

**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: **PUB00488c**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

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

Issued | Tukuna: Issue date style

QB XX/XX

This question we've been asked (QWBA) provides guidance on the bright-line start date, so you can work out whether residential land is potentially subject to the 2-year bright-line test.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 6A and FD 1

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 indicated

Question | Pātai

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

Answer | Whakautu

If you dispose of residential land within 2 years of acquiring it, the disposal may be subject to tax under the 2-year bright-line test in s CB 6A. The date the 2-year period starts is referred to as the “bright-line start date”.

In a standard land purchase, the bright-line start date is the date the title is transferred to you. But different start dates apply in other circumstances. Table | Tūtohi 1 shows the relevant bright-line start dates in different situations.

Note that the bright-line start date is usually different from the date of acquisition of land for the purpose of the other land sale rules in the Act.

Table | Tūtohi 1 – Bright-line start date

Circumstances	Bright-line start date
Standard purchase of land.	The date the land transfer to you is registered under the Land Transfer Act 2017.
Land held in a trust and there is a change of trustees.	The bright-line start date that the previous trustee had.
Land that results from you subdividing your land.	Your bright-line start date for the original undivided piece of land.
Land acquired on the completion of a land development or subdivision (ie, land bought off the plans).	The date you entered into the contract to acquire the land.
You have freehold estate that was converted from a lease with perpetual right of renewal.	The date you were granted the leasehold estate.

Settlement of relationship property.	The bright-line start date that the transferor under the settlement had. ¹
A joint tenancy converted to a tenancy in common, or vice versa.	To the extent your share or notional share in the land has not changed, you keep the bright-line start date you had for the land before the conversion.
A land transfer that changes your share in the land.	The land transfer registration date is the bright-line start date only for any additional share in the land you are getting. Your bright-line start date for the share in the land you owned before does not change.
Land outside New Zealand.	The date the land transfer to you is registered under any overseas law similar to the Land Transfer Act 2017.
Where the title is not registered to you before your bright-line end date. [Your bright-line end date is the earliest of the date you have an agreement to dispose of the land or the date you in fact dispose of it.]	The date you acquired an estate or interest in the land under s CB 15B. This is the same date you are regarded as acquiring land for the purposes of the other land sale rules in the Act, as explained in QB xx/xx .
Land transferred to you from an associated person, where the requirements for rollover relief are met (see from [18]).	The bright-line start date that the transferor had.
Land for which other rollover relief is available. This may be relevant for transfers involving Māori trusts or land included in a settlement of a claim under the Treaty of Waitangi.	The bright-line start date that the transferor had.

¹ See proposed amendment to s FB 3A in cl 46 of the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill.

Explanation | Whakamāramatanga

1. The 2-year bright-line test in s CB 6A may apply to tax gains from the disposal of residential land if your “bright-line end date” (which, for typical land sales, is the date you enter into an agreement to sell or dispose of the land)² is within 2 years of your “bright-line start date”.
2. You need to identify when the 2-year period for the bright-line test in s CB 6A starts (the “bright-line start date”), so you can determine if the disposal of your land may be taxed under the bright-line test. Note that in some situations, even if you dispose of the land within the 2-year period, the bright-line test will not apply – for example, if you satisfy the main home exclusion (s CB 16A).
3. The current 2-year bright-line test potentially applies only if:
 - none of the land sale rules in ss CB 6 to CB 12 apply; and
 - you dispose of the residential land on or after 1 July 2024.
4. Other bright-line tests, which vary from 2 to 10 years, may apply to land disposed of before 1 July 2024. The start date for those old bright-line tests is generally the same as the bright-line start date for the current 2-year test, but not in all situations. This question we’ve been asked (QWBA) concerns only the current 2-year test.
5. The date of acquisition for the purposes of the other land sale rules in the Act is often different from the bright-line start date. See QB [xx/xx](#): **On what date is a person treated as acquiring land for the purposes of the land sale rules?** for more information on working out the date of acquisition for the purposes of the land sale rules generally.

In a standard land purchase, the bright-line start date is the date the land transfer to you was registered

6. In a typical land purchase, the 2-year period starts when the land transfer to you was registered under the Land Transfer Act 2017 and you acquired the legal title. This occurs on the settlement date in almost all cases.
7. However, there are exceptions to this usual rule that change your bright-line start date (as Table | Tūtohi 1 above shows). The following briefly explains the other possible bright-line start dates set out in the table.

² Section CB 6A(4).

Exceptions to the standard bright-line start date

Change of trustee

8. Transfers due to a change in trustee do not affect the original bright-line start date. This means that when a trustee of a trust transfers land to another trustee of the trust due to a change in trustees, the bright-line start date remains the same as the original trustee's bright-line start date.

Subdivided land

9. If you subdivide land, your bright-line start date is the start date you had for the undivided land. It does not matter that new titles may be issued.

Land bought off the plans

10. If you acquired land on completion of a land development or subdivision (ie, you purchased off the plans), your bright-line start date is the date the sale and purchase agreement was entered into. It is not the date the transfer to you was registered, after the development or subdivision was completed.

A freehold estate converted from a lease with a perpetual right of renewal

11. If you had a lease with a perpetual right of renewal that was converted into a freehold estate, your 2-year period on the date the original leasehold estate was granted to you.

Settlement of relationship property

12. Under s FB 3A, when residential land is transferred on a settlement of relationship property, the bright-line start date for the transferee is the transferor's original bright-line start date. [As indicated in footnote 1 on page 2, there is a proposed amendment to achieve this in cl 46 of the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill. We propose to not finalise this QWBA until after the bill is enacted.]

Conversion of joint tenancy to tenancy in common (or vice versa)

13. If you have a joint tenancy (which is when the owners do not have divided shares in the land) and convert this ownership to a tenancy in common (which is when each owner

has a divided share of the land that is recorded on the record of title), or vice versa, you do not get a new bright-line start date because of the conversion, except to the extent (if any) that your share (or notional share) of the land changes.

A change in your share of the land

14. Under s CB 6A(3), if a transfer of land changes your share in a piece of land, the transfer registration sets the bright-line start date only for any new share in the land you are getting. The bright-line start date for the share in the land you had before does not reset.
15. This means, for example, if two people each have a 50% share in land, and one of them (Person A) buys the other person's (Person B's) share, Person A's bright-line start date for their original 50% share does not change, but their bright-line start date for the new 50% share is the date the title is transferred from Person B.

Land outside New Zealand

16. For land outside New Zealand, your bright-line start date is the date the land transfer was registered under any overseas law similar to the Land Transfer Act 2017.

The title is not registered to you before your bright-line end date

17. A special rule applies if your bright-line end date³ for the land occurs before the land transfer to you is registered. In this situation, your bright-line start date will be the date you acquired an estate or interest under s CB 15B, which sets out when land is acquired for the purposes of the other land sale rules in the Act. As noted in Table 1, QB [xx/xx](#) provides guidance on the date of acquisition for the land sale rules generally.

Land transferred to you from an associated person, where rollover relief is available

18. In addition to the bright-line start dates covered in Table | Tūtohi 1, s FD 1 modifies the bright-line start date for transfers of property in certain circumstances. This is one aspect of what is referred to as "rollover relief" from the bright-line test.

³ As noted at [1], for typical land sales, this is the date you enter into an agreement to sell or dispose of the land.

19. Rollover relief covers transfers between associated persons in certain circumstances. This applies if the transferor and transferee have been associated under any of ss YB 2 to YB 13 for at least 2 years at the date of transfer.
20. Two individuals are associated if, for example, they are married or in a civil union or de facto relationship, or are within two degrees of blood relationship.⁴ Other relevant types of association include a trustee and a beneficiary of the trust, or a person and a company for which the person has a voting or market interest of 25% or more.⁵
21. Rollover relief also applies to a transfer to a trustee of a trust if all beneficiaries are associated with the transferor and have been for at least 2 years. This ensures rollover relief can apply where land is settled on a new family trust. The requirement to have been associated with the transferor for at least 2 years does not apply to persons under 2 years of age or those who have become associated with the transferor due to marriage, civil union, de facto relationship, or adoption. In those situations, the person must have been associated with the transferor since birth, marriage, civil union, de facto relationship, or adoption (as applicable). [There is a proposed amendment to add civil unions and de facto relationships to s FD 1(1)(b)(i) in cl 48 of the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill. We propose to not finalise this QWBA until after the bill is enacted.]
22. If s FD 1 applies, one of the consequences is that the transferee's bright-line start date is whatever the transferor's bright-line start date was.
23. For more information about rollover relief under s FD 1, see QB yy/yy: **How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?**

Land transfers involving Māori trusts, where rollover relief is available

24. Section FD 2 also provides rollover relief for transfers into Māori rollover trusts, between Māori rollover trusts if the beneficiaries of both trusts are the same, and transfers out to a settlor of the trust in limited circumstances.⁶

⁴ This includes being within two degrees of relationship with a person's spouse or partner: s YB 4(1). There is an exception if the individuals cannot reasonably be expected to know the other person exists or is a close relative.

⁵ Sections YB 6 and YB 3 respectively.

⁶ The settlors must have originally transferred the land to the trustee, they must be beneficiaries of the trust, and they must have acquired the same amount of land back as they transferred in (or at least the same proportion if one of the settlors has died).

25. “Māori rollover trust” is defined in s FD 2(5) as a trust in which a trustee is a “Maori authority” or eligible to elect to be one, and all beneficiaries of the trust are members of the same iwi or hapū, or descendants of the same tipuna, and the land is subject to Te Ture Whenua Maori Act 1993.
26. If s FD 2 applies, one of the consequences is that the transferee’s bright-line start date is whatever the transferor’s bright-line start date was.

Transfers of land included in a Treaty of Waitangi settlement, where rollover is relief available

27. There is also rollover relief available under s FD 3 for certain transfers of residential land included in a settlement claim under the Treaty of Waitangi, if the transfer is to a trustee of a trust that is or is eligible to be a Maori authority.
28. If s FD 3 applies, one of the consequences is that the transferee’s bright-line start date is whatever the transferor’s bright-line start date was.

Nominations

29. In a situation where the named purchaser nominates someone else to complete the purchase, the bright-line start date for the nominee is the date the transfer of title is registered to them, just like in a typical land transaction. If there is no registered transfer of the land to the nominee on or before the date they sell or dispose of the land, the 2-year period will start on the date they were nominated as purchaser.
30. The nomination of someone else as purchaser does not give rise to any potential bright-line implications for the nominator (the original named purchaser). This is because the nominator does not transfer their interest in the land to the nominee when they make the nomination – there is no disposal. When the legal title transfers to the nominee, the nominator’s interest in the land simply ceases to exist, it is not disposed of. This is similar to the lapsing of an option to acquire land, which has been considered by the Taxation Review Authority not to be a disposition of land (*Case M4* (1990) 12 NZTC 2,021 (TRA)).

Acquiring land for a company to be formed

31. There are no bright-line test implications for a person who acquires land on behalf of a company yet to be formed where the company subsequently ratifies the contract for the acquisition of the land. This is because s 182 of the Companies Act 1993 allows for ratification of pre-incorporation contracts, and at common law an effective ratification

constitutes the relationship of principal and agent retrospectively.⁷ This means that the person who acquired the land on behalf of the company yet to be formed has not themselves acquired (and subsequently disposed of) a land interest.

32. The company's bright-line start date is the date the instrument to transfer the land to the company is registered on settlement.

Look-through companies

33. Because look-through companies are transparent for most income tax purposes, there are various transactions that involve an LTC that give rise to different bright-line issues and bright-line start dates. Interpretation statement IS **xx/xx: Look-through companies and disposal of residential land under the bright-line test** considers the application of the bright-line test to different scenarios concerning LTCs, and outlines the relevant bright-line start dates.

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.

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References | Tohutoro

Legislative references | Tohutoro whakatureture

Companies Act 1993, s 182

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 15B, CB 16A, FD 1 to FD 3, YB 2 to YB 13

Land Transfer Act 2017

⁷ See further in this regard: *Laws of New Zealand Agency* (online ed, accessed 5 February 2025) from [42].

Case references | Tohutoro kēhi

Case M4 (1990) 12 NZTC 2,021 (TRA)

Other references

Stephen Kós (ed) *Laws of New Zealand Agency* (online ed, accessed 5 February 2025)

QB xx/xx: On what date is a person treated as acquiring land for the purposes of the land sale rules? [TIB ref]

[TIB link]

[Tax technical site link]

QB yy/yy: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons? [TIB ref]

[TIB link]

[Tax technical site link]

IS xx/xx: Look-through companies and disposal of residential land under the bright-line test

[TIB ref]

[TIB link]

[Tax technical site link]

About this document | Mō tēnei tuhinga

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