

## Income tax – Updates to bright-line test items

Reference: PUB00488 and PUB00460

### Reading guide for consultation

#### Why are we consulting these items?

The original bright-line test was first introduced in 2015. Since its introduction, the Commissioner has published five Questions we've been asked (QWBAs) addressing the original 2-year and the subsequent 5- and 10-year bright-line tests: [QB 16/07](#), [QB 17/02](#), [QB 18/16](#), [QB 18/17](#), and [QB 19/13](#).

Given the changes to the bright-line test since its introduction and the importance of clear guidance for our customers, the Commissioner has prepared a suite of new updated versions of the QWBAs (**PUB00488a to f**). These draft QWBAs focus on the current 2-year bright-line test that applies to residential land sold on or after 1 July 2024 (referred to in this reading guide as the "bright-line test").

A new updated version of [QB 16/06](#) (**PUB00460**) has also been prepared to reflect these changes to the bright-line test. This item has also been updated to reflect the Commissioner's view that "disposing" in s CB 6 (in terms of the required intention) is disposing of the land by way of sale or similar. This updated QWBA is released for consultation alongside the bright-line QWBAs.

The Commissioner is seeking public feedback on the changes to the original QWBAs.

This reading guide refers to each QWBA by reference to the QWBA it updates. For example, the updated version of QB 16/07 is still referred to as QB 16/07, even though it will replace QB 16/07 and will receive a new QB number when it is published. The number allocated to each item for consultation is included in parenthesis.

#### What changes have been made?

For the most part, the substantive changes to the QWBAs reflect legislative changes made since the QWBAs were originally published. The draft QWBAs now cover only the current bright-line test. The original QWBAs will continue to be available on the tax technical website, with the exception of QB 16/06, which only briefly touches on the original 2-year bright-line test.

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The language and appearance of the QWBAs has also been updated to make them easier to read and consistent with other public guidance from the Tax Counsel Office. New examples have been added where appropriate.

Additionally, **QB 17/02** (which addresses the date of acquisition of land for the purpose of the land sale rules and when the bright-line test starts) has been split into two draft QWBAs. One covers the date of acquisition for the land sale rules generally (**PUB00488b**). The other covers the bright-line start date, and is referred to here as **QB 17/02B (PUB00488c)**.

## Main legislative changes

### Bright-line start and end dates

The bright-line test applies to an amount a person derives from disposing of residential land if the person's bright-line start date is within 2 years of their bright-line end date, unless one of the exclusions apply.

A person's "bright-line start date" is generally the same as a person's "bright-line acquisition date" under the previous tests. That is, in typical land transactions, it is the date the instrument to transfer the land is registered, but there are different rules for various specific scenarios.

Similarly, a person's "bright-line end date" is generally the same as their "bright-line date" or "bright-line disposal date" under the previous tests. In typical land transactions, it is the date the person enters into an agreement for disposal of the land, but there are different rules for certain specific scenarios.

However, the way the test is structured and worded has changed. All the draft QWBAs have been updated to reflect these changes. Draft **QB 17/02B (PUB00488c)** provides detailed guidance on the meaning of bright-line start date and when different bright-line start dates will apply.

### Main home exclusion

The main home exclusion to the bright-line test in s CB 16A now applies if the land was used predominantly, for most of the "bright-line period", for a dwelling that was the person's main home. The bright-line period is the period from the person's bright-line start date to their bright-line end date.

The main home exclusion does not apply to a disposal if the seller has engaged in a regular pattern of acquiring and disposing of residential land that is the seller's main home. Since

**QB 16/07** was published, this regular pattern carve-out has been expanded to apply to a group of persons who occupy all the relevant properties together.

When determining whether the land was used as the person's main home for most of the bright-line period, the period of construction is now ignored entirely.

These changes are reflected in the draft **QB 16/07 (PUB00488a)** and in the other draft QWBAs that refer to the main home exclusion.

## Rollover relief

One aspect of the rollover relief rules in new subpart FD is that they modify the bright-line start date for transfers of land in certain circumstances. Rollover relief was available in some circumstances under previous bright-line tests, but it has been expanded under the current bright-line test.

Rollover relief is available in the following circumstances:

- Transfers between associated persons who have been associated (under the associated person rules in ss YB 2 to YB 13) for at least 2 years at the date of transfer (s FD 1).
- Transfers into Māori rollover trusts (s FD 2).
- Certain transfers of residential land included in a settlement claim under the Treaty of Waitangi to a trustee of a trust that is or is eligible to be a "Maori authority" (s FD 3).<sup>1</sup>

When rollover relief applies, the transferee takes on the transferor's bright-line start date. Draft **QB 17/02B (PUB00488c)** outlines when rollover relief will modify a person's bright-line start date.

In addition, there is a separate QWBA concerning how the rollover relief provisions apply to associated persons. That QWBA (PUB00489) was released for consultation separately from this batch of items last year.

## Other substantive changes

Other substantive changes to the QWBAs are:

- Section DB 23, which concerns deductions for the cost of revenue account property, was amended retrospectively in 2021 to override the private limitation. References to s DB 23 in these items have been updated to reflect this.

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<sup>1</sup> "Maori authority" with no macron is a defined term in the Income Tax Act 2007.

- The definition of residential land does not apply to land that is used predominantly as business premises. However, there is now a qualification to the business premises exclusion if the land is used as business premises for a business of supplying accommodation and the dwelling is not the “main home” of the person. This qualification is discussed in draft **QB 19/13 (PUB00488f)**, which concerns the business premises exclusion.
- A person can only have one “main home”. If they have more than one home, the main home is the one with which they have the greatest connection. Draft **QB 18/17, (PUB00488e)** which concerns lifestyle blocks, now refers to [QB 24/01](#), which provides guidance on determining the home with which a person has the greatest connection. **QB 18/17** originally referred to guidance on determining a person’s “permanent place of abode” for residency purposes, which the Commissioner considers is no longer applicable.
- Draft **QB 16/06 (PUB00460)** has been amended to reflect the Commissioner’s view that “disposing” in s CB 6 (in terms of the requisite intention) is disposing of the land by way of sale or similar. This is consistent with the view in relation to s CB 4 set out in [QB 17/08](#), and is based on the shared history of those provisions. The original **QB 16/06** states that disposal includes things like gifting or settling on trust. QB 17/08 and draft **QB 16/06 (PUB00460)** state that disposal in the context of the requisite intention means disposal by way of sale or similar.

## Let us know what you think

We are consulting on these draft QWBAs until 11 April 2025 and welcome all feedback.

If you are familiar with the original QWBAs and would like marked-up copies that highlight the substantive changes, please contact [PublicConsultation@ird.govt.nz](mailto:PublicConsultation@ird.govt.nz) and we can email these to you.