

**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: **PUB00488d**

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

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

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

Issued | Tukuna:

QB xx/xx

This question we've been asked (QWBA) explains when a section subdivided from residential land and sold within 2 years will be excluded from the bright-line test. It will be of interest to sellers seeking to rely on the main home exclusion.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 6A and CB 16A

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

- **QB 18/16:** Income tax — bright-line test — main home exclusion — sale of subdivided section

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

Question | Pātai

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

Answer | Whakautu

The bright-line test can apply if a person subdivides residential land and sells one or more of the subdivided sections within 2 years of the “bright-line start date”. When determining whether the sale of the subdivided section is subject to the bright-line test, the bright-line start date for the section is the bright-line start date for the undivided land.

The sale is excluded from the bright-line test when the main home exclusion applies.

The main home exclusion applies when:

- more than 50% of the area of the land in the subdivided section has been used for a dwelling that was the seller’s main home; and
- the seller has used the land in the subdivided section in that manner for more than 50% of the bright-line period.

The main home exclusion can apply even if the section being sold does not have a dwelling on it. This is because “used for a dwelling” in the main home exclusion includes other areas of land the seller uses frequently, repeatedly or customarily in connection with or for the benefit of the dwelling.

Key terms | Kīanga tau tāpua

Bright-line test applies to tax sales of residential land occurring within a 2-year period.

Curtilage means an area of land attached to a dwelling and forming one enclosure with it, such as a yard or garden.

Subdividing involves the legal division of land into multiple sections and the creation of new legal titles for each section.

Explanation | Whakamāramatanga

The bright line test

1. The bright-line test in s CB 6A taxes the sale of residential land within a 2-year period.

2. The 2-year bright-line test applies when a person disposes of residential land on or after 1 July 2024, if their bright-line end date (which is typically the date the person enters into an agreement to sell the land) is within 2 years of their bright-line start date (which in typical land transactions is the date on which the transfer to the person was registered). The period beginning on the bright-line start date and ending on the bright-line end date is referred to as the bright-line period. There are other bright-line tests that applied to land disposed of before 1 July 2024, but this QWBA concerns only the current 2-year bright-line test.
3. The bright-line test under s CB 6A applies only where none of the land sale rules in ss CB 6 to CB 12 apply (eg, s CB 6, which applies to the sale of land acquired for the purpose or with the intention of disposal).

Scope of this QWBA

4. This QWBA is about whether the main home exclusion to the bright line test can apply in a situation where:
 - there is undivided land with a dwelling on it that is the seller's main home;
 - the land is then subdivided into new sections, one of which has the main home dwelling on it and another (or others) which do not; and
 - the seller sells one or more of the subdivided sections (or one of the sections) that do not contain the main home dwelling.
5. In this QWBA, it is assumed that none of the other land sale rules in ss CB 6 to CB 12 of the Income Tax Act 2007 apply to the sale of the subdivided section. The bright-line test needs to be considered only where the sale is not taxed under any of the other land sale rules in ss CB 6 to CB 12.
6. Additionally, for simplicity this QWBA assumes the person disposing of the land is not the trustee of a trust.¹

The bright-line test applies to residential land

7. The bright-line test applies to "residential land", which is a broadly defined term in s YA 1. The broad definition means that a subdivided section of land can still be residential land even if there is no dwelling on the land. It is sufficient that the owner

¹ However, the main home exclusion may also be available if the person disposing of the land is a trustee of a trust, if: (1) the dwelling was the main home of a beneficiary of the trust, and (2) no principal settlor of the trust has a main home, or if they do it is the home being disposed of.

has an arrangement relating to building a dwelling, or that it is bare land that may be used for building a dwelling under the operative district plan.

8. The definition of residential land also excludes land that is:
 - "farmland";² or
 - used predominantly as business premises.³
9. If a subdivided section of land is not residential land, the sale of the section will not be subject to the bright-line test.

When is the bright-line start date for subdivided land?

10. Section CB 6A(2) outlines a person's bright-line start date for the disposal of residential land, which varies depending on the circumstances. As noted at [2], the bright-line start date in a typical land transaction is the date the instrument to transfer the title to the person is registered, which is the settlement date.
11. Section CB 6A(2) has a specific rule for land that results from a person subdividing their land. In that situation, the bright-line start-date is the person's bright-line start date for the undivided land.
12. For example, if you purchase land in January 2019 and subdivide it into three lots with new titles being issued to you in July 2024, the bright-line start date for the subdivided lots will be January 2019. This means the bright-line test will not apply if you sell any of the lots on or after 1 July 2024, as the bright-line end date will not be within 2 years of the bright-line start date.

Can the main home exclusion apply to a sale of a subdivided section of land?

13. The main home exclusion can apply to the sale of a subdivided section of land. It applies even though the subdivided section of land has a separate certificate of title from the undivided land, and even if the land has no dwelling on it.

² See QB [xx/xx](#): **When is the sale of a lifestyle block excluded from the bright-line test?** for information about when a lifestyle block is "farmland".

³ Unless it used as business premises for a business of supplying accommodation, and the dwelling is not the main home of the person.

14. This is because the land in the subdivided section may still have been used predominantly, for most of the time the bright-line period, for a dwelling that was the seller's main home, as required by s CB 16A(1).

The main home exclusion

15. The main home exclusion in s CB 16A(1) provides:

CB 16A Main home exclusion for disposal within 2 years

Main home exclusion

- (1) Section CB 6A does not apply to a person who disposes of residential land if the land has been **used predominantly, for most of the bright-line period, for a dwelling that was the main home** for—
- (a) the person; or
 - (b) a beneficiary of a trust, if the person is a trustee of the trust and—
 - (i) a principal settlor of the trust does not have a main home; or
 - (ii) if a principal settlor of the trust does have a main home, it is that main home which the person is disposing of.

Modified rule for constructing main home

- (2) For the purposes of determining under subsection (1) whether residential land has been used for most of the bright-line period predominantly for a dwelling that was the main home of the person or a beneficiary of a trust, as described in subsection (1), **the period in which the dwelling was constructed is ignored.**

[Emphasis added]

16. For the main home exclusion to apply, the seller must have used the land in question predominantly, for most of the bright-line period, for a dwelling that was their main home.
17. Section YA 1 defines "main home" is defined in s YA 1:

main 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

18. There are three points to note about the definition of "main home":

- A person can have only one “main home”.
 - For a dwelling to be the “main home” of a person, must be mainly used as a residence by the person (ie, a home).
 - If the person has more than one home, the main home is the home with which the person has the greatest connection.
19. See [QB 24/01](#): **If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test?** for help in determining which property the seller has the greatest connection with.
20. Land that is “**used... for a dwelling**” is not limited to the land on which the dwelling is situated or to the surrounding curtilage (like a yard and 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. In the Commissioner’s view, for an area of land to be used for a dwelling, the land must be actually used for the dwelling. That is, it is the **actual use** of the land, **rather than any intended use**, that is relevant.
21. The extent to which residential land is used **in connection with or for the benefit of a dwelling** is a question of fact that turns on the circumstances of each case. Factors that may indicate land is being used in connection with or for the benefit of a dwelling include the land being:
- set aside exclusively for private residential purposes;
 - being used for an activity that complements or adds to the enjoyment of the dwelling;
 - clearly identifiable as being used in connection with or for the benefit of the dwelling; and
 - incidental to the enjoyment of the dwelling.
22. The area of land in question must have been used for a dwelling **by the seller**.⁴
23. For the main home exclusion to apply, the land needs to have been **used predominantly** for a dwelling that was the seller’s main home. This is a question of fact and the test is a physical area test. The test involves a comparison of the physical area of land used by the seller for the dwelling and the total area. “Predominantly” in this context means more than 50%.

⁴ Or the beneficiary of a trust, if the person disposing of the land is a trustee of the trust, and no principal settlor of the trust has a main home, or if they do it is the home being disposed of.

24. If the split between the seller's private residential use of the land in the subdivided section and their use of that land for other purposes is close, the nature and the importance of the different uses could be relevant when determining the seller's predominant use.

How the main home exclusion applies to subdivided sections of land

25. For the main home exclusion to apply to a subdivided section, the land in the subdivided section must have been used predominantly for a dwelling that was the seller's **main home** for more than 50% of the bright-line period. As stated at [23], "predominantly" in this context means more than 50% of the land area.
26. The use of the land in the subdivided section for all of the bright-line period – both before and after the subdivision – is relevant in determining whether the land in that section has been used for a dwelling that was the seller's main home for most of the bright-line period.
27. Even after land is subdivided, before being sold the land in a subdivided section may continue to be used in connection with or for the benefit of the owner's main home dwelling on one of the other sections resulting from the subdivision. Alternatively, it may be that from a particular point in time, which could be before or after the subdivision, the land in the subdivided section ceases to be used for the main home. For example, this could be the case if earthworks, construction, or some other activity on the land mean the owner no longer uses that land in connection with or for the benefit of their main home.
28. The length of time during the bright-line period, both before and after the subdivision, that the land in the subdivided section is used for the main home and the length of time it is not used for the main home need to be compared to determine whether the "most of the time" requirement is met.

How many times can a seller use the main home exclusion?

29. Under s CB 16A(3), the main home exclusion will not be available where a seller disposes of residential land and:
- the seller has already used the main home exclusion twice within the two years immediately preceding the bright-line end date (eg, in the case of a sale of land, within 2 years of the date the sale agreement is entered into); or
 - the seller has engaged in a regular pattern of acquiring and disposing of residential land that had their main home on it.

30. The regular pattern carve-out from the main home exclusion also applies to a group of persons who occupy all the relevant properties together. A group of persons can include a non-natural person like a company if one of the individuals in the group has significant involvement in, or control of, the activities of the non-natural person.
31. Each section of land that results from a subdivision is a separate piece of residential land. If the main home exclusion is applied to the sale of multiple sections of land resulting from a subdivision (which could include the section with the dwelling), the application of the exclusion to each section will count as a separate use of the exclusion for the purposes of s CB 16A(3)(a).
32. For example, if an area of residential land the owner has used as their main home was subdivided into three sections of land and all three sections were sold within the 2-year bright-line, the main home exclusion could not be relied on for the sale of the third section if it had been used for the sale of the first two sections. The main home exclusion would also not apply to any further sales made by the seller within 2 years of the two sales for which the main home exclusion was used.
33. Additionally, buying undivided land and subsequently selling subdivided sections is relevant when determining whether the seller has engaged in a regular pattern of acquiring and disposing of relevant residential land.
34. These exceptions to the main home exclusion are discussed further in QB yy/yy: **When do I have a “regular pattern” of transactions that means I cannot use exclusions from the land sale rules for my residence or for my main home?**

Examples | Taurira

Example | Taurira 1 – Sale of subdivided section of land with no new dwelling

Simon acquires a property that he uses as his main home. Two months after the title was registered to Simon, he decides to subdivide the land due to a change in circumstances. New certificates of title are created for the subdivided section with the dwelling and the subdivided section at the rear of the property that was used as the backyard for Simon's home (the backyard section). While trying to sell the backyard section, Simon continues to enjoy the land in the section as his backyard. He eventually manages to sell the section 12 months later.

The sale of the backyard section is within 2 years of Simon's bright-line start date for the land. Simon can use the main home exclusion for the sale because the land in the backyard section was predominantly used in connection with a dwelling that was Simon's main home for most of (in fact, all of) the bright-line period.

Example | Taurira 2 – Sale of subdivided section of land with new dwelling

The facts are the same as in Example | Taurira 1 except that immediately after subdividing the backyard section, Simon clears the area and begins constructing a new dwelling with surrounding curtilage (a small garden and a garage). From this time, Simon is no longer using the land in the backyard section in connection with or for the benefit of his main home.

The main home exclusion will not apply to the sale of the backyard section of land because the land in the section was not used predominantly for a dwelling that was Simon's main home for most of the bright-line period. The bright-line period for the backyard section is 14 months (starting on the date the original undivided section was transferred to Simon, and ending on the date the contract for sale of the section was entered into). Of that period, Simon uses the land in the backyard section in connection with and for the benefit of his main home for only 2 months.

It is only the construction period of a person's main home that is ignored for the purposes of determining whether residential land has been used for the main home for most of the bright-line period. The construction period for any other dwelling is not ignored.

Example | Tauria 3 – Delay in using the land as the main home

Hugo purchases vacant land with the intention of building his new home on it. It takes 18 months from the bright-line start date to obtain finalised architectural plans and relevant building consents, engage a builder, and for construction and final sign-off. While the house is under construction, Hugo lives with family in a nearby suburb. Hugo finally moves into the house 18 months after purchasing the land.

The cost of construction was more than Hugo had anticipated, and he decides to subdivide and sell off a portion of his backyard to help pay his mortgage.

It takes a further 5 months after moving into the house for Hugo to subdivide and sell the portion of his backyard. At all times during this period, the subdivided portion remained part of the backyard and Hugo continued to use it.

The subdivided portion of Hugo's backyard was used predominantly for his dwelling (as the backyard), so the main home exclusion applies to the sale of the subdivided portion of the backyard. While Hugo only lived in the house for 5 months, the period in which the dwelling is constructed is ignored when determining whether the land was used predominantly as a dwelling for most of the bright-line period.

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References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, YA 1 ("main home", "residential land")

Other references | Tohutoro anō

QB 24/01: If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test? *Tax Information Bulletin* Vol 36, No 6 (July 2024): 39

taxtechnical.ird.govt.nz/tib/volume-36---2024/tib-vol36-no6
taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2024/qb-24-01

QB xx/xx: When is the sale of a lifestyle block excluded from the bright-line test? TIB [ref]

[TIB link]

[Tax technical site link]

QB yy/yy: When do I have a “regular pattern” of transactions that means I cannot use exclusions from the land sale rules for my residence or for my main home? TIB [ref]

[TIB link]

[Tax technical site link]

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