

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

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QUESTIONS WE'VE BEEN ASKED

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?

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QB XX/XX

This Question We've Been Asked explains how to determine a person's main home for the purpose of the main home exclusion to the bright-line test where the person uses two or more homes as a residence.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 16A, CZ 40 and YA 1

Question | Pātai

If a person has two or more homes that they use as a residence, which home is their main home for the purpose of the main home exclusion to the bright-line test?

Answer | Whakautu

A person can have only one main home. If a person has two or more homes that they use as a residence, their main home is the one home with which they have the greatest connection. This means the one home with which the person has the most significant or important bond.

The following factors may be useful for determining which home the person has the greatest connection with:

- the time the person has occupied the home;
- where the person's immediate family lives;
- where the person's social ties are strongest;
- where the person's employment, business interests and economic ties are located; and
- where the person's personal property is located.

This is an objective test and requires an overall assessment of the person's circumstances.

If a person has a family home that they use as a residence and a holiday home, the greatest connection test does not apply. This is because the holiday home is not used as a residence. Their main home will be the family home.

Explanation | Whakamāramatanga

Introduction

1. The bright-line test taxes residential land sold within the bright-line period (s CB 6A). Generally, the bright-line test does not apply when the land was used predominantly for a dwelling that was the person's main home. This is known as the main home exclusion.

2. The Commissioner has been asked how the main home exclusion applies when a person has two or more homes that they use as a residence. This is an issue because under the bright-line test, a person can have only one main home.
3. This Question We've Been Asked explains how to determine which of the person's homes is their main home. Three examples at [20] illustrate the concepts discussed.
4. All legislative references are to the Income Tax Act 2007 unless otherwise stated.

Bright-line test

5. The bright-line test taxes residential land sold within the bright-line period. The length of the bright-line period depends on when the land was 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)

6. 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

7. The sale of residential land within the bright-line period is not subject to tax if the main home exclusion applies (ss CB 16A and CZ 40). For land acquired on or after 27 March 2021¹ "main home" is defined in s YA 1 as:

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

- (a) that is used as a residence by the person (a **home**); and

¹ For land acquired from 29 March 2018 to 26 March 2021, the relevant definition is "bright-line grandparented home" in s YA 1. "Bright-line grandparented home" is defined in a similar way to "main home" but with the addition of the word "mainly" before "used as a residence". Under this test, the person needs to use a dwelling as a residence for more than 50% of the person's period of ownership.

(b) with which the person has the greatest connection, if they have more than 1 home

8. The definition of “main home” explains that a person can have only one main home and that home is the one dwelling with which they have the greatest connection and that is “used as a residence”. The Commissioner previously concluded that “residence” means a place where a person has a fixed presence and a degree of permanence. It is a place where a person has settled, where they ordinarily eat, live and sleep, and a place the person uses as a base for their daily activities and is the seat of that person’s domestic life and interests. “Used” means actual physical use of the dwelling and not intended use. Therefore, a dwelling is used as a residence when it is customarily or repeatedly used for this purpose.²
9. Paragraph (b) of the definition of “main home” states that if a person has two or more homes (being dwellings that are used as a residence), their main home is the one with which they have the “greatest connection”. The meaning of these words is discussed from [11]. Paragraph (b) applies only in relatively rare circumstances where a person has two or more homes that they use as a residence. For example, if a person has a home that they use as a residence and a holiday home that they use occasionally, they are not covered by para (b) because they are not using the holiday home as a residence. Example | Taura 1 illustrates this situation.
10. Finally, the person does not need to own both homes for para (b) to apply. A person’s main home can be a home they rent. Example | Taura 1 also illustrates this point.

Meaning of “greatest connection”

11. “Greatest connection” is not defined in the Act. Based on definitions in the *Oxford English Dictionary* (online ed, Oxford University Press, New York, accessed 9 August 2022), the ordinary meaning of “greatest connection” suggests the home with which the person has the greatest connection is the one with which the person has the most significant or important bond.
12. This is an objective test and requires an overall assessment of the person’s circumstances. The Commissioner considers that the following factors may be relevant in determining with which home the person has the most significant or important bond:
 - the time the person has occupied the home;

² IS xx/xx: Income tax – how absences affect the main home exclusion to the bright-line test (draft, date).

- where the person's immediate family lives;
- where the person's social ties are strongest;
- where the person's employment, business interests and economic ties are located; and
- where the person's personal property is located.

The time the person has occupied the home

13. The time the person has occupied the home may be a relevant factor, although it is unlikely to be determinative. This is because para (a) of the definition of main home has already established that the homes have been used as a place of residence. This means the person's use of both homes has a degree of permanence; it is where they are settled, where they ordinarily eat, live and sleep, and where their domestic life is based.

Where the person's immediate family lives

14. Where the person's immediate family lives may be a relevant factor and is likely to carry substantial weight. If immediate family members live in one of the homes, this factor is likely to be significant. This is because it is unlikely that a person would have a more significant or important bond with a home that their immediate family does not live in. Example | Taura 2 illustrates this point.
15. However, if a person lives in one dwelling and their estranged family lives in another, the dwelling the estranged family lives in is unlikely to be the person's home as they are not using it as a residence. In this scenario, para (b) of the definition of main home does not apply.

Where the person's social ties are strongest

16. The location of a person's social ties (such as sporting or cultural memberships) may be a relevant factor, although this depends on the facts. For example, a person's sporting or cultural membership might be located where they spend their working week (say, an apartment in the city) and not where their immediate family and personal possessions are located (say, a home in the country). This scenario tends to indicate that the home in the country is likely to be the person's main home.

Where the person's employment, business interests and economic ties are located

17. The location of a person's employment, business interests and economic ties may be a relevant factor, but, as with social ties, it depends on the facts. This factor is likely to be of greater relevance if the second home is located overseas. Example | Taurira 3 illustrates this point.

Where the person's personal property is located

18. The location of a person's personal property (for example, furniture or personal belongings) may be a relevant factor. If a person uses both homes as a residence, it is likely they will have personal property in both places. However, if most of a person's personal property is kept at one home, this tends to indicate that this home is likely to be the one with which they have the greatest connection.

Examples | Taurira

19. The following three examples illustrate the application of the law.
20. The examples assume all properties were acquired on or after 27 March 2021 and the bright-line disposal date is within 10 years of the date of acquisition. They also assume that none of ss CB 6 to CB 12 apply.

Example | Taurira 1 - Person has an apartment and a holiday home

Anka rents an apartment in Auckland where she lives with her two children. The apartment is close to her work and the children's preschool.

Anka also owns a house at Omaha beach. She spends five or six weeks of the year at the Omaha house. She visits the Omaha house during the Christmas and New Year period and in the school holidays.

If Anka decides to sell her Omaha house within the bright-line period, she cannot rely on the main home exclusion. This is because she has not used the Omaha house as a residence; she has used it as a holiday house.

Anka's Auckland apartment is her main home. It is the place where she has a fixed presence and a degree of permanence. It is where she eats, lives and sleeps and she uses it as a base for her daily activities.

Example | Tauria 2 - Person has an apartment in the city and a house in the country

On 1 August 2016, Sandra and Dave purchase a four-bedroom house in the Wairarapa. They live there with their adult daughter Lily.

In 2021, Sandra gets a job in Wellington. She commutes for a few months, but soon gets tired of going back and forth each day. On 4 August 2021, Sandra and Dave purchase a one-bedroom apartment in Wellington for Sandra to use during the week. She drives to Wellington in her car on Monday mornings, spends the week at the Wellington apartment, and then returns to the Wairarapa on Friday evenings to spend the weekend in the Wairarapa house. Most of her personal property is kept at the Wairarapa house.

When in Wellington, Sandra attends a local gym. She also joins a Wellington toastmasters club. Sandra's sister and parents live in Wellington, and she has good friends in both Wellington and the Wairarapa. In the Wairarapa, she belongs to a tennis club and a weekend tramping group.

On 3 April 2027, Sandra and Dave decide to sell the Wellington apartment. They want to use the money to upgrade their beach house in the Coromandel. As they have owned the apartment for less than 10 years and it was purchased after 27 March 2021, the 10-year bright-line period applies. Sandra and Dave want to know whether they can rely on the main home exclusion, so they do not have to account for tax on the sale of the apartment.

The issue is whether the Wellington apartment is Sandra's main home. It is clearly not Dave's main home, as he has used the apartment only a handful of times. This means 50% of the profits on the sale of the apartment will be taxable to Dave.

In Sandra's case, she has used both properties as a place of residence, so she must determine which of the two is her main home. Paragraph (b) of the definition of main home states that her main home is the home with which she has the greatest connection. This means, the home with which Sandra has the most significant or important bond. This is an objective test and requires an overall assessment of Sandra's circumstances.

The time Sandra occupies the home

Based on days of use, Sandra spends more time at the Wellington apartment (four nights a week) than the Wairarapa house (three nights a week). However, when holidays are considered, the time difference between the two homes is not significant.

Where Sandra's immediate family lives

The Wairarapa house is where Sandra's immediate family (her husband and adult daughter) live. She also has family in Wellington, but they do not live with her. This suggests the Wairarapa house is Sandra's main home.

Where Sandra's social ties are strongest

Sandra has social ties in Wellington and the Wairarapa. This factor is neutral.

Where Sandra's employment, business interests and economic ties are located

Sandra owns an apartment in Wellington and is employed in Wellington, suggesting that her Wellington apartment is the home with which she has the greatest connection. However, she also owns land in the Wairarapa, which could indicate the Wairarapa house is her main home.

Where Sandra's personal property is located

Most of Sandra's personal property is in the Wairarapa house. This suggests the Wairarapa house is her main home.

Conclusion

On an overall assessment of Sandra's circumstances, her main home is the Wairarapa house and not the Wellington apartment. Factors such as the location of her immediate family and her personal possessions carry more weight than the time she spends at each home. This means she cannot rely on the main home exclusion and will have to account for tax on the sale of the apartment.

The beach house in the Coromandel is not used as a residence so it is irrelevant in the above main home assessment.

Example | Tauria 3 - Retired couple with a house in Auckland and an apartment in Australia

Tom and Gerry recently retired. On 30 September 2021, they sell their house, which they have owned for 20 years, and purchase a smaller three-bedroom house in Auckland. Tom and Gerry also purchase an apartment on the Gold Coast around the same time. The couple spend seven months of the year in Auckland and the five winter months in their apartment on the Gold Coast. Tom and Gerry intend to eventually move to the Gold Coast permanently.

Tom and Gerry have busy social lives in both locations. They have gym and golf club memberships on the Gold Coast and in Auckland. They have no immediate family, but their extended family is in Invercargill and the United States.

The couple have commercial and residential property investments in Auckland. They receive superannuation from New Zealand. They have bank accounts in Australia and New Zealand and their personal property is split evenly between the two locations.

In 2027, Tom gets sick and needs to spend more time in Auckland where his doctor is based. They decide to sell the Gold Coast apartment as Tom cannot travel for some time.

As New Zealand tax residents, Tom and Gerry are taxed in New Zealand on their worldwide income. They want to know whether the profits from the sale of their Gold Coast apartment can be excluded from the bright-line test on the basis that it was their main home.

Tom and Gerry have used both properties as a place of residence, so the issue is which of the two is their main home. Paragraph (b) of the definition of main home states that their main home is the home with which they have the greatest connection. This means, the home with which Tom and Gerry have the most significant or important bond. This is an objective test and requires an overall assessment of Tom and Gerry's circumstances.

The time Tom and Gerry occupy the home

Based on days of use, Tom and Gerry spent more time in their Auckland house than their Gold Coast apartment. This suggests the Auckland house may be their main home, although this factor does not carry significant weight on its own.

Where Tom and Gerry's immediate family lives

Tom and Gerry do not have immediate family living with them in either property. They have extended family in Invercargill and the United States, but this is not relevant for this assessment as these locations do not relate to either property.

Where Tom and Gerry's social ties are the strongest

Tom and Gerry have sporting and social ties in both locations. This factor is neutral and does not point to either property as being the main home.

Where Tom and Gerry's employment, business interests and economic ties are located

While Tom and Gerry are retired, they do have significant business interests and economic ties in Auckland. They own residential and commercial property in Auckland. They also receive superannuation from New Zealand. These factors suggest Tom and Gerry have the most significant or important bond with their Auckland house.

Where Tom and Gerry's personal property is located

Tom and Gerry's personal property is evenly split between the two locations. This factor is neutral and does not point to either property as being the main home.

Conclusion

On an overall assessment of Tom and Gerry's circumstances, their main home is the Auckland house. This means they cannot rely on the main home exclusion and must account for tax on the sale of the Gold Coast apartment. Factors such as the location of their investments and the time spent in each location helped to confirm that their main home was their Auckland house. Their intention to move permanently to the Gold Coast is not relevant.

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 | Tohutoro

Legislative references | Tohutoro whakatureture

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

Other references | Tohutoro anō

IS xx/xx: Income tax – how absences affect the main home exclusion to the bright-line test (draft, December 2022).

Oxford English Dictionary (online ed, Oxford University Press, New York, accessed 9 August 2022).

About this document | Mō tēnei tuhinga

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