

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY**

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**INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI**

# **Income tax – How absences affect the main home exclusion to the bright-line test**

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This Interpretation Statement considers whether the main home exclusion to the bright-line test applies where a person leaves their dwelling for a period during the bright-line period.

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

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## Summary | Whakarāpopoto

1. The bright-line test taxes residential land sold within the bright-line period. Generally, the bright-line test does not apply when the land is used predominantly for a dwelling that was the person's main home. This is known as the main home exclusion.
2. This Interpretation Statement considers whether the main home exclusion to the bright-line test applies where a person leaves their dwelling for a period during the bright-line period. A person might temporarily leave their dwelling during the bright-line period for many reasons. Holidays, work secondments, renovations or financial reasons are possible scenarios. However, absences may affect whether the main home exclusion applies.

### **Land acquired on or after 27 March 2021 (10-year bright-line test and 5-year new build bright-line test)**

3. For land acquired on or after 27 March 2021, the main home exclusion applies if all days in the bright-line period (10 years or 5 years for new builds) are main home days.
4. A "main home day" is a day within the bright-line period where the land has:
  - been used predominantly as a main home by the main home person; or
  - not been used as a main home, provided those days do not exceed 365 consecutive days (known as the 12-month buffer).
5. A person's "main home" is the one dwelling that is used as a residence by the main home person. The Commissioner considers "used as a residence" requires actual physical use of the dwelling and not intended use. The use must be consistent with the typical use of a dwelling as a residence. "Residence" means a place where a person has a fixed presence and degree of permanence. It is a place where a person has settled, where they ordinarily eat, live and sleep. It is a place the person uses as a base for their daily activities and is the seat of their domestic life and interests.
6. A person does not need to occupy the dwelling every day of the bright-line period for the dwelling to be used as a residence. Depending on the facts, a temporary absence from the dwelling during the bright-line period may still mean the dwelling is being used as a residence. However, there comes a point where the length of the absence no longer represents typical use of a dwelling as a residence. Although this is a matter of fact and degree in each case, the Commissioner considers that an absence of more than 12 months will strongly indicate that the person is no longer using the dwelling as a residence.

7. If all days in the bright-line period are main home days, the main home exclusion applies. If a day in the bright-line period is not a main home day, the main home exclusion does not apply. This means the sale of the land may be subject to tax. However, an adjustment is allowed so tax is not payable for periods where the dwelling was used as a residence.
8. The main home exclusion to the 10-year bright-line test and the 5-year new-build bright-line test is discussed in more detail from [17].

## **Land acquired from 29 March 2018 to 26 March 2021 (5-year bright-line test)**

9. For land acquired from 29 March 2018 to 26 March 2021, the main home exclusion applies if, for most of the bright-line period, the land has been used predominantly for a dwelling that was the person's main home.
10. The Commissioner considers that the words "for most of the bright-line period" require a comparison between the length of time the land was used by the main home person as a residence and the length of the bright-line period. "Most" means more than 50%. If the length of time the land was used as a residence is 50% or less, the main home exclusion does not apply. There are no adjustments to recognise periods where the dwelling was used as a residence and the 12-month buffer does not apply.
11. The main home exclusion to the 5-year bright-line test is considered in more detail from [61].

## **Introduction | Whakataki**

12. This Interpretation Statement summarises the relevant parts of the bright-line test and the main home exclusion before considering how absence affects the application of the main home exclusion. Examples | Taurira 1–5 at [60] and 6 and 7 at [67] illustrate the concepts discussed.

## **Bright-line test**

13. The bright-line test taxes residential land sold within the bright-line period. The length of the bright-line period depends on when the person first acquired the land and the type of land acquired.

When the land was acquired	Bright-line period
From 29 March 2018 to 26 March 2021	5 years
On or after 27 March 2021	10 years
	5 years (for new build land)

14. "Residential land" is relevantly defined in s YA 1 to mean land that has a dwelling on it.
15. "Dwelling" is relevantly defined in s YA 1 as "a place configured as a residence or abode, whether or not it is used as such, and includes any appurtenances belonging to or enjoyed with the place".
16. The bright-line test applies only where none of the other land taxing rules in ss CB 6 to CB 12 apply (for example, s CB 6, which applies to the sale of land acquired for the purpose or with the intention of re-sale).

## Main home exclusion – land acquired on or after 27 March 2021

### Main home exclusion

17. For land acquired on or after 27 March 2021, the main home exclusion applies when all days in the bright-line period are "exempted predominant main home days" (referred to in this statement as "main home day"). A main home day is a day within the bright-line period when the land has been used predominantly for a dwelling that was the main home for one or more main home persons (s CB 16A(1B)).
18. The following analysis considers the three requirements for the main home exclusion to apply:
  - The land was used predominantly for a dwelling (from [20]).
  - The dwelling was used as a main home by the main home person (from [22]).
  - The exceptions to the main home exclusion do not apply (from [55]).
19. A main home day also includes a day when the land has not been used as a main home, provided those days do not exceed 365 consecutive days. This is known as the 12-month buffer and is discussed at [57].

## The land was used predominantly for a dwelling

20. For the main home exclusion to apply, the land must have been used “predominantly for a dwelling” that was the main home for one or more main home persons. The meaning of “predominantly for a dwelling” was considered in “[QB 18/16: Income tax – bright-line test – main home exclusion – sale of subdivided section](#)”, *Tax Information Bulletin* Vol 31, No 1 (February 2019): 43<sup>1</sup>. The Commissioner concluded that land is used predominantly for a dwelling that was the person’s main home if more than 50% of the physical area of the land is used as the person’s main home. If less than 50% of the physical area of the land is used as the person’s main home, the main home exclusion will not apply. However, an adjustment is permitted so the main home portion of the land is not taxed under the 10-year bright-line test and the 5-year new build bright-line test. This Interpretation Statement does not focus on this aspect of the main home exclusion.
21. It is assumed, for the purpose of this statement, that all land is used predominantly for a dwelling that was the person’s main home.

## The dwelling was used as a “main home” by the main home person

22. “Main home” is defined in s YA 1. It means the one dwelling that is used as a residence by the main home person.<sup>2</sup> If a person has more than one dwelling, their main home is the one with which they have the greatest connection.<sup>3</sup>

**main home** means, for a person, the 1 dwelling—

- (a) that is 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

23. A dwelling is a main home if it is “used as a residence” by the main home person.

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<sup>1</sup> QB 16/18 concerns the 2-year and 5-year bright-line tests. However, the analysis on the meaning of “predominantly for a dwelling” is also relevant for the 10-year and 5-year new-build bright-line tests. *Other parts of QB 16/18 may be out-of-date due to recent legislative changes.*

<sup>2</sup> The meaning of main home person is discussed from [49].

<sup>3</sup> For detailed analysis on the meaning of “greatest connection”, see QWBA xx/xx: If a person has two or more homes, which home is their main home for the purpose of their main home exclusion to the bright-line test? (draft, December 2022).

## Meaning of “used as a residence”

24. The words “used as a residence” in the definition of “main home” are not defined in the Act, so their ordinary meaning must be considered.

### Ordinary meaning

25. The *Oxford English Dictionary* (online edition, Oxford University Press, accessed 24 May 2022) defines “residence” relevantly as:
- 2. a The circumstance or fact of having one’s permanent or usual dwelling place or home in or at a certain place; the fact of residing or being resident ...
  - 4. a The place where a person resides; the dwelling place or home of a person ...
26. Based on the ordinary meaning, residence refers to a place where a person resides on a permanent basis as their home.
27. The *Oxford English Dictionary* usefully articulates the concept of a “home” by explaining that it is a place that is the seat of domestic life and interests. Home is relevantly defined as:
- 2. a. A dwelling place; a person’s house or abode; the fixed residence of a family or household; the seat of domestic life and interests. Also (chiefly in later use): a private house or residence considered merely as a building; cf. house n.1 1a. Also (esp. in early use) without article or possessive (now only in prepositional phrases, as at home, from home, near home, etc ...).
  - b. Without article or possessive. The place where one lives or was brought up, with reference to the feelings of belonging, comfort, etc., associated with it.
28. The *Oxford English Dictionary* defines “used” relevantly as:
- 1 a. Customarily employed, experienced, or encountered; habitual, usual.
  - 2 a. That is made use of, esp. frequently or repeatedly.
29. Based on the ordinary meaning, a dwelling will be used as a residence when it is customarily or repeatedly used for this purpose.
30. Pulling these definitions together suggests a dwelling is used as a residence when it is customarily or repeatedly used as a place where a person resides on a permanent basis. It is where the person remains, stays and dwells and is the seat of that person’s domestic life and interests.

### Case law – “residence”

31. The meaning of residence in the context of the main home exclusion to the bright-line test has not been considered by the courts in New Zealand. However, there is helpful case law from the courts in the United Kingdom in other contexts.
32. In an electoral law context, Ridley J in the High Court decision in *Stoke-on-Trent Borough Council v Cheshire County Council* [1913] 3 KB 699 concluded (at 706) that a place of residence of a person is a place where they eat, drink and sleep.
33. Also in an electoral law context, is the decision of the United Kingdom Court of Appeal in *Fox v Stirk; Ricketts v Registration Officer for the City of Cambridge* [1970] 3 All ER 7. The question was whether two university students were entitled to be registered on the electoral roll for their university towns or whether they should be registered on the roll in their “home” electorate (generally the home of their parents). The test was whether the students were “resident” in the university electorate on 10 October 1969.
34. Lord Denning MR discussed the meaning of resident, and identified three principles to apply in the context of resident and residence (at 11):

I prefer to go by the ordinary meaning of the word 'resident'. I follow Viscount Cave LC in *Levene v Inland Revenue Comrs* ([1928] AC 217 at 222, [1928] All ER Rep 746 at 749), where he said:

“... the word ‘reside’ is a familiar English word and is defined in the Oxford English Dictionary as meaning ‘to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place.’”

I would also take into account, as the Act says, the general principles formerly applied and have regard to the purpose and other circumstances of a man’s presence at or absence from the address. **Hence I derive three principles. The first principle is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man a resident there. A guest who comes for the weekend is not resident. A short-stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account.** Applying these principles, I do not think these students are disqualified simply because their parental home is in England. They may be resident at their homes, but they may also be resident in Bristol or Cambridge. I would deplore any test by which a student is disqualified according to whether his parental home was in England or overseas. People who have houses or flats in London and houses in the country can be on the register for both, because they are resident in both, but they can only vote at one. So also with students; they can be on the register for their homes and for their university towns, but they can only vote in one.



**I think that a person may properly be said to be 'resident' in a place when his stay there has a considerable degree of permanence.** So I would apply the simple test: was there on 10 October 1969, a considerable degree of permanence in the stay of the appellants in Bristol or Cambridge? I think there was. They were living there and sleeping there. They were there for at least half the year—as a minimum. Many of them were there for much more, especially the science students, because they have to work in the vacations in the laboratories. There was certainly a sufficient degree of permanence to make them 'resident' in Bristol or Cambridge, as the case may be. [Emphasis added]

35. Adopting the *Oxford English Dictionary* definition of reside, Lord Denning MR explained that a temporary presence at an address does not make a person resident there and a temporary absence does not deprive a person of their residence. Residence requires a degree of permanence. It is place where a person is settled and where they live.

### Case law – “used”

36. No case law considers the meaning of “used” in the context of the main home exclusion. However, Judge Bathgate in *Case H21* (1986) 8 NZTC 218 considered the meaning of used in the context of the Land Tax Act 1976 (at 223):

This case is concerned with the exemption of the class of land described in sec 27(1)(n), which states:

- “(1) Land shall be exempt from land tax in the following cases, and to the following extent:
- (n) Land owned or occupied by, or in trust for, any society or association of persons, whether incorporated or not, if **the land is used solely or principally for games or sports** other than horse racing, greyhound racing, or trotting, and is **not used for the private pecuniary profit** of any individual.”.

...

The word “used” appears twice in the paragraph. On the first occasion it is to describe the fact, state or condition of the land in relation to games or sports than may occur thereon. In this sense used means a physical use carried out on the land itself. I do not think a wider connotation was intended for the word on its second appearance in the paragraph. **On both occasions “used” relates to what physically occurs upon the land, which is a common way of interpreting the word and is often in such circumstances coupled with occupancy of land.** [Emphasis added]

37. “Used” in the definition of main home is used in a similar context to the provision Judge Bathgate considered. Judge Bathgate concluded that used relates to what

physically occurred on the land. He noted this is a common interpretation of “used” in a land context.

38. This view is consistent with the United Kingdom case *Brake v Inland Revenue Commissioners* [1915] 1 KB 731 (UKHC) which was applied by the High Court in *Thornton Estates Ltd v CIR* (1998) 18 NZTC 13,577 (HC). *Brake* was concerned with whether certain holdings of undeveloped land were subject to undeveloped land duty under the relevant United Kingdom Act or whether the land was exempt because it was “bona fide used for any business, trade or industry”. Rowlatt J held the land was not exempt because “use” in connection with land means the physical employment of the land (at 733):

The only question in this case is whether this land is “bona fide used for any business, trade, or industry”. It seems to me to be too clear an argument that the use of land for any business trade or industry means the employment of the land as land. That means, of course, its physical employment, not because one reads in the word “physically” before “used” in the statute, but because the use of the land means the use of the land as land, and that brings in the idea of physical use.

39. Hansen J in *Thornton Estates* agreed with this interpretation of use in a land context, stating (at 12,240) “[t]he meaning I give to the word in its context is the same as that given by Rowlatt J in *Brake*”.
40. However, on occasion, the courts have held that land may be used without being physically used. The Court of Appeal in *Sloss v Sloss* [1989] 3 NZLR 31 is authority for this proposition. *Sloss* was a matrimonial property case. During the marriage, Mr Sloss purchased a commercial building with his separate property. The issue for the court was whether the building was acquired “for the common use and benefit of the parties” within s 8(ee) of the Matrimonial Property Act 1976. As to the meaning of use, the court held (at 36):

The physical occupation of property is clearly a use of that property. In its ordinary meaning, “use” is not, however, confined in that way. In its natural meaning it is a word of wide import. The *Shorter Oxford English Dictionary* (3rd ed, 1987) gives as the first meaning, “[the] act of using or fact of being used”, and amongst the more detailed definitions is, “utilisation or employment for or with some aim or purpose”. The owner of land may be said to use the land when, without doing anything on that land, he obtains advantages from the land (*Newcastle City Council v Royal Newcastle Hospital* [1959] AC 248, 255) and in *R v Heyworth* (1866) 14 LT 600, 601 Lush J observed that: “The owner ‘uses’ the place [a slaughter house] by letting it out”. Even the giving away of property may be a “use” of that property (*R v Wampole (Henry K) & Co* [1931] 3 DLR 754)).

41. While the Commissioner accepts that a person can use land by renting it out or even for land banking, in the context of the definition of main home, the Commissioner considers Parliament intended that the narrower meaning of used should apply. This is

because the word residence influences how the word used is interpreted. Parliament could have drafted the definition so it said “the 1 dwelling that is the person’s residence” but it did not. Therefore, Parliament must have intended the word used to add something more to this definition. This means actual physical use of the dwelling as a residence is required. Intended use of the dwelling is not relevant for this purpose. Furthermore, it is also irrelevant that there are reasons beyond the control of the main home person for why the main home person was not able to use the dwelling as a residence. For example, if a person must leave their dwelling for more than 12 months because the dwelling needs to be reclad, the dwelling is not being used as a residence at this time and the main home exclusion will not apply.

42. Having determined that physical use is required, the next question is whether that use needs to be continuous. In a different context is *Handiside v A-G* [1969] NZLR 650 (SC). In this case, Wild CJ was concerned with the word used as it appeared in the Customs Act 1966 in relation to a motor vehicle. To qualify for a concession under the legislation, a vehicle must have been “personally owned and used ... for at least one year”. Wild CJ said (at 651):

The thing that is spoken of as being “used” is a vehicle. A vehicle is not a thing that is used continuously, even over a short period. **Therefore the word “used” does not connote continuous use.** That point gains emphasis from two other features of the context. The use must be by the owner “personally”; and it must extend “for at least one year”. Even over a short period of time and in the hands of the keenest owner a vehicle needs to be parked, serviced and garaged. Over a period of a year it might well in addition require extensive repairs. Moreover, its owner would normally require to leave it out of action while he is ill or while he goes away on business.

**Reading the whole phrase with such considerations in mind, I am of opinion that the word “used” connotes use normal to the kind of vehicle in question,** and that normal use does not cease merely because the vehicle is in fact out of action at times and for reasons incidental to normal personal ownership and use. An owner who, choosing deliberately not to use his vehicle, leaves it locked away in a garage for months on end could not be said to be using it. **But I do not think that “personal use for at least one year” is broken by the fact that the vehicle is stored in a garage for a period during which the owner is unable for normal reasons to use it. How long that period may be is a question of degree, and that is a question of fact that depends on the circumstances of the case.** In the circumstances of this case I am clearly of [the] opinion that in law the Collector can properly be satisfied that the plaintiff was entitled to the benefit of the concession. [Emphasis added]

43. While this case considers the word used in a different context (the use of a motor vehicle rather than the use of a dwelling as a residence), the analysis is helpful. For example, the court’s observation that used does not mean continuous use and instead means use normal or typical to the kind of asset in question, appears transferrable to the use of a dwelling. A dwelling does not need to be in continuous use for it to be

“used”. Periods where the dwelling is not physically used by the person for normal reasons does not mean it has not been used as a residence during the relevant period. As with vehicles, dwellings are not typically used continuously. The owner of a dwelling (like the owner of a vehicle) may not physically use the dwelling every day. They may leave the dwelling to go away on business, take a holiday or visit friends. They may be required to vacate the property for renovations. This is how a person typically uses their home, and the Commissioner considers that during these short absences, the person’s use of the dwelling as a residence does not cease.

44. *Handiside* is consistent with the United Kingdom Court of Appeal decision in *Fox v Stirk*, where Lord Denning MR held that a temporary absence from a residence did not mean the dwelling was no longer being used by the person as a residence (at 12):

The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account.

45. However, a point will come where the length of the absence no longer represents typical use of a dwelling as a residence and, although the answer will likely depend on the facts and circumstances in each case, there is direction from Parliament about where that point might lie. The definition of a “main home day” means “a day within the land’s bright-line period that the land has been used predominantly for a dwelling that was the main home for 1 or more main home persons”. This suggests that for the main home exclusion to apply, the dwelling must be used as a residence each day in the bright-line period. However, a main home day also includes days in the bright-line period where the dwelling is not used as a residence, provided those days do not exceed 365 days. This is known as the 12-month buffer (discussed from [57]) and provides the main home person with a certain amount of leeway. The Commissioner considers that a property will be unlikely to be used as a residence if the main home person has not physically occupied the dwelling for 12 months or more<sup>4</sup> (Example | Taura 3 and Example | Taura 4 illustrate this).

### **Conclusion on the meaning of “used as a residence”**

46. “Residence” in the definition of “main home” means a place where a person has a fixed presence and a degree of permanence. It is a place where a person has settled and where they ordinarily eat, live and sleep. It is a place the person uses as a base for their daily activities and the seat of their domestic life and interests.
47. “Used” in the definition of “main home” means actual physical use of the dwelling as a residence. An unoccupied or vacant dwelling is not a main home, irrespective of

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<sup>4</sup> *Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill* (Officials’ Report to the Finance and Expenditure Select Committee on submissions on the Bill, February 2022), at 180.

whether it is available or intended to be used as a residence. It does not require continuous use but use consistent with the typical use of a dwelling as a residence. Therefore, a dwelling is used as a residence when it is customarily or repeatedly physically used for this purpose.

48. A temporary presence does not mean the dwelling is used as a residence, and a temporary absence from the dwelling does not mean it is no longer being used as a residence. The Commissioner considers short absences during the bright-line period may still mean the dwelling is being “used as a residence”, provided those absences are consistent with the typical use of a dwelling as a residence. For example, holidays and weekends away may represent typical use. However, there will come a point where the length of the absence no longer represents typical use of a dwelling as a residence. Although this will be a matter of fact and degree in each case, the Commissioner considers an absence from the dwelling for more than 12 months will strongly indicate the dwelling is no longer being used as a residence by the main home person. For example, if a person was seconded to an overseas office for two years, it would be difficult to argue the person continues to physically use their dwelling as a residence, when they might return to the dwelling for only a few weeks each year. This type of use is not consistent with the typical use of a dwelling as a residence. The person does not have a fixed presence at the dwelling, and it no longer serves as a base for their daily activities and the seat of their domestic life and interests.

### Meaning of “main home person”

49. The person using the dwelling as a residence must be the main home person. “Main home person” is defined in s CB 16A(1D):

*Key term: main home person*

(1D) **Main home person** means, for person A, 1 or more of the following people:

- (a) person A;
- (b) a beneficiary of a trust, if person A is a trustee of the trust that owns the residential land disposed of, 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 that is being disposed of.

50. In most cases, the “main home person” will be the owner of the land who is disposing of it within the bright-line period (s CB 16A(1)). For the main home exclusion to apply, the owner must be the person who is using the dwelling as a residence. Use of the dwelling by other family members will not satisfy this test.

51. A main home person may also be a beneficiary of a trust but only if the principal settlor of the trust does not have a main home or it is the main home of the principal settlor that is being sold. "Principal settlor" means a settlor whose settlements for the trust are the greatest or greatest equal by market value (s CB 16A(7)). Example | Tauria 5 illustrates how the main home exclusion applies where a dwelling is owned by a trust.

### Co-owners

52. Co-owners of residential land can have different main homes. If the land is sold during the bright-line period, the main home exclusion will apply only to the owner or owners that use the dwelling as a residence.<sup>5</sup> If an owner or owners do not use the dwelling as a residence, perhaps because they live elsewhere during the bright-line period, the main home exclusion will not apply to those owners. They will be required to pay tax on their share of any profits.
53. Where residential land is held by co-owners who are joint tenants (i.e. they don't have distinct shares in the property), profits and losses should be allocated equally between the owners. Where the residential land is held by co-owners who are tenants in common (i.e. where each has a distinct share in the property), profit and losses are allocated according to each party's share of the property.
54. Co-ownership is illustrated in the fact variation in Example | Tauria 4 .

### Exceptions to the main home exclusion

55. Two exceptions that may prevent the main home exclusion applying are if the:
- person has used the main home exclusion two or more times within the two years immediately preceding the bright-line date (s CB 16A(3)(a)); and
  - person or group of persons has engaged in a regular pattern of acquiring and disposing of their main home (s CB 16A(3)(b) and (4)).
56. A "group of persons" means two or more people when they occupy or have occupied the residential land together as their main home. It includes a non-natural person (such as a trustee of a trust or another entity) if at least one of the people who occupies the main home has significant involvement in or control of the activities of the non-natural person (s CB 16A(5)).

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<sup>5</sup> *Special report on the bright-line test for residential land* (Inland Revenue, Wellington, 2015), p 14.

## Twelve-month buffer

57. The main home exclusion also applies on days when the dwelling is not used as a residence, provided those days do not exceed 365 days (ss CB 16A(1B)(b)) and CB 16A(1C)). This is known as the 12-month buffer and is intended to cater for situations where the person's dwelling is used for another purpose (for example, the dwelling is rented out while the person is overseas). The buffer applies only if the 12-month period is immediately before or immediately after a period during which the dwelling was used as a residence. It may be used multiple times during the bright-line period. If the buffer is exceeded, the main home exclusion does not apply at all.

## Examples | Taura 1 to 5

58. A person might temporarily leave their dwelling during the bright-line period for many reasons. They may leave home because of a work secondment, to carry out renovations or to go on holiday. Financial issues may require a person to rent out their home for a period. These absences may affect whether the main home exclusion applies.
59. Examples | Taura 1–5 consider how absences during the bright-line period may affect the application of the main home exclusion to the bright-line test. The examples concern land acquired on or after 27 March 2021 with a bright-line period of 10 years.
60. The examples assume ss CB 6 to CB 12 do not apply, the land is residential land, and the exceptions to the main home exclusion do not apply.

### Example | Tauria 1 – Person goes on holiday for six weeks

Brian purchased a two-bedroom house in Wellington on 30 March 2021. He uses the house as his residence. It is the place where he permanently resides and the seat of his domestic life and interests.

On 1 December 2021, Brian goes on annual leave to the family bach on the Coromandel. He is there for six weeks. He returns to his house in Wellington in mid-January 2022 and goes back to work.

On 4 August 2023, Brian decides to sell his house and wants to know if he can rely on the main home exclusion, so he does not have to account for tax on the sale.

Brian can rely on the main home exclusion and does not need to account for tax on the sale of his Wellington house as it was used as a residence by him during the entire bright-line period. It continued to be his main home during the period when he stayed at the family bach. A temporary absence from his house for six weeks does not mean Brian was no longer using his house as his residence. The main home exclusion does not require the main home person to continuously occupy the home. Going away on holiday for six weeks represents typical use of a dwelling as a residence.

### Example | Tauria 2 – Person goes overseas for three months

The facts in this example are the same as in Example | Tauria 1. However, instead of going to the family bach for six weeks, Brian takes unpaid leave and goes overseas. He leaves on 1 April 2022 and is away for three months. He spends his time couch-surfing in London and on bus tours through Europe.

While overseas, Brian's friend Tai house-sits for him. Tai waters the plants, collects the mail and makes sure the place is secure.

Brian returns to New Zealand on 1 July 2022, and shortly after decides to sell the house so he can relocate permanently to London. He wants to know whether the main home exclusion applies.

Brian can rely on the main home exclusion. He used his Wellington house as a residence during the entire bright-line period. It was the place where he resided on a permanent basis and where he ate, lived and slept. It continued to be his main home while he was overseas for three months.

Brian's time spent overseas was a temporary absence and does not mean he was no longer using his Wellington house as a residence. Brian's use of his house during this period is consistent with the typical use of a dwelling as a main home.



It is not relevant that during this period Tai was house-sitting for Brian. As a house-sitter, Tai did not have exclusive possession of the house nor had he been granted a right of quiet enjoyment. Brian could return at any time and take possession of the house.

*Fact variation – Brian rents his house to Tai*

If Brian had rented his house to Tai for three months under a residential tenancy agreement, then this would not qualify as typical use of a dwelling as a residence. In this scenario, the temporary absence is not consistent with the use of the house as a residence. The fact the parties have signed a residential tenancy agreement strongly indicates Brian's use of the residence has changed. Brian does not have exclusive possession of the house during this period.

However, because Brian was away for only three months, and immediately before he left, he was using his house as a residence, the main home exclusion still applies because of the 12-month buffer.

### **Example | Tauira 3 – Person goes overseas for 15 months**

The facts in this example are the same as in Example | Tauira 2. However, Brian is now on an extended trip overseas for 15 months. He spends his time couch-surfing in London and on bus tours through Europe and South America.

Brian eventually returns on 1 July 2023 and shortly after decides to sell the Wellington house so he can relocate permanently to London. He wants to know whether the main home exclusion applies.

Brian cannot rely on the main home exclusion, and he will need to account for tax on the sale of his house.

The time spent overseas was not a temporary absence but a significant period when Brian was not physically using the house as his residence. It makes no difference that his furniture and belongings remained in the house, his mail was still being sent to the address or he had a job to return to. The main home exclusion is focused on use rather than intention, and Brian has not physically used the house for 15 months. This level of absence is not consistent with the typical use of a house as a residence. In these circumstances, the 12-month buffer will not provide Brian with any relief as the absence exceeds the 365-day buffer threshold.

However, an adjustment will be allowed so tax is not payable for periods when the house was used as a residence.

*Fact variation – Brian leaves his adult children in the house while overseas*

If Brian left his two adult children in the house while he went overseas, this would not have made a difference. The main home person (Brian) must physically use the house as their residence. It is irrelevant that Brian's adult children occupy the house in his absence.

### **Example | Tauria 4 – Person goes on secondment for two years**

Rebecca purchases a three-bedroom apartment in Auckland on 10 April 2021. She uses the apartment as her main home for three years. It is the place where she permanently resides and where she eats, sleeps, and lives.

On 3 March 2024, Rebecca is seconded to the Middle East for two years. She leaves her apartment vacant. Rebecca returns to New Zealand twice a year to visit family and friends for two weeks at a time and stays in the apartment. While in the Middle East she stays in her employer's hotel.

On 10 March 2026, Rebecca returns to New Zealand. She continues to live in her apartment until August 2027, when she decides to sell it. She wants to know whether she can rely on the main home exclusion so that she does not have to account for tax on the sale of the apartment.

The main home exclusion does not apply. From 3 March 2024 to 10 March 2026, Rebecca did not use the apartment as a residence. The apartment was not the centre of her domestic life and interests for that period. While she did return home twice a year for two weeks at a time, that time is not enough to constitute a fixed or permanent presence. Rebecca's use of the apartment during this period is not consistent with the typical use of a dwelling as a residence.

Rebecca is also unable to rely on the 12-month buffer because the number of days where the apartment was not used as a residence exceeds 365 days.

While the main home exclusion does not apply and Rebecca will need to account for tax on the sale of the apartment, an adjustment will be permitted to allow for the periods Rebecca used the apartment as a residence.

*Fact variation – Rebecca is a co-owner of the apartment*

Rebecca is married to Luke, and they have two teenage daughters. Rebecca and Luke are co-owners of the apartment. When Rebecca goes on secondment, Luke decides to stay in the apartment with their daughters as they are in secondary school. When Rebecca and Luke sell the apartment in August 2027, Luke can rely on the main home

exclusion, so he does not have to account for tax on his half-share of the profit. However, as Rebecca was absent from the apartment for two years, she cannot rely on the main home exclusion. However, an adjustment will be permitted to allow for the periods Rebecca used the apartment as a residence.

### Example | Tauria 5 – A trust owns the dwelling

On 5 July 2022, Lucas purchases a house in Hamilton. He settles the house in a family trust and makes his son Liam a discretionary beneficiary of that trust. Lucas is then seconded overseas for three years for work. While Lucas is overseas, Liam lives in the house. In 2024, the trustees decide to sell the house and want to know whether they can rely on the main home exclusion, because a beneficiary of the trust – Liam – has used the house as his main home.

In these circumstances, the “main home person” is the principal settlor of the trust, who is Lucas. Lucas has another house overseas that he uses as a main home. Therefore, because the main home person has not occupied the Hamilton house as his main home, the main home exclusion does not apply.

## Main home exclusion – land acquired from 29 March 2018 to 26 March 2021

61. For land acquired from 29 March 2018 to 26 March 2021, the main home exclusion applies if, for most of the bright-line period, the land has been used predominantly for a dwelling that was the person’s bright-line grandparented home (s CZ 40).

62. “Bright-line grandparented home” is defined in s YA 1:

**bright-line grandparented 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

63. “Bright-line grandparented main home” is defined in a similar way to “main home”. However, the main home person is required to use the dwelling only “mainly” as a residence for most of the bright-line period.

64. The Commissioner considers that the words “for most of the bright-line period” require a comparison between the length of time the land was used by the main home person

as a residence and the length of the bright-line period. "Most" means more than 50%. If the length of time the land was used as a residence is 50% or less, the main home exclusion does not apply. There are no adjustments to recognise periods where the dwelling was used as a residence, and the 12-month buffer does not apply.

65. The two exceptions that may prevent the main home exclusion applying are if the:
- person has used the main home exclusion two or more times within the two years immediately preceding the bright-line date (s CZ 40(3)(a)); and
  - person or group of persons has engaged in a regular pattern of acquiring and disposing of their main home (s CZ 40(3)(b)).

## Examples | Tauria 6 and 7

66. Examples | Tauria 6 and 7 consider how absences during the bright-line period may affect the application of the main home exclusion to the 5-year bright-line test. The examples concern land acquired from 29 March 2018 to 26 March 2021.
67. The examples assume ss CB 6 to CB 12 do not apply, the land is residential land, and exceptions to the main home exclusion do not apply.

### Example | Tauria 6 – Person moves into a rest home

On 1 April 2018, Linda purchases a two-bedroom unit in New Plymouth. She uses the unit as her main home for two and a half years. On 1 October 2020, Linda moves into a rest home, and she rents the unit to a young couple for two years. On 2 October 2022, Linda sells her unit to help pay for her rest home care.

The main home exclusion applies because for more than 50% of the time Linda owned the unit (four and a half years) it was predominantly used by Linda as a main home.

It is not relevant that Linda did not use the unit as a main home for two years, as the 5-year bright-line test requires that she uses the unit as a main home only for most of the time she owns the land.

### Example | Tauria 7 – Person goes overseas for two years

Chris purchases a townhouse in Christchurch on 1 May 2018. He uses the townhouse as his main home for one year before heading overseas for two years. On his return, he sells his townhouse and moves to Australia.

As Chris used the townhouse as a main home for less than 50% of the time he owned the land, the main home exclusion does not apply. There are no adjustments to recognise periods where Chris used the dwelling as a main home, and the 12-month buffer does not apply.

*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.*

## References | Tohotoro

### Legislative references | Tohotoro whakatureture

Customs Act 1966

Income Tax Act 2007, ss CB 6 to CB 12, CB 16A, CZ 40, YA 1 (“bright-line grandparented home”, “dwelling”, “main home”, “residential land”)

Land Tax Act 1976

Matrimonial Property Act 1976, s 8

### Case references | Tohotoro kēhi

*Brake v Inland Revenue Commissioners* [1915] 1 KB 731 (UKHC)

*Case H21* (1986) 8 NZTC 218

*Fox v Stirk; Ricketts v Registration Officer for the City of Cambridge* [1970] 3 All ER 7 (UKCA)

*Handiside v A-G* [1969] NZLR 650 (SC)

*Sloss v Sloss* [1989] 3 NZLR 31 (CA)

*Stoke-on-Trent Borough Council v Cheshire County Council* [1913] 3 KB 699 (UKHC)

*Thornton Estates Ltd v CIR* (1998) 18 NZTC 13,577 (HC)

### Other references | Tohotoro anō

*Special report on the bright-line test for residential land* (Inland Revenue, Wellington, 2015).

*Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill* (Officials' Report to the Finance and Expenditure Select Committee on submissions on the Bill, February 2022), at 180.

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QWBA xx/xx: If a person has two or more homes, which home is their main home for the purpose of their main home exclusion to the bright-line test? (draft, December 2022).

## About this document

Interpretation Statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, Interpretation Statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an Interpretation Statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.