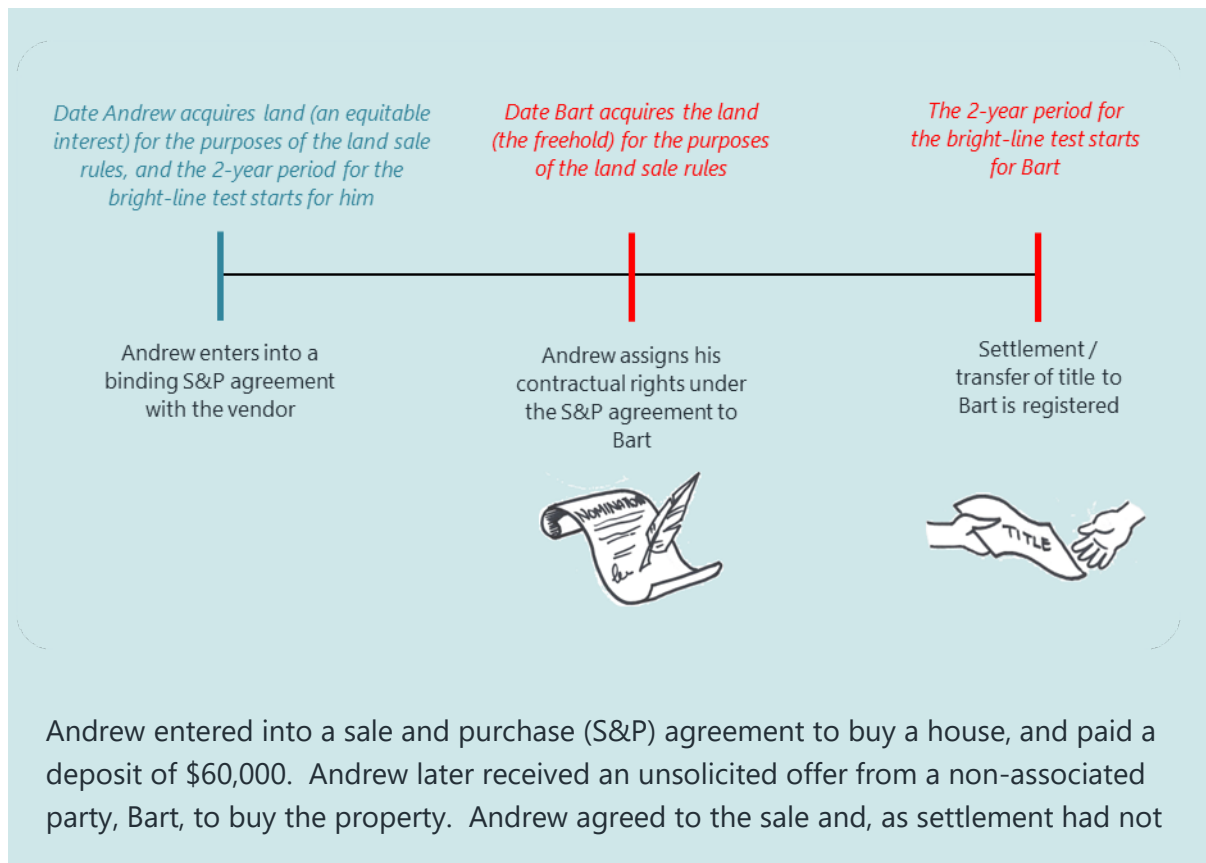
Alex and Angus are each associated with the trustees of the trust, because they are settlors of the trust (see s YB 8). But s CB 15(2) does **not** apply in this case to treat the trustees of the Jones Family Trust as having acquired the land when Alex and Angus did. This is because the nomination did not give rise to a transfer of land from Alex and Angus to the trustees. Alex and Angus continued to hold their rights under the

contract, and therefore their interest in the land. The nomination simply created additional rights (for the trustees).

If the trustees of the Jones Family Trust sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date the 2-year period runs from) is the date the transfer of title was registered to the trustees. If the trustees sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB xx/xx for more information.

The nomination of the trustees as purchaser will not give rise to any tax implications under the land sale rules for Alex and Angus. This is because, as noted above, Alex and Angus did not transfer their interest in the land to the trustees when they made the nomination – there was no disposal. On settlement, when the legal title transferred to the trustees, Alex and Angus’s interest in the land simply ceased to exist; it was not disposed of.

Example | Taura 4 – Acquisition of land where there is an assignment of contractual rights to purchase the land



yet occurred, Andrew and Bart decided that Andrew would assign his rights under the sale and purchase agreement to Bart in exchange for a fee of \$110,000. This was recorded in a deed, which was signed 2 months after Andrew entered into the sale and purchase agreement with the vendor. The deed was entitled “Deed of Nomination”, but it was clear from the words of the deed that the intention was that Andrew was transferring his rights under the sale and purchase agreement to Bart.

Therefore, the transaction was an assignment of the contractual rights, not a nomination. The label the parties put on the document does not determine its legal effect. The sale was concluded with Bart as the purchaser. When Bart sold the property some years later, one of the land sale rules in subpart CB potentially applied and the date that he had acquired the land was relevant.

For the purposes of the land sale rules, Bart acquired the land on the date the deed that assigned the contractual rights to him was executed. This was when Bart first had an equitable interest in the land.

If Bart sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date the 2-year period runs from) is the date the transfer of title was registered to him. If Bart sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB [xx/xx](#) for more information.

When Andrew entered into the sale and purchase agreement to buy the house, he acquired an equitable interest in the land (which is “land” as defined in s YA 1). The bright-line test could apply to Andrew’s disposal of his rights under the sale and purchase agreement to Bart, if none of ss CB 6 to CB 12 apply. When Andrew assigned the rights under the contract to Bart, he transferred his equitable interest to Bart. Because Andrew entered into an agreement to dispose of land before the registration of title, the bright-line period started on the date he acquired the equitable interest – that is, the date the sale and purchase agreement was entered into.

Because the land is residential land, and the assignment of the contractual rights to Bart was within 2 years of the start of the bright-line period for Andrew, the amount Andrew derived on the disposal (\$110,000) is income under the bright-line test in s CB 6A (if none of ss CB 6 to CB 12 apply). The main home exclusion from the bright-line test (in s CB 16A) cannot apply because Andrew never lived in the house. Andrew would be able to deduct the cost of his acquisition of the equitable interest (ie, the amount of the deposit he paid, \$60,000).

What if someone acquires land by way of an option?

36. A different date of acquisition rule (in s CB 15B(3)) applies if someone acquires land through the exercise of an option to acquire it.
37. An option to acquire land might be a right contained within a lease, or it might be granted separately. An option is essentially an offer to sell, together with a contract not to revoke the offer.⁴
38. Someone may also be granted what is known as a pre-emptive right or “first right option” to acquire land – for example, a right of first refusal or a right of first offer. Although these pre-emptive rights are not, strictly speaking, options, if someone acquires the land through the exercise of such a right, it will have become an option by that point. This means the date of acquisition rule for acquiring land through the exercise of an option will also apply if someone acquires the land through the exercise of a pre-emptive right.
39. Under the rule, if a person acquires land through the exercise of an option, they are regarded as acquiring the land **on the date that they exercised the option**. As noted above, what is relevant is when they acquired the land in question (ie, the land they are disposing of). It is not relevant if they previously had a different interest in the same underlying physical land. For example, if a person had a leasehold interest in the land and an option to acquire the freehold, and they exercise the option, acquire the freehold and subsequently dispose of it, what is relevant is when they acquired the freehold. In that situation it would be the date that they exercised the option. Their prior leasehold interest is not relevant.
40. Another thing to note is that an option to acquire land (or an estate or interest in land) is also itself “land” as defined in the Act. Therefore, if someone disposes of an option to acquire land, the date the option was acquired may be relevant. On this point, see from [44].
41. The following four examples illustrate when land is acquired under s CB 15B where an option or “first right option” is involved. The first three examples involve an option to purchase land (Example | Taura 5), lease with option to purchase land (Ex | Taura 6) or lease with later option to purchase land (Example | Taura 7). Example | Taura 8 involves a “first right option”.
42. These examples also note when the 2-year period for the bright-line test starts. See QB [xx/xx](#) for more detailed guidance on the bright-line start date.

⁴ See, for example, *Alexander v Tse* [1988] 1 NZLR 318 (CA), and DW McMorland, *Sale of Land* (4th ed, Cathcart Trust, Auckland, 2022) at 3.16).

Example | Tauria 5 – Option to purchase land

Date the land is acquired for the purposes of the land sale rules

The 2-year period for the bright-line test starts

Option acquired

Option exercised / binding S&P agreement entered into

S&P agreement unconditional

Settlement / transfer of title registered

OPTION
 NO
 YES

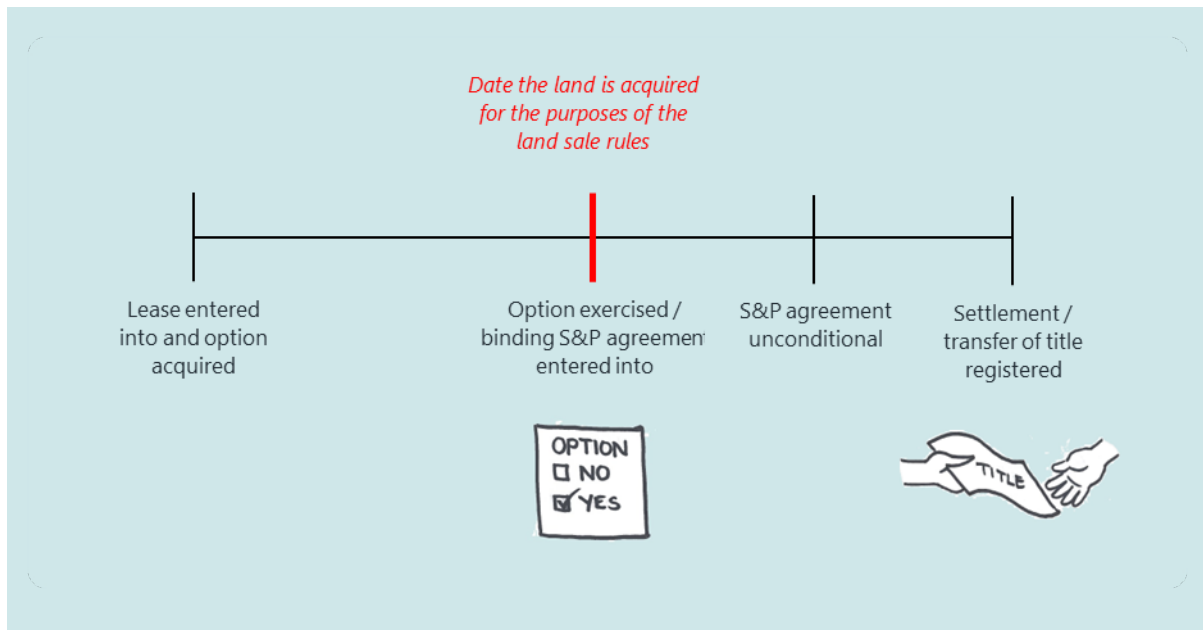
TITLE

Sanjay purchased an option to buy some land for a specified sum. He exercised the option. Doing so created a binding contract for the sale and purchase (S&P) of the land on the terms set out in the option contract. The sale was settled in due course. When Sanjay went to sell the land several years later, one of the land provisions in subpart CB potentially applied, meaning the date that Sanjay acquired the land (the freehold estate) was relevant.

Because Sanjay acquired the freehold estate through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the rule in s CB 15B(3), for the purposes of the land sale rules, Sanjay acquired the land (the freehold) when he exercised the option.

If Sanjay sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date from which the 2-year period runs) is the date the transfer of title was registered to him. If Sanjay sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB xx/xx for more information.

Example | Taurira 6 – Lease with option to purchase land



Baymax Robotics Limited entered into a lease of business premises and at the same time acquired an option, exercisable within the next 2 years, to buy the premises for a specified sum. Baymax Robotics exercised the option, intending to subsequently sell the land, as it was considered a profit could be made. In exercising the option, a binding contract for the sale and purchase (S&P) of the land was created on the terms set out in the option contract. The sale was settled in due course. When Baymax Robotics went to sell the premises, one of the land provisions in subpart CB potentially applied and the date that Baymax Robotics had acquired the land (the freehold estate) was relevant.

Because Baymax Robotics acquired the freehold estate through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the rule in s CB 15B(3), for the purposes of the land sale rules, Baymax Robotics acquired the land (the freehold) when it exercised the option.

If none of ss CB 6 to CB 12 applied, it may be necessary to consider whether the bright-line test could potentially apply. This would involve considering whether the land is “residential land” as defined in s YA 1. It is assumed for this example the land is not “residential land” as it is used predominantly as business premises. See QB yy/yy: **When does the business premises exclusion to the bright-line test apply?** for information about the business premises exemption to the bright-line test.

Example | Taurira 7 – Lease and subsequent option to purchase land

*Date the land is acquired
for the purposes of the
land sale rules*

Lease entered into Option acquired Option exercised / binding S&P agreement entered into S&P agreement unconditional Settlement / transfer of title registered

OPTION
 NO
 YES

TITLE

Scissorhands Sculpting Limited was leasing some land from which it operated its business. As the business became increasingly successful, Scissorhands Sculpting wanted to lock in the ability to purchase the land if things continued to go well. Scissorhands Sculpting entered into negotiations with the owner and, as a result, acquired an option, exercisable within a set period, to buy the land for an agreed sum. Scissorhands Sculpting exercised the option. In exercising the option, a binding contract for the sale and purchase of the land was created on the terms set out in the option contract. The sale was settled in due course.

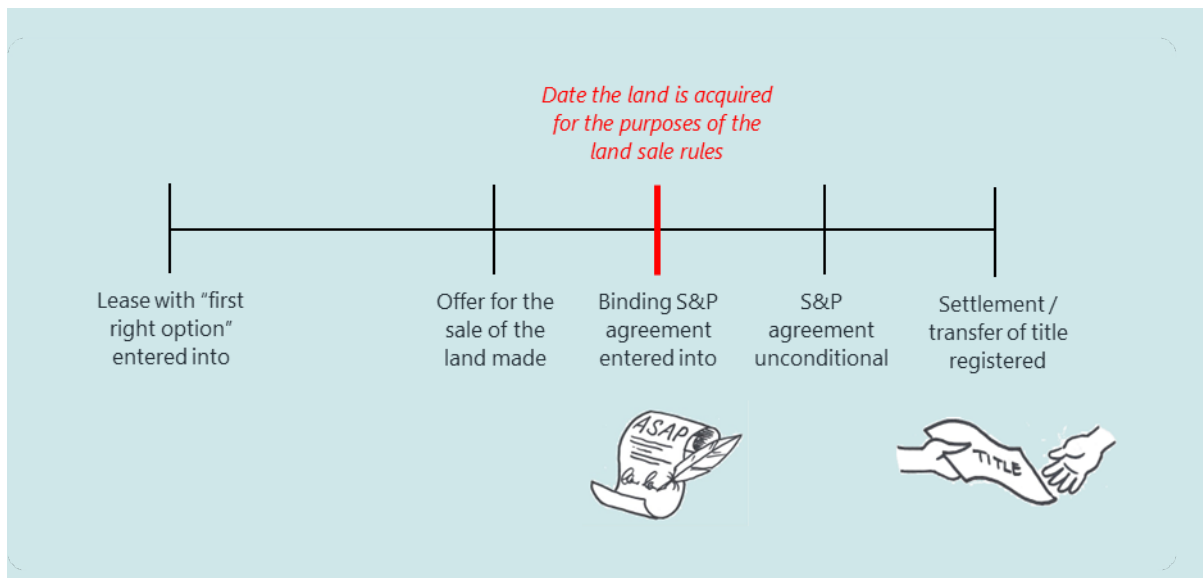
To maximise the profit, Scissorhands Sculpting did some development work on the land prior to selling it. One of the land provisions in subpart CB potentially applied to the sale and the date that Scissorhands Sculpting had acquired the land (the freehold estate) was relevant.

Because Scissorhands Sculpting acquired the freehold through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the rule in s CB 15B(3), for the purposes of the land sale rules, Scissorhands Sculpting acquired the land (the freehold) when it exercised the option. It is not relevant that the company previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

If none of ss CB 6 to CB 12 applied, it may be necessary to consider whether the bright-line test could potentially apply. This would involve considering whether the land is “residential land” as defined in s YA 1. It is assumed for this example the land is

not “residential land” as it is used predominantly as business premises. See QB yy/yy for information about the business premises exemption to the bright-line test.

Example | Tauria 8 – Lease with “first right option” to purchase land



Jimmy Chews Limited leased its restaurant premises and had a “first right option” (a right of first refusal) to purchase the land if the owner decided to sell it. Later, the owner decided to sell the land during the term of the lease. The owner made an offer to Jimmy Chews, which Jimmy Chews accepted, and the parties entered into a sale and purchase (S&P) agreement.

The sale and purchase agreement was subject to finance and to the obtaining of satisfactory building report and LIM. Those conditions were fulfilled, and the sale was settled in due course. Jimmy Chews moved to larger business premises and leased the land to another hospitality business. When Jimmy Chews went to sell the land, one of the land provisions in subpart CB potentially applied and the date that Jimmy Chews acquired the land (the freehold estate) was relevant.

When the previous owner made an offer to Jimmy Chews, the “first right option” became an option to acquire the freehold. Because Jimmy Chews acquired the freehold through the exercise of that option, the exception to the general rule (contained in s CB 15B(3)) applies.

Under the rule in s CB 15B(3), for the purposes of the land sale rules, Jimmy Chews acquired the land (the freehold) when it exercised the option by accepting the offer and entering into the binding contract for the sale and purchase of the land. It is not relevant that Jimmy Chews previously held another interest in the underlying physical

land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

If none of ss CB 6 to CB 12 applied, it may be necessary to consider whether the bright-line test could potentially apply. This would involve considering whether the land is “residential land” as defined. It is assumed for this example the land is not “residential land”. See QB yy/yy for information about the business premises exemption to the bright-line test.

Subdivided land

43. If someone subdivides land, a new title might be issued. This does not reset the person’s date of acquisition of the land. Their date of acquisition for the new land will be whatever date they acquired the original undivided piece of land.⁵

Acquisition of an option

44. As noted at [5], an option to acquire land or an estate or interest in land also falls within the definition of “land” in the Act.
45. Because options to acquire land or estates or interests in land are “land”, if someone disposes of an option to another party rather than exercising it, the amount they derive on disposing of the option may be income under one of the land sale rules in subpart CB. Depending on which taxing provision is potentially relevant, the time at which the person acquired the option may be relevant.
46. Under s CB 15B, an option will be acquired when a binding agreement creating the option, or for the transfer of the option, is entered into. This is the time from which the holder or purchaser of the option has an interest in the option.
47. Example | Taura 9 illustrates when a company acquires an option to acquire land under s CB 15B, and what bright-line start date applies for an option. See QB xx/xx for more detailed guidance on the bright-line start date.

Example | Taura 9 – Acquiring an option to purchase land

ABC Dealing Limited, which carries on a business of dealing in land, entered into an option contract under which it had the right to purchase some residential land within a

⁵ For example, see *Paul Stephens Construction Ltd v CIR* (1990) 12 NZTC 7,192 (HC).

specified period, for a specified price. ABC Dealing Limited decided to sell the option, and did so.

For the purposes of the land sale rules, ABC Dealing Limited acquired the land (the option) when the option contract was entered into. This is the time from which ABC Dealing Limited has an interest in the option.

Because there was no registered transfer of land to ABC Dealing Limited before the date it entered into a contract to sell the option, the bright-line start date is also the date the option contract was entered into. See QB xx/xx for more information.

Acquisition of land on behalf of a company to be formed

48. Section CB 15B(2) provides that if a person on behalf of a company to be formed enters into an agreement under which the company will have land, the company is treated, for the purposes of subpart CB in relation to the land, as existing from the date the person enters into the agreement.
49. Because the company is deemed to exist at the time the relevant agreement is entered into and the person entered into the agreement on behalf of the company, the date that the person entered into the agreement (that gave rise to an interest in land) will be the date the company is treated as having acquired the land.

When there may be a different date of acquisition rule

50. Note that, for particular transactions, relevant provisions in subpart FB or FC may override the date of acquisition rules in s CB 15B. Those subparts deal with transactions such as transfers on settlements of relationship property, distributions on death, distributions from a trust, transfers of value from a company, and gifts of property.
51. In addition, for the purposes of certain provisions, a person may be treated as acquiring land at a different date than the date under s CB 15, if they acquire land on an amalgamation (s FO 17) or, as noted at [25], from an associated person (s CB 15(2)).

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

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

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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References | Tohutoro

Legislative references | Tohutoro whakatureture

Contract and Commercial Law Act 2017, ss 12 and 17

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 14, CB 15, CB 15B, CB 16A, FO 17, YA 1 ("estate" (in relation to land), "estate in land" "estate or interest in land", "interest" (in relation to land), "interest in land", "land", "residential land"), YB 8, YB 21, subparts FB and FC.

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Alexander v Tse [1988] 1 NZLR 318 (CA)

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Laidlaw v Parsonage [2010] 1 NZLR 286 (CA)

Paul Stephens Construction Ltd v CIR (1990) 12 NZTC 7,192 (HC)

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Rivette v Atrax Group New Zealand Ltd (2010) 11 NZCPR 723 (HC)

Stonne Ltd v Ronyx Holdings Ltd (2005) 7 NZCPR 18 (HC)

Willetts v Ryan [1968] NZLR 863 (CA)

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McMorland, DW, Sale of Land (4th ed, Cathcart Trust, Auckland, 2022)

Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Commentary on the Bill (Inland Revenue, Wellington, November 2013)

QB xx/xx: When is the bright-line start date for the 2-year bright-line test? TIB [ref]

[TIB link]

[Tax technical site link]

QB yy/yy: When does the business premises exclusion to the bright-line test apply? TIB [ref]

[TIB link]

[Tax technical site link]

About this document | Mō tēnei tuhinga

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