

FACT SHEET | PUKA MEKA

Bright-line test and family transactions (s CZ 39)

Issued | Tukuna: 20 April 2023

IS 23/02 FS

This fact sheet accompanies “[IS 23/02](#): Income tax – application of the 5 year s CZ 39 bright-line test to certain family and close relationship transactions”. IS 23/02 considers when the bright-line test in s CZ 39 of the Income Tax Act 2007 applies to disposals of residential land (that is not a main home) in family transactions.

This fact sheet considers only the s CZ 39 bright-line test, which may apply if you entered into a binding agreement to purchase residential land from 29 March 2018 to 26 March 2021 (inclusive). If you purchased residential land after 26 March 2021, the 10 year or 5 year (for new builds) bright-line test in s CB 6A of the Income Tax Act 2007 may apply instead.

Key terms | Kīanga tau tāpua

Bright-line period	Generally the 5-year period from the date you were registered as the owner of residential land and the date you gift it or enter into a binding agreement to sell it.
Disposal	Includes a sale, transfer, distribution from a trustee, or gift.

Partner	A spouse, civil union partner or de facto partner.
Relationship agreement	A contracting out or prenuptial agreement, or a court order, under the Property (Relationships) Act 1976.
Residential land	Land that has, or will have, a house on it (that is not your main home), and includes rental properties, but not business premises or farmland.

Summary | Whakarāpopoto

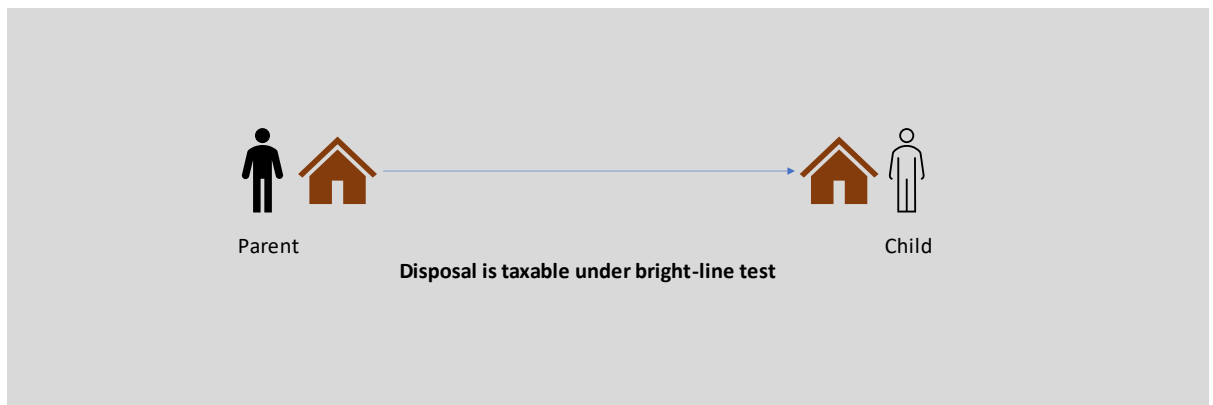
1. The bright-line test for disposals of residential land initially had a 2 year bright-line period, then a 5 year bright-line period (the topic of this fact sheet), and now has a 10 year bright-line period or a 5 year bright-line period for new builds.
2. This fact sheet may be relevant to you if:
 - you entered into a binding agreement to purchase residential land (that is not your main home) from 29 March 2018 to 26 March 2021 (inclusive); and
 - you are disposing of (including selling) the residential land (such as a rental property) within the 5 year bright-line period.
3. This fact sheet covers the situations when you:
 - are a parent who assists your child with buying their first home;
 - add your new partner to the title of your residential land; and
 - inherit a share of residential land under a will, and you sell your share to the other beneficiaries who own shares in the inherited residential land.
4. If you sell residential land to your family member or partner within the bright-line period, you may be taxed under the 5 year bright-line test in s CZ 39.
5. If you gift residential land or the payment you receive is below its market value, you will be taxed on the market value of the residential land instead.
6. If you sell residential land inherited under a will, the sale is exempt from the bright-line test.

Analysis | Tātari – Family and close relationships

Parent disposes of residential land to their child

7. You may be a parent who assists your child to buy residential land. You purchase the residential land personally, as a trustee of a trust, or by a company you are a shareholder of. You do not purchase the residential land as a nominee or bare trustee for your child (considered from [10]).
8. Your child may provide funds towards the purchase. You are the borrower from the bank if there is a mortgage in your name registered against the residential land. You rent the residential land out to your child or a third party until your child is able to buy it from you. They may pay or reimburse you for all or some of the ongoing expenses.
9. You dispose of the residential land to your child for the market value within the bright-line period. The payment you receive from your child is income under the bright-line test. You will still be taxed on the market value of the residential land if you disposed of it for less than market value. You can deduct your cost of the residential land, and this can reduce the amount of income you have to pay tax on. See Example | Taura 1.

Example | Taura 1: Parent disposes of rental property to their child



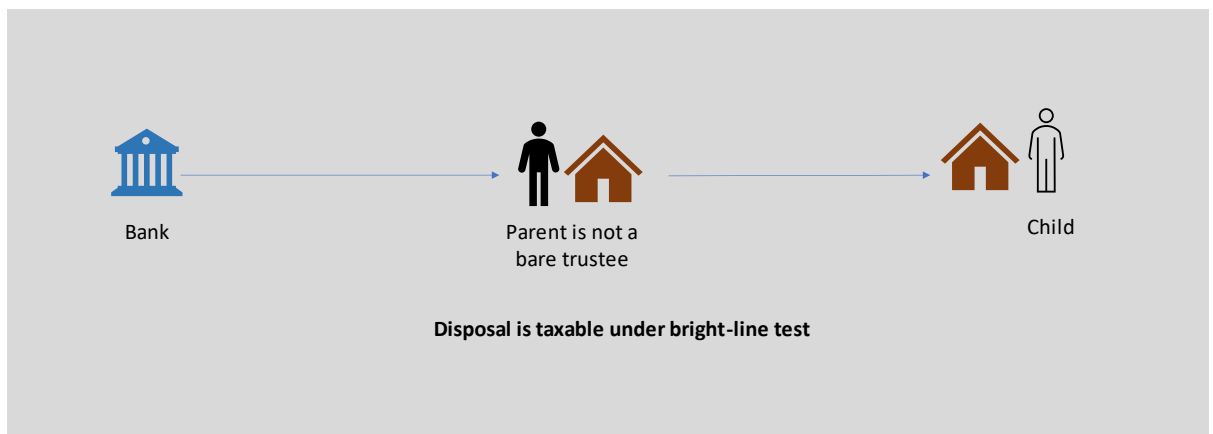
Parent acting as bare trustee for their child

10. If you acted as a bare trustee for your child, the disposal of the residential land to your child within the bright-line period is not subject to the bright-line test.
11. You will be acting as a bare trustee if you are a trustee holding residential land passively for your child and have no active duties. Your only responsibility as a bare

trustee is to maintain the residential land and transfer it on demand to your child or as directed by them.

12. You will not be acting as a bare trustee if you are a borrower for a loan in relation to a mortgage registered against the residential land in your own name or as a trustee of a trust. A personal obligation for the loan in this situation is an active duty and not a passive duty of a bare trustee. See Example | Taura 2.
13. You will need to provide us with contemporaneous evidence that you are acting as a bare trustee for your child. Whether or not this is the case will depend on the circumstances.

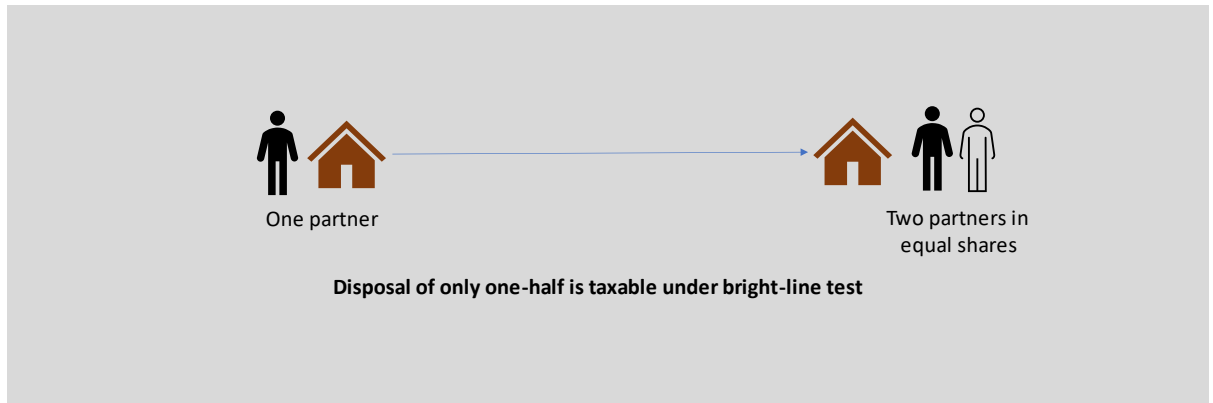
Example | Taura 2: Parent is not acting as a bare trustee for their child



Partner transfers a share of residential land to their new partner

14. You may have changed the ownership of your residential land from yourself to yourself and your new partner as equal co-owners within the bright-line period.
15. The transfer of a half share of the residential land to yourself is not subject to the bright-line test. However, the transfer of the other half share of the residential land to your partner is subject to the test. You will be taxed on the market value of the residential land if you transferred the half share to your partner for less than market value. See Example | Taura 3.

Example | Taura 3: Partner transfers share of rental property to their new partner

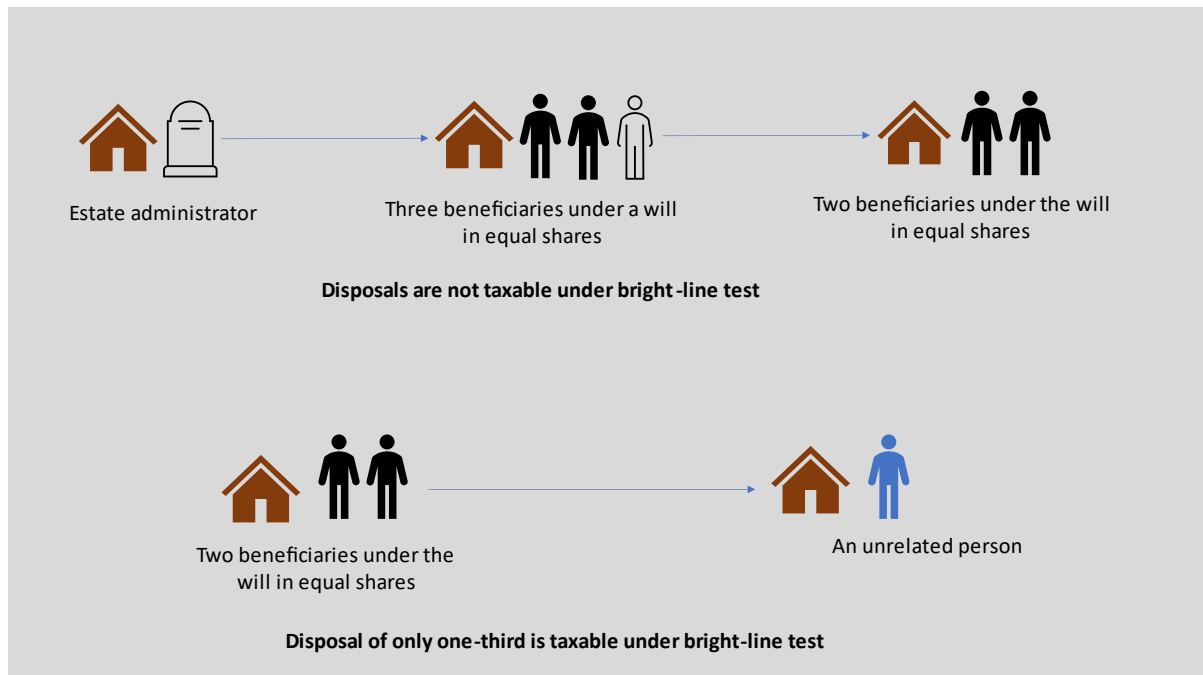


16. Any subsequent sales by you and your partner to someone else within the bright-line periods of your and your partner's shares in the residential land will be subject to the bright-line test.
17. In both situations, you can deduct half of the cost of the residential land and this can reduce the amount of income you have to pay tax on.
18. If you had transferred a half share of the residential land to your partner under a relationship agreement, the bright-line test would not have applied to the transfer.

Beneficiaries sell inherited residential land

19. You may have inherited a share of residential land under a will. You want to sell your share in the residential land to the other beneficiaries who inherited shares in the residential land.
20. The sale of your share in the residential land to the other beneficiaries within the bright-line period is exempted from the bright-line test because it was inherited under a will. See Example | Taura 4.
21. However, a later sale of the residential land within the bright-line period by the remaining beneficiaries to someone else is exempted only to the extent of their original inherited shares in the residential land. See Example | Taura 4.

Example | Taura 4: Beneficiaries sell inherited house



About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (December 2012).