

**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: **PUB00488f**

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

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

Issued | Tukuna:

QB xx/xx

This question we've been asked (QWBA) explains the business premises exclusion that applies for the purposes of the bright-line test. It will be of interest to anyone selling their business premises on what might be residential land.

**Key provisions | Whakaratonga tāpua**

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

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

- **QB 19/13:** Income tax – When does the business premises exclusion to the bright-line test apply?

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

## Question | Pātai

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

## Answer | Whakautu

Land that has been used predominantly as business premises is not subject to the bright-line test, even if the land has a dwelling on it.

“Business premises” means land, typically including a building, together with any surrounding associated land, from which a person carries on a business. In some cases, land can be business premises even if there is no building on the land.

Land will be used predominantly as business premises where:

- more than 50% of the area of the land has been used as business premises; and
- the land has been used as business premises for more than 50% of the time the seller owned it.

## Key terms | Kīanga tau tāpua

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

**Business premises** means land, typically including a building, together with any surrounding associated land, occupied by a person mainly to carry on a business. However, in some cases, land without a building may also qualify as business premises.

## Explanation | Whakamāramatanga

### The scope of this QWBA

1. This QWBA explains the business premises exclusion to the bright-line test. There are separate business premises exclusions that are relevant where the sale of land is potentially taxable under one of the other land sale rules in the Act (ss CB 6 to CB 11 and ss CB 12 and CB 13).
2. For a more detailed discussion of the business premises exclusion from ss CB 6 to CB 11, see [QB 19/14: Income tax – When does the business premises exclusion in s CB 19 apply to preclude land sales from being taxed under ss CB 6 to CB 11?](#)

## Bright-line test

3. The bright-line test under s CB 6A taxes the sale of residential land within a 2-year period.
4. 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 for disposal) is within 2 years of their bright-line start date (which in typical land transactions is the date the transfer to the person is registered). 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.
5. The bright-line test under s CB 6A applies only where none of the land taxing 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).

## Definition of “residential land”

6. Section YA 1 defines “residential land” as follows:

### YA 1 Definitions

In this Act, unless the context requires otherwise,—

...

#### residential land—

- (a) means—
  - (i) land that has a dwelling on it, unless the land is farmland or is used predominantly as business premises:
  - (ii) land for which the owner has an arrangement that relates to erecting a dwelling, unless the land is farmland or is used predominantly as business premises:
  - (iii) bare land that may be used for erecting a dwelling under rules in the relevant operative district plan, unless the bare land is farmland or is used predominantly as business premises; and
- (b) includes land that has a dwelling on it, if it is used by a person predominantly as business premises for a business of supplying accommodation and the dwelling is not a main home for the person or 1 or more other persons referred to in section CB 16A(1) (Main home exclusion for disposal within 2 years)

7. “Residential land” does not generally include land “used predominantly as business premises”.

8. However, there is a qualification to this exclusion for land that has a dwelling on it, if it is used predominantly as business premises for a business of supplying accommodation, and the dwelling is not the person's "main home". This means residential property used predominantly to provide short-stay accommodation (such as a property rented out through online platforms) is not within the business premises exclusion and may be subject to the bright-line test on disposal, unless the dwelling is the owner's main home.<sup>1</sup>
9. In most cases, a person selling business premises will not need to rely on the business premises exclusion because usually the land will not meet the requirements to be "residential land" for other reasons. This is because:
  - business premises land will not usually have a dwelling on it;
  - the landowner will not usually have an arrangement to erect a dwelling on the land; and
  - business premises land will not usually be "bare land" (which would come within the definition of "residential land" if it may be used for erecting a dwelling under the relevant council's operative district plan).
10. Because most business premises land being sold will not meet the criteria to potentially be "residential land", the carve out for business premises will not usually need to be considered, and the land will not be subject to the bright-line test in s CB 6A.
11. One situation where the business premises exclusion needs to be considered is where a person sells land that has both a dwelling and business premises on it. The presence of a dwelling means the land may fall within the definition of "residential land" and potentially be subject to the bright-line test. However, if the land is used predominantly as business premises, it will not be "residential land" as defined.
12. Another situation where a person may need to consider the business premises exclusion is where business premises are on bare land that may be used for erecting a dwelling under the relevant operative district plan. Situations in which a person sells business premises land for which they have an arrangement to erect a dwelling are likely to be rare.

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<sup>1</sup> 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.

## Meaning of “dwelling”

13. A “dwelling” is defined in s YA 1 as “any place configured as a residence or abode, whether or not it is used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place”. However, for the purposes of s CB 6A and the definition of “residential land”, a “dwelling” does not include any of the following, in whole or part:
- a hospital;
  - a hotel, motel, inn, hostel or boarding house;
  - a serviced apartment in relation to which a resident does not have quiet enjoyment;<sup>2</sup>
  - a convalescent home, nursing home, or hospice;
  - a rest home or retirement village; or
  - a camping ground.

## Meaning of “business premises”

14. The Act does not define business premises for the purposes of the bright-line test and the definition of “residential land”. The *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York, 2011) defines “premises” as:

A house or building, together with its land and outbuildings, occupied by a business or considered in an official context.

15. At common law, “business premises” can refer to a variety of places from which a business is carried on, whether just buildings, buildings and associated land, or bare land.<sup>3</sup>
16. The Commissioner considers that while business premises will typically include a building, there may be instances where land without a building is business premises. For example, a quarry may be business premises even if it does not have a building on it. It will be up to the taxpayer to show that the land is business premises.
17. As noted above, “business premises” is a place from which a business is carried on. Whether there is a “business” is determined using the business test set out in *Grieve v CIR* (1984) 6 NZTC 61,682 (CA). “Carrying on” a business from a location, requires

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<sup>2</sup> As that term is used in s 38 of the Residential Tenancies Act 1986.

<sup>3</sup> See, for example, *Case Y10* (2007) 23 NZTC 13,097 (TRA); *Thames Water Ltd v Hampstead Homes Ltd* [2003] 1 WLR 198 (CA); *Gardiner v Sevenoaks Rural District Council* [1950] 2 All ER 84 (QB); *C of T v Nightcaps Coal Company (Ltd)* (1909) 29 NZLR 885 (SC).

some or all of the activities of the business to be conducted continuously or habitually from there. For the purposes of the s CB 6A business premises exclusion, the business premises may be those of the landowner or of a third party such as a tenant or tenants.

18. Once the land is found to have business premises on it, the s CB 6A business premises exclusion requires that the land as a whole must have been **used predominantly** as business premises. "Predominantly" in this context means more than 50%. Land will have been used predominantly as business premises where:
  - the physical area of land used as business premises is more than 50% of the total land area; and
  - that land has been used as business premises for more than 50% of the time the landowner has owned the land.
19. Where a building has multiple storeys, the floor area of each storey is included in the calculation of total land area.
20. From time to time, particularly where the split between the business premises use of the land and the land's other uses is close, the nature and the importance of the land's different uses should be considered to determine which of the uses is the predominant use.
21. Because the definition of "business premises" requires the land to have been used "predominantly" as business premises, the Commissioner considers the exclusion applies on an all or nothing basis. Therefore, if the land is predominantly used as business premises, all of the land is excluded from the meaning of residential land. If the land is not used predominantly as business premises, the exclusion does not apply and all of the land is residential land and potentially subject to the bright-line test.

## Examples | Tauria

### Example | Tauria 1 – Business premises exclusion not relevant as requirements to be "residential land" not met

On 1 April 2023, Raj, a dentist, purchases a property with a villa on it. The previous owner had lived in the villa for many years. Raj fits out the villa as a dental surgery and carries on his dentistry business from there. Then, 18 months later, Raj sells his dentistry practice and the villa and moves overseas. During the time Raj owned the villa, nobody lived in it, and Raj did not have an arrangement to erect a dwelling on the property.

Shortly after selling the villa, Raj hears about the bright-line test and asks his lawyer, Ruby, whether the sale might be subject to tax because the villa was previously a residential home.

Ruby explains that the sale of the villa is not subject to the bright-line test because the property does not meet the definition of "residential land". This is because:

- the property did not have a dwelling on it;
- Raj did not have an arrangement to erect a dwelling on the property; and
- the property was not "bare land" that may be used for erecting a dwelling under the relevant operative district plan.

Ruby explains that although the villa might look like a dwelling, it was fitted out as a dental surgery, not as a place of residence or abode. Ruby also notes there is a business premises exclusion to the definition of "residential land", but in Raj's case, this exclusion is not relevant because the property did not fall within the requirements to potentially be "residential land" in the first place.

### **Example | Tauria 2 – Land with a building that is partly business premises and partly a dwelling excluded from the bright-line test as predominantly business premises**

Dave purchases a building in the suburbs that has a downstairs retail space and a single bedroom flat upstairs. The downstairs retail space is just over twice the size of the upstairs flat. Dave leases the retail space to Andy, who runs a florist business from it. He rents the upstairs flat to Mary under a residential tenancy.

A year later, Dave decides to move overseas and sells the building. The property meets the first requirement of the definition of "residential land" because the upstairs flat is a dwelling. However, the downstairs retail space is the florist's business premises. Because the business premises is more than twice the size of the upstairs flat, the property is used predominantly as business premises. For this reason, the property is not "residential land". Therefore, the sale of the property is not subject to the bright-line test.

### **Example | Tauria 3 – Land with business premises and stand-alone residence excluded from the bright-line test as business premises**

Milk Mixer Ltd buys a large milk-processing factory. On the property is a small house where the factory's caretaker lives. Because there is a dwelling on the property (the

house), the land is potentially “residential land”, so potentially subject to the bright-line test. However, because the land is predominantly (more than 50%) used as Milk Mixer Ltd’s business premises, all of the land is excluded from the definition of “residential land”. For this reason, the bright-line test would not apply if the property were sold within 2 years of Milk Mixer Ltd’s bright-line start date.

#### **Example | Taura 4 – Land with business premises and stand-alone residence excluded from the bright-line test as predominantly business premises**

Wayne buys a property that has a three-bedroom house and large stand-alone workshop on it. He lives in the house with his family and operates a surfboard-building business from the workshop. Wayne’s workshop and associated land make up 60% of the total land area of the property and have been his business premises since he purchased the property. Because the property has a dwelling on it (the house), the property meets the initial definition of “residential land”.

Wayne sells the property within 2 years of his bright-line start date. Although the property meets the initial part of the definition of “residential land”, it falls outside the definition because the land is predominantly used as business premises. This means the sale of the property is not caught by the bright-line test.

If the land was not predominantly used as business premises, it is possible that the property sale would nonetheless be excluded from the bright-line test under the “main home” exclusion (s CB 16A). For details on how the “main home” exclusion in s CB 16A applies, see QB [xx/xx](#): **How does the bright-line test apply to the sale of a subdivided section?**

#### **Example | Taura 5 – Land with business premises and stand-alone residence not excluded from the bright-line test as not predominantly business premises**

Jerome buys an investment property with a stand-alone studio at the front and a three-bedroom house at the rear. Jerome rents the property to Denise. Denise uses the studio for her legal practice and lives in the house with her family. The studio makes up 30% of the total land area of the property and is used as Denise’s business premises 100% of the time Jerome owns the property. Because the property has a dwelling on it (the house), the property meets the initial definition of “residential land”.

Jerome sells the property within 2 years of his bright-line start date. Although the property is used as business premises, it is not used “predominantly” (more than 50%) as business premises. Therefore, the property is not excluded from the definition of



“residential land”, so is caught by the bright-line test. Unlike Wayne in Example | Tauria 4, Jerome does not live in the house on the property. Accordingly, the “main home” exclusion (s CB 16A) is not available.

### **Example | Tauria 6 – Land with business premises used for providing short-stay accommodation**

Apollo buys land with a dwelling on it and uses it as business premises to provide short-stay accommodation through Airbnb. Apollo sells the land within 2 years of his bright-line start date, and none of the other land sale provisions apply.

Even though the land is used predominantly as business premises, it is residential land because the business premises was used for a business of supplying accommodation. The land is not a “main home” because Apollo did not live in the dwelling. Therefore, the property is not excluded from the definition of residential land, so is caught by the bright-line test.

### **Example | Tauria 7 – Main home with business premises used for providing short-stay accommodation**

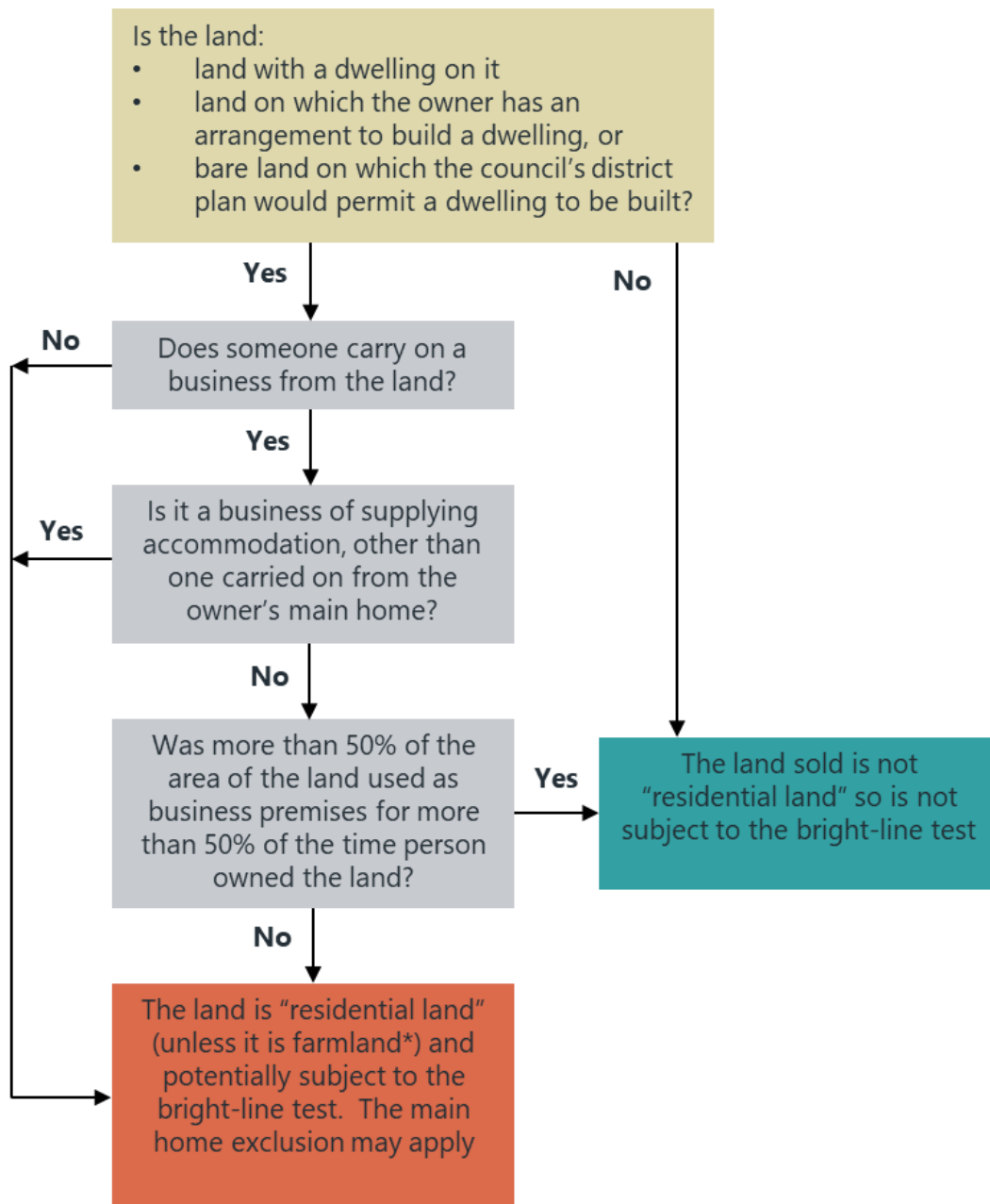
Maya buys land with a five-bedroom dwelling on it. She lives in the house and uses one of the bedrooms. Maya uses the other four bedrooms as business premises to provide short-stay accommodation through Airbnb. Maya sells the land within 2 years of her bright-line start date, and none of the other land sale provisions apply.

The land is used predominantly as business premises, as more than 50% of the dwelling and surrounding land is used for Maya’s business. Despite this, as it is a business of supplying accommodation, the land may still be residential land under para (b) of the definition. In this situation, Maya lived in the dwelling the entire time, so the land is a “main home” as it was the one dwelling used by Maya mainly as a residence. This means the land is not brought back into the definition of residential land, even though it was business premises for a business of supplying accommodation. Therefore, the land is excluded from the definition of residential land, so is not subject to the bright-line test.

## Appendix

Figure | Hoahoa 1 sets out the steps to determine whether the bright-line test and business premises exclusion apply to a sale of land within the 2-year period of the bright-line test.

**Figure | Hoahoa 1: Flowchart for determining whether land is residential land for the purpose of the bright-line test**



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## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, CB 19, YA 1 (definitions of “dwelling”, “residential land”)

Residential Tenancies Act 1986, ss 38

### Case references | Tohutoro kēhi

*C of T v Nightcaps Coal Company (Ltd)* (1909) 29 NZLR 885 (SC)

*Case Y10* (2007) 23 NZTC 13,097 (TRA)

*Gardiner v Sevenoaks Rural District Council* [1950] 2 All ER 84 (QB)

*Grieve v CIR* (1984) 6 NZTC 61,682 (CA)

*Thames Water Ltd v Hampstead Homes Ltd* [2003] 1 WLR 198 (CA)

### Other references | Tohutoro anō

Concise Oxford English Dictionary (12th ed, Oxford University Press, New York, 2011).

QB xx/xx: How does the bright-line test apply to the sale of a subdivided section?

[TIB ref]

[TIB link]

[Tax technical site link]

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

[TIB ref]

[TIB link]

[Tax technical site link]

QB 19/14: Income tax – When does the business premises exclusion in s CB 19 apply to preclude land sales from being taxed under ss CB 6 to CB 11? *Tax Information Bulletin* Vol 31, No 9 (Oct 2019): 75

[taxtechnical.ird.govt.nz/tib/volume-31---2019/tib-vol31-no9](http://taxtechnical.ird.govt.nz/tib/volume-31---2019/tib-vol31-no9)

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