

Notes | Pitopito kōrero:**Replaced**

Statements made at [144] and [145] and the third paragraph in Example | Tauira 5 could be said to be inconsistent with [QB 26/04: Income tax – Bare trusts and mortgages](#). The comments were intended to refer to situations where there was no bare trust or agency because the property was held for the benefit of its legal owners who had independent power, discretion and responsibility in respect of the property, and were not acting on any instructions. However, to the extent those comments could be read as being inconsistent with QB 26/04, they are replaced.

Correction

The Commissioner no longer considers the statements made at [67] on undisclosed principals represents the law. An agent for an undisclosed principal will be a person that acts on another person's behalf for the purposes of s YB 21. For further discussion on undisclosed principals, see [IS 21/01: GST and agency](#).

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

Income tax – Application of the s CZ 39 5 year bright-line test to certain family and close relationship transactions

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IS 23/02

This interpretation statement considers the requirements of the 5 year bright-line test for residential land in s CZ 39 of the Income Tax Act 2007 and how it applies to certain family and close relationship transactions. Those family and close relationship transactions are when the ownership of residential land (that is not a main home) changes from:

- parents to their child to assist the child with buying their first home;

- one partner to themselves and their new partner; and
- all the beneficiaries who inherit the land under a will or rules of intestacy to some of the beneficiaries.

The bright-line test under s CZ 39 applies if a person first acquired an estate or interest in residential land on or after 29 March 2018 but before 27 March 2021.

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



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Summary | Whakarāpopoto

1. Sections CB 6A and CZ 39 provide for objective “bright-line” tests for the disposal of residential land. The application dates of the sections are generally as follows:
 - Section CB 6A, as originally enacted, applied if a person first acquired an estate or interest in residential land on 1 October 2015 to 28 March 2018 (inclusive).¹ The bright-line period was originally 2 years.
 - Section CZ 39 applies if a person first acquired an estate or interest in residential land on 29 March 2018 to 26 March 2021 (inclusive).² The bright-line period is 5 years.
 - Section CB 6A was replaced and now applies if a person acquired an estate or interest in residential land on or after 27 March 2021.³ The bright-line period is either 10 years or 5 years (for new builds).
2. This Interpretation Statement focuses only on the application of s CZ 39 in the context of certain family and close relationship transactions. The test under s CZ 39 requires income tax to be paid on amounts derived from the disposal of residential land acquired and disposed of within the bright-line period of 5 years.
3. The Commissioner has been asked whether the s CZ 39 bright-line test applies to family and close relationship transactions where the ownership of residential land (that is not a main home) changes from:
 - parents to their child to assist the child with buying their first home;
 - one partner⁴ to themselves and their new partner; and
 - all the beneficiaries who inherit the land under a will or rules of intestacy to some of the beneficiaries.

¹ Section 4(2) of the Taxation (Bright-line Test for Residential Land) Act 2015.

² Section CZ 39(1).

³ Section 48(2) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022. The application of s CB 6A is covered in detail in New legislation: Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, Bright-line test changes, *Tax Information Bulletin* Vol 34, No 5 (June 2022): 3 at 119–148.

⁴ “Partner” in this statement means spouse, civil union partner or de facto partner; it does not mean a partner in a partnership.

4. All requirements of s CZ 39 need to be met for it to apply to these family and close relationship transactions. A person will have s CZ 39 income if, relevantly:
- the person first acquires an estate or interest in residential land on or after 29 March 2018 (s CZ 39(1));
 - s CB 6A (Disposal within 10 years: bright-line test for residential land) does not apply;
 - the exclusion for rollover relief under ss CB 6AB, CB 6AC, CB 6AE and FB 3A does not apply;
 - none of ss CB 6 to CB 12 apply;
 - the person derives an amount;
 - the amount is from disposing of residential land;
 - the disposal is within the 5-year bright-line period; and
 - the exception for disposal of land by an executor, administrator or beneficiary does not apply.

Requirements of s CZ 39

Person first acquires an estate or interest in residential land on or after 29 March 2018

5. Section CZ 39 generally applies if a person first acquires an estate or interest in residential land on or after 29 March 2018. In most cases, an estate or interest in residential land is first acquired on the date a binding sale and purchase agreement is entered into (even if some conditions still need to be met).

Section CB 6A does not apply

6. Section CB 6A generally applies if a person acquires an estate or interest in residential land on or after 27 March 2021. This has the effect of s CZ 39 generally applying if a person acquires an estate or interest in residential land on 29 March 2018 to 26 March 2021 (inclusive).

Exclusion for rollover relief does not apply

7. Section CZ 39 does not apply if:

- any of the rollover relief provisions in ss CB 6AB, CB 6AC, CB 6AE or FB 3A apply; and
- the transferor (the person who transferred the land to the person now disposing of it) first acquired an estate or interest in the land before 29 March 2018.

None of ss CB 6 to CB 12 apply

8. Sections CB 6 to CB 12 provide that income includes amounts derived from the disposal of land in several situations. Accordingly, s CZ 39 applies only to income from the disposal of residential land that is not already otherwise taxable under these provisions.

Person derives an amount

9. Section CZ 39 applies to a person who derives an amount (from disposing of residential land). The person, for the purposes of s CZ 39 can be an individual, a company, or one or more trustees of a trust.
10. An “amount” includes a monetary sum or money’s worth. “Money’s worth” refers to consideration given when the property was acquired for something other than money. It means something that is convertible into money, equivalent to money, and is essentially material and capable of being valued.⁵
11. An amount for s CZ 39 purposes may be more than the actual amount derived by the person if the land has been disposed of at below market value, as determined at the time of that disposal (s GC 1 (Disposals of trading stock below market value)). Section GC 1 applies to family and close relationship transactions and deems property transferred below market value to have been transferred at market value.
12. Disposals of property on making a gift or on a trustee’s distribution to a beneficiary are also disposals at the market value, occurring at the date of the transaction (s FC 2 (Transfer at market value)).
13. “Market value” is the price that would be agreed between a willing but not anxious seller and a willing but not anxious buyer.

⁵ *Wilkins (Inspector of Taxes) v Rogerson* [1961] 1 All ER 358 (CA) at 361, *Hickman v Turner and Waverley Ltd (formerly Turn and Wave Ltd)* [2013] 1 NZLR 741 (SC) at 747, *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* (2009) 260 ALR 643 (FCA) at 685.

14. An amount has been derived when the earning process in respect of the amount is complete.

Amount is from disposing of residential land

15. Section CZ 39 applies to disposals of "residential land". Residential land must have a dwelling on it, or there must be an arrangement to erect a dwelling on it, or it must be bare land that may be used for erecting a dwelling (s YA 1).
16. Exclusions are farmland and land used predominantly as business premises.
17. "Land" includes an estate or interest in land, including a legal or an equitable estate or interest (s YA 1). An absolute owner holds only the legal estate. An equitable interest, for the purposes of s CZ 39, would include an interest under an off-the-plans contract or an interest of a fixed beneficiary under a trust.
18. The Commissioner considers what is a disposal of land in Interpretation Statement IS 22/03.⁶ IS 22/03 concludes that the ordinary meaning, case law and legislative history and context indicate that "disposal" in the land sale rules (including s CZ 39) requires:
 - complete alienation of the land by the disposer – the land must be 'got rid of' by the person;
 - dealing with the land, so that one person loses ownership of the land and another (including the same person in a different capacity) gains it (or gains a corresponding interest in respect of the same underlying land).

Therefore, in the Commissioner's view, "disposal" in the land sale rules does not include transfers from and to the same person in the same capacity.

19. Gifts are also disposals of land for the purposes of s CZ 39 and so are the transfers on a distribution by trustees of a trust to a beneficiary of the trust.
20. Additionally, due to s CB 23B (Land partially disposed of or disposed of with other land), s CZ 39 applies to disposals of the whole or a part of the interest in land.

⁶ IS 22/03: Income tax – application of the land sale rules to co-ownership changes and changes of trustees.

Bright-line period is less than 5 years

21. For a transaction to be subject to the s CZ 39 bright-line test, the “bright-line period” has to be less than 5 years. The bright-line period is the period from the “bright-line acquisition date” to the “bright-line date”.
22. The “bright-line acquisition date” is generally the date of registration of the transfer of the land to the person or, if there is no date of registration, the latest date on which the person acquired the estate or interest in the land (s CZ 39(2)).
23. Relevant to this statement, the “bright-line date” (s YA 1) is either:
 - the earlier of the date when the person enters into an agreement for the disposal of residential land or makes a gift of residential land; or
 - if there is no such agreement for the disposal or making of a gift, the date on which the person disposes of an estate or interest in the residential land.

Exception for an executor, administrator or beneficiary does not apply

24. An exception from the s CZ 39 bright-line test exists for an amount an executor, administrator or beneficiary derives from disposing of land that was transferred to them on the death of a person.

Family and close relationship transactions

25. The Commissioner concludes that the s CZ 39 bright-line test applies to the following family and close relationship transactions because a person has derived an amount from disposing of residential land (assuming all other requirements of s CZ 39 are met):
 - a disposal from parents, as individuals, to their child;
 - a disposal from a company (which is not a look-through company), where the parents are shareholders, to their child;
 - a disposal from parents, who are the trustees of a trust, to their child who is a beneficiary of the trust;
 - a disposal from one partner to themselves and their new partner, to the extent of the new partner’s share in the land;
 - a subsequent disposal from the two partners to a third party; and

- a disposal from beneficiaries under a will or rules governing intestacy to a third party to the extent that the disposed interests do not equate to (are not the same as) the original shares acquired under a will or rules of intestacy.
26. If the amount derived from the disposal is below the market value of the residential land, it is treated as being the market value.
27. However, deductions are allowed under part D for the cost of the residential land, such as acquisition costs and capital improvements (s DB 23 (Cost of revenue account property)) as limited by s EL 20 (Allocation of deductions related to bright-line disposals of residential land)). The deduction is taken in the income year in which the land is disposed of (s EA 2 (Other revenue account property)).
28. Any earlier deductions carried forward under the residential rental ring-fencing rules in subpart EL (Allocation of deductions for excess residential land expenditure) may be allowed to be allocated to the income year under s EL 5 (When residential portfolios sold) or s EL 7 (When Property A sold). Any allowable deductions reduce the amount of income taxable under the s CZ 39 bright-line test.
29. The Commissioner concludes that s CZ 39 does not apply to the following family and close relationship transactions involving residential land:
- a disposal from parents who are nominees or bare trustees for their child to their child;
 - a disposal from a person who dies to an executor or administrator;
 - a disposal from an executor or administrator to the beneficiaries under a will or rules governing intestacy;
 - a disposal from some of the beneficiaries under a will or rules governing intestacy to the other beneficiaries; and
 - a disposal from beneficiaries under a will or rules governing intestacy to a third party to the extent of their original shares in the land acquired under the will or rules governing intestacy.
30. The outcomes in the scenarios apply regardless of the relationships of the parties.

Introduction | Whakataki

31. The Commissioner has been asked to clarify how the s CZ 39 bright-line test for residential land applies to the following family and close relationship transactions:

- the ownership of residential land changes from parents to their child to assist the child with buying their first home;
 - the ownership of residential land changes from one partner to themselves and their new partner; and
 - the ownership of residential land changes from all the beneficiaries who inherited the land under a will or rules of intestacy to some of the beneficiaries.
32. The s CZ 39 bright-line test does not apply if the main home exclusion in s CZ 40 applies. The residential land in the family and close relationship transactions considered in this statement is not a main home of the person disposing of it or of a beneficiary of a trust. Therefore, the main home exclusion is not considered in this statement.⁷
33. Section CZ 39 also does not apply to residential land transferred on a settlement of relationship property to which subpart FB applies (see [152]).
34. All the requirements of s CZ 39 need to be met for it to apply to a disposal of residential land. Therefore, this statement first discusses the requirements of s CZ 39, then discusses whether s CZ 39 applies to the family and close relationship transactions listed in [31].

Analysis | Tātari – Requirements of s CZ 39

35. Section CZ 39 relevantly states:

CZ 39 Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018

When this section applies

- (1) This section applies to a person's disposal of residential land, if the person first acquires an estate or interest in the residential land on or after 29 March 2018 and section CB 6A (Disposal within 10 years: bright-line test for residential land) does not apply. However, this section does not apply to—
- (a) a person's disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 29 March 2018:

⁷ See QB 18/16: Income tax – bright-line test – main home exclusion – sale of subdivided section and QB 18/17: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks.

- (b) a person's disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 29 March 2018 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

When this section does not apply

- (1B) This section does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AB, CB 6AC, CB 6AE, or FB 3A (which relate to residential land), and the transferor first acquired an estate or interest in the land before 29 March 2018.

Disposal within 5 years

- (2) An amount that a person derives from disposing of residential land is income of the person, if the bright-line date for the residential land is within 5 years of—
 - (a) the date (**the bright-line acquisition date**) on which the instrument to transfer the land to the person was registered—
 - (i) under the Land Transfer Act 2017; or
 - (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand; or
 - (b) their date of acquisition (**the bright-line acquisition date**) of the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date.

...

Exception: disposal of land by executor, administrator, or beneficiary

- (7) This section does not apply to an amount that an executor or administrator described in section FC 1(1)(a) (Disposals to which this subpart applies), or a beneficiary described in section FC 1(1)(b), derives from disposing of residential land that was transferred to them on the death of a person (*see also*: section FC 9 (Residential land transferred to executor, administrator, or beneficiary on death of person)).

Relationship with subject matter

- (8) This section applies if none of sections CB 6 to CB 12 apply.

A definition

- (9) In this section, **date of acquisition** means the latest date on which the person acquires the estate or interest in the residential land.

36. Relevant definitions in s YA 1 are:

bright-line acquisition date means the relevant bright-line acquisition date described in sections CB 6A to CB 6AE and CZ 39 (which relate to the bright-line test for residential land)

bright-line disposal date and **bright-line date** means, for a disposal of residential land,—

- (a) the earliest of—
 - (i) the date that the person enters into an agreement for the disposal:
 - (ii) the date on which the person makes a gift of the residential land:
 - (iii) the date on which the person's residential land is compulsorily acquired under any Act by the Crown, a local authority, or a public authority:
 - (iv) if there is a mortgage secured on the residential land, the date on which the land is disposed of by or for the mortgagee as a result of the mortgagor's defaulting; or
- (b) if none of paragraph (a)(i) to (iv) apply, the date on which the estate or interest in the residential land is disposed of

...

bright-line period means, for a person and residential land, the period beginning with the relevant date described in, as applicable—

...

- (b) section CZ 39(2) to (6) (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018), and ending with the bright-line date for the residential land

37. Accordingly, a person will have s CZ 39 income if:

- the person first acquires an estate or interest in residential land on or after 29 March 2018 (s CZ 39(1));
- s CB 6A (Disposal within 10 years: bright-line test for residential land) does not apply (s CZ 39(1));
- the exclusion for rollover relief does not apply (s CZ 39(1B));
- none of ss CB 6 to CB 12 apply (s CZ 39(8));
- the person derives an amount (s CZ 39(2));
- the amount is from disposing of residential land (s CZ 39(2));
- the disposal is within the 5-year bright-line period (s CZ 39(2) and (9)); and

- the exception for disposal of land by an executor, administrator or beneficiary does not apply (s CZ 39(7)).

Person first acquires an estate or interest in residential land on or after 29 March 2018

38. Section CZ 39 generally applies if a person first acquires an estate or interest in residential land on or after 29 March 2018. In most cases, an estate or interest in residential land is first acquired on the date a binding sale and purchase agreement is entered into (even if some conditions still need to be met).⁸

Section CB 6A does not apply

39. Section CZ 39 applies if s CB 6A (Disposal within 10 years: bright-line test for residential land) does not. The application date for s CB 6A is set out in s 48(2) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022:

48 Section CB 6A replaced (Disposal within 10 years: Bright-line test for residential land)

- (1) Replace section CB 6A with:

...

- (2) Subsection (1) applies to a person's disposal of residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, subsection (1) does not apply if the person makes an offer for the acquisition of the land, on or before 23 March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, subsection (1) does not apply to—
- (a) a person's disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021:
 - (b) a person's disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

⁸ QB 17/02: Income Tax – date of acquisition of land, and start date for 2 year bright-line test.

40. Section CB 6A generally applies if a person acquires an estate or interest in residential land on or after 27 March 2021. This has the effect of s CZ 39 generally applying if a person acquires an estate or interest in residential land on 29 March 2018 to 26 March 2021 (inclusive).

Exclusion for rollover relief does not apply

41. Section CZ 39(1B) says that s CZ 39 does not apply if any of the following rollover relief provisions apply and the transferor (the person who transferred the land to the person now disposing of it) first acquired an estate or interest in the land before 29 March 2018:
- Section CB 6AB (Residential land transferred in relation to certain family trusts and other capacities);
 - Section CB 6AC (Residential land transferred in relation to certain Māori family trusts);
 - Section CB 6AE (Certain transfers of residential land included in settlement of claim under the Treaty of Waitangi); or
 - Section FB 3A (Residential land) in subpart FB (Transfers of relationship property) (see [152]).
42. Rollover relief defers the application of the bright-line test until a subsequent disposal of the land occurs that does not qualify for rollover relief.⁹

None of ss CB 6 to CB 12 apply

43. Section CZ 39(8) says that s CZ 39 applies if none of ss CB 6 to CB 12 apply. Accordingly, s CZ 39 applies only to income from the disposal of residential land that is not already otherwise taxable under these provisions.
44. Sections CB 6 to CB 12 provide that income includes amounts derived from the disposal of land in several situations. In brief, the disposals of land giving rise to income under ss CB 6 to CB 12 encompass:

⁹ The application of rollover provisions, including ss CB 6AB, CB 6AC and CB 6AE, is covered in detail in New legislation: Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, Bright-line test changes, *Tax Information Bulletin* Vol 34, No 5 (June 2022): 3 at 133–145. The application of s FB 3A is discussed in New legislation: Taxation (Bright-line Test for Residential Land) Act 2015, *Tax Information Bulletin* Vol 28, No 1 (February 2016): 78 at 87.

- land acquired for a purpose or with an intention of disposal (s CB 6);
- land acquired for the purposes of a business relating to land, any such business comprising (s CB 7):
 - dealing in land;
 - developing land or dividing land into lots; or
 - erecting buildings;
- land previously used for landfill purposes (s CB 8);
- a land dealer's or an associated person's other land (s CB 9);
- a land developer's or an associated person's other land (s CB 10);
- a builder's or an associated person's other land (s CB 11); and
- schemes for development or division into lots begun within 10 years of the date the person acquired the land (s CB 12).

45. If residential land was acquired with a purpose or with an intention of disposal, s CB 6 will apply instead of s CZ 39.¹⁰

Person derives an amount

46. Section CZ 39 applies to a person who derives an amount (from disposing of residential land). This raises three questions:

- Who is the "person" subject to s CZ 39?
- What is the "amount" subject to s CZ 39?
- When is the amount "derived"?

Who is the "person" subject to s CZ 39?

47. The term "person" is defined in the Act only for the purposes of certain sections, which are not relevant here. Section AA 3(2) states that the Legislation Act 2019 contains definitions of terms, including the term "person", that apply to the interpretation of the Income Tax Act 2007. Section 13 of the Legislation Act 2019 defines "person" as follows:

¹⁰ See QB 16/06: Land acquired for a purpose or with an intention of disposal for details.

person includes a corporation sole, a body corporate, and an unincorporated body

48. The definition is non-exhaustive so the ordinary meaning of person is also relevant. The *Concise Oxford English Dictionary* defines a person as “a human being regarded as an individual”.¹¹ The Income Tax Act 2007 refers to human beings as natural persons.

Company

49. Nothing in s CZ 39 limits its application to only natural persons. Being a body corporate, a company is a “person” for the purposes of s CZ 39. A company, according to s YA 1, means a body corporate or other entity that has a legal existence separate from that of its members (with some exceptions).¹²

Trust

50. An “unincorporated body” is also a “person” for the purposes of s CZ 39. An unincorporated body includes trustees of a trust.¹³ A trust must possess the “three certainties” to be valid:¹⁴

- certainty of intention – that is, evidence of an intention to create a trust;
- certainty of subject matter – that is, the property that is subject to the trust relationship must be clearly identifiable; and
- certainty of objects – that is, ascertainable beneficiaries who have the power to enforce the trust.

51. A trust is not defined in the Act. General trust law does not treat a trust as an entity. Fogarty J in *B v X [Child support]* stated:¹⁵

A trust is not a juristic person with a legal personality distinct from that of the trustee and beneficiary nor is it merely descriptive of an equitable right or obligation. Instead it is a relation between trustee and beneficiary in respect of certain property. More particularly, a trust exists when the owner of a legal or equitable interest in property is bound by an obligation, recognised by and enforced in equity, to hold that interest for the benefit of

¹¹ *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York, 2011).

¹² This statement does not consider look-through companies (subpart HB).

¹³ *Hieber v CIR* (2002) 20 NZTC 17,774 (HC).

¹⁴ *Royal Forest and Bird Protection Society of NZ Inc v Nelson City Council* [1984] 2 NZLR 480 (CA) and *Foreman v Hazard* [1984] 1 NZLR 586 (CA).

¹⁵ *B v X [Child support]* [2011] NZFLR 481 (HC) at 101.

others, or for some object or purpose permitted by law. That is not a definition of a trust, but a description. Precise definition is elusive, if not impossible, and attempts at such definition vary markedly.

52. Subpart HC, which sets out the rules on taxation of trusts, accords with the general trust law position and only provides for taxation of amounts derived by trustees as trustee income or beneficiary income. Therefore, in the context of trusts, it is the trustee who can derive income from the disposal of residential land under s CZ 39 (although this income may be taxed to the beneficiary as “beneficiary income”).¹⁶

Nominee or bare trustee

53. If residential land has been disposed of by a person who is a nominee of another person or by a bare trustee for a beneficiary under a bare trust, the nominee or bare trustee is ignored. Section YB 21 says:

YB 21 Transparency of nominees

Treatment of nominee

- (1) In this Act, unless the context otherwise requires, if a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored.

Who is a nominee?

- (2) A person holds or does something as a nominee for another person if the person acts on the other person’s behalf. However, a trustee is a nominee only if the trustee is a bare trustee.

...

54. Section YB 21 helps to determine where the real economic control resides.¹⁷ Section YB 21 looks through to the person who is deemed to hold or do something that the nominee holds or does (s YB 21(1)).
55. The term “nominee” is not defined in the Act. The High Court in *Equiticorp Industries Group Ltd (in stat man) v The Crown* considered the meaning of “nominee” and stated:¹⁸

¹⁶ See IS 18/01: Taxation of trusts – income tax.

¹⁷ IS 12/01: Income tax – timing of share transfers for the purposes of the continuity provisions at [87].

¹⁸ *Equiticorp Industries Group Ltd (in stat man) v The Crown* [1998] 2 NZLR 481 (HC) at 532.

In *Schuh Trading Co v Commissioner of Internal Revenue* 95 F 2d 404 (1938) at p 411, a case concerning the transfer of company assets to a nominee, the Judge said: "The word nominee ordinarily indicates one designated to act for another as his [or her] representative in a rather limited sense. It is used sometimes to signify an agent or trustee. It has no connotation, however, other than that of acting for another, in representation of another, or as the grantee of another."

- 56. A nominee is someone who acts for or represents another and includes an agent or a trustee. They are someone who stands in the place of or is associated with the other person.¹⁹ They can be anyone at all.²⁰
- 57. Section YB 21 modifies this general position. Any trustee may be a nominee under general law but only a bare trustee can be a nominee for the purposes of s YB 21.
- 58. A nominee under an agreement for sale and purchase is not a nominee for the purposes of s YB 21. A nominee under an agreement for sale and purchase is the ultimate purchaser of the land and is not acting on behalf of another person. However, the originally named purchaser may be a nominee for the purposes of s YB 21 if they were acting on behalf of the ultimate purchaser when they entered into the agreement.

Bare trustee

- 59. While a trustee is ordinarily included in the meaning of nominee, a trustee is a nominee under s YB 21 only if they are a bare trustee. The term bare trustee is also not defined in the Act. In *Herdegen v FCT*, Gummow J discussed the nature of a bare trust:²¹

Today the usually accepted meaning of "bare" trust is a trust under which the trustee or trustees hold property without any interest therein, other than that existing by reason of the office and the legal title as trustee, and without any duty or further duty to perform, except to convey it upon demand to the beneficiary or beneficiaries or as directed by them, for example, on sale to a third party ... The term is usually used in relation to trusts created by express declaration. ... Also, the term "bare trust" may be used fairly to describe the position occupied by a person holding the title to property under a resulting trust flowing from the provision by the beneficiary of the purchase money for the property.

¹⁹ *Hyndman v Anderson* [2018] NZDC 1,360.

²⁰ *Rattrays Wholesale Ltd v Meredyth-Young & A'Court Ltd* [1997] 2 NZLR 363 (HC) at 382.

²¹ *Herdegen v FCT* (1988) 84 ALR 271 (FCA) at 281.

60. *Lewin on Trusts* provides a useful definition of a “bare trust” as compared with a “special trust”:²²

The simple or bare trust is where property is vested in one person upon trust for another, and the nature of the trust, not being prescribed by the settlor, is left to the construction of law. In this case the beneficiary has ... the right to be put into actual possession of the property, and ... the right to call upon the trustee to execute conveyances of the legal estate as the beneficiary directs.

A bare or simple trustee ... is often called a nominee. He is a mere name or “dummy” for the true owner. ...

The special trust is where the machinery of a trustee is introduced for the execution of the purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor’s intention, as in the ordinary case of a trustee holding property on the express trusts of a settlement or of a will, or where a conveyance is made to trustees upon trust to sell for payment of debts. [Emphasis added]

61. A later edition of *Lewin on Trusts* provides:²³

A distinction has traditionally been drawn between “bare” trusts, or “simple” or “naked” trusts, and “special” trusts. **According to that distinction, a bare trustee holds property in trust for a single beneficiary absolutely and indefeasibly, and is a mere passive repository for the beneficial owner, having no duties other than a duty to transfer the property to the beneficial owner or as he directs.** By contrast a trustee holding property on special trusts has active duties to perform, for example in executing the trusts of a will or settlement, with administrative (and perhaps, also dispositive) powers accompanying his active duties. It is still possible to distinguish between an absolute trust for a single beneficiary, which might still be called a bare or simple trust, and other types of trust. [Emphasis added]

62. The meaning of “bare trustee” is stated in *Halsbury’s Laws of England* as:²⁴

A bare trustee has been defined as a person who holds property in trust for the absolute benefit and at the absolute disposal of other persons who are of full age and mental capacity in respect of it, and who has himself no present beneficial interest in it and no duties to perform in respect of it except to convey or transfer it to persons entitled to

²² WJ Mowbray, *Lewin on Trusts* (16th ed, Sweet and Maxwell, London, 1964) at 6.

²³ L Tucker, N Le Poidevin and J Brightwell, *Lewin on Trusts* (20th ed, Sweet and Maxwell, London, 2020) at [1-028].

²⁴ *Halsbury’s Laws of England* (5th ed, 2021, online ed) vol 98 Meaning of ‘bare trustee’ at [194].

hold it, and he is bound to convey or transfer the property accordingly when required to do so. It seems, however, that he is under a fairly basic duty to preserve the trust property so long as the trusteeship subsists. ...

63. To summarise:

- A bare trustee has no beneficial interest in the property.²⁵
- A bare trustee holds the property only to convey it to the beneficiary of the trust when required to do so.²⁶
- A bare trustee must refrain from the active management of the trust property that does not fall within the duty to maintain it.²⁷
- The duties of a bare trustee are passive in the sense that a bare trustee must comply with the directions of the beneficiary.²⁸
- A bare trustee has no independent power, discretion or responsibility in connection with the property.²⁹
- A bare trustee has a duty to take reasonable care of trust property while they hold the property.³⁰
- The beneficiaries of a bare trust must be of full age and mental capacity (that is, a person who is under no disability affecting their legal power to deal with the property).³¹

64. A bare trustee cannot have active duties, only passive duties. A trustee engaging in active duties would not be a bare trustee. However, taking reasonable care of and maintaining the property while awaiting the beneficiary's instructions to convey it to the beneficiary, or to transfer it to a third party, is not an active duty.

65. It is necessary to consider the nature and extent of the trustee's obligations and duties, in light of the surrounding circumstances, and any obligations imposed by the general law or by statute.³² A bare trust also needs to meet the three certainties of a trust

²⁵ *Halsbury's Laws of England* at [194].

²⁶ *Halsbury's Laws of England* at [194].

²⁷ *Bruton Holdings Pty Ltd (in liq) v FCT* (2011) 193 FCR 442.

²⁸ *Herdegen* at 281.

²⁹ *Paragon Development Corp v Sonka Properties Ltd* 103 OR (3d) 48 (2011).

³⁰ *Herdegen* at 282.

³¹ *Halsbury's Laws of England* at [194].

³² *Burns v Steel* [2006] 1 NZLR 559 (HC).

(intention, subject-matter and object). One of the most common scenarios in which a bare trust arises is where a purchaser (the beneficiary) provides someone else (usually called a nominee) with the money to purchase an asset.

Agent

66. An agent is a nominee for the purposes of s YB 21. Agency occurs where a person (the agent) is authorised by another person (the principal) to act on their behalf to create or affect the legal relations between the principal and third parties. The agent acts in place of the principal to bind the principal. The agent is not liable to pay the debt of the principal. An agent does not typically have a legal interest in the property they obtain as an agent.³³ An agency can be evidenced by a power of attorney.³⁴ In some situations, a bare trustee may act in the capacity of an agent.³⁵
67. An undisclosed agent is generally not a nominee for the purposes of s YB 21. This is because an undisclosed agent contracts personally with a third party and their liability usually continues even when the third party discovers the existence of the agency. The undisclosed agent is liable to the third party in relation to debts on their own behalf, not on behalf of the principal.³⁶

Evidence

68. Labels adopted by the parties are not determinative of the true nature of the transaction.³⁷ The Commissioner may require documentary evidence of an intention to create an agency or a bare trust. Financial records and correspondence contemporary with the time when the transaction was entered into may provide such evidence.

³³ IS 21/01 GST and Agency at [43] and [63] for features supporting the existence of an agency relationship.

³⁴ *Laws of New Zealand Agency* (online ed) at [34].

³⁵ QB 16/03 GST Treatment of bare trusts at [18] to [23].

³⁶ *Laws of New Zealand Agency* (online ed) at [137].

³⁷ *CIR v Gulf Harbour Development Ltd* (2004) 21 NZTC 18,915 (CA) at [19] (citing *Marac Life Assurance Ltd v CIR* [1986] 1 NZLR 694 (CA) at 705).

What is the “amount” subject to s CZ 39?

69. According to s CZ 39, a person must derive an “amount” from disposing of residential land. Section YA 1 defines “amount” by saying that it includes money’s worth and refers to sections of the Act that are not relevant for the purposes of this statement.
70. “Money’s worth” is not defined in the Act. Several cases have, however, considered the meaning of the term. In *Secretan v Hart (Inspector of Taxes)*, Buckley J said:³⁸

The expression “consideration, in ... money’s worth” is, of course, one which is very familiar to lawyers as being **a way of expressing the price or consideration given for property where the property is acquired in return for something other than money, such as services or other property**, where the price or consideration which the acquirer gives for the property has got to be turned into money before it can be expressed in terms of money. [Emphasis added]

71. Money’s worth is a way of expressing the price or consideration given for property where the property is acquired in return for something other than money, such as services or other property. Money’s worth also means something that is:
- convertible into money;³⁹
 - treated by the parties as equivalent to money;⁴⁰ and
 - essentially material and capable of being valued.⁴¹
72. The definition is non-exhaustive, so the ordinary meaning of amount is also relevant. The *Concise Oxford English Dictionary* defines “amount” as “the total of something in number, size, value, or extent” and as “a quantity”. An amount includes a monetary sum that the person has received for the disposal of residential land.

Disposal below market value

73. An amount derived for s CZ 39 purposes may be more than the amount received by the person if the land has been disposed of at below market value. For the purposes of s GC 1 (Disposals of trading stock below market value), “trading stock” includes land

³⁸ *Secretan v Hart (Inspector of Taxes)* [1929] 3 All ER 1,196 (ChD) at 1,199.

³⁹ *Wilkins (Inspector of Taxes) v Rogerson* at 361.

⁴⁰ *Hickman* at 747.

⁴¹ *Brookfield Multiplex Ltd.*

whose disposal would produce income under s CZ 39. The definition of “trading stock” in s YA 1 is:

trading stock—

...

- (b) in sections ... GC 1 to GC 3 (which relate to the disposal of trading stock for inadequate consideration), ...—

...

- (v) includes land whose disposal would produce income under any of sections CB 6A to CB 15 and CZ 39 (which relate to income from land):

...

74. Therefore, s YA 1 treats residential land subject to s CZ 39 that is disposed of for inadequate consideration as trading stock for the purposes of s GC 1. Section GC 1 states:

GC 1 Disposals of trading stock at below market value

When this section applies

- (1) This section applies when a person disposes of trading stock for—
 - (a) no consideration:
 - (b) an amount that is less than the market value of the trading stock at the time of disposal.

Market value consideration

- (2) The person is treated as deriving an amount equal to the market value of the trading stock at the time of disposal.

Market value expenditure

- (3) If the person disposes of the trading stock to another person, an amount equal to the market value of the trading stock at the time of disposal is treated as expenditure incurred by the other person in acquiring the trading stock.

...

75. Section GC 1 says that when trading stock is disposed of for no consideration or for less than market value, the person is treated as deriving an amount equal to the trading stock’s market value. Therefore, a person who disposes of residential land for no consideration or for less than market value, where the disposal would produce

income under s CZ 39, is treated as deriving an amount equal to the market value of the residential land at the time of disposal.

76. Section GC 1 refers to the concept of “market value”, which is not defined in the Act for the purposes of subparts GC and CZ specifically or generally. Therefore, the ordinary meaning of market value will apply. The *Concise Oxford English Dictionary* defines market value as “the amount for which something can be sold in a given market”.
77. Generally, the market value of something is the price that would be agreed between a willing but not anxious seller and a willing but not anxious buyer.⁴² However, it is important to identify the relevant market for the land being sold.⁴³
78. Also, the market value of residential land can be represented by a range and can be affected by circumstances such as the condition or particular features of the land.
79. The market value of land is determined objectively. The subjective value placed on the land by the person transferring or receiving the land is not relevant.⁴⁴ The onus to prove the market value of the land rests on the taxpayer. The market value can be different to the sale price.
80. *Edge v CIR* considered the application of ss 101 and 102 of the Land and Income Tax Act 1954, which were predecessors of s GC 1.⁴⁵ The case involved the sale of livestock together with the land, with the Commissioner determining that the livestock was valued at a different amount than the taxpayer had allocated to it in his return. Turner J said he construed s 102 as:⁴⁶

... applying to voluntary transactions — those in which for reasons unconnected with the market or the exigencies of commerce, **the vendor voluntarily accepts a price less than that that which he could have received by selling in the market.** This is the type of transaction which the section, in my opinion, is designed to catch. **The ordinary example of such a transaction is a sale or transfer for no consideration or for a reduced consideration to a member of one’s own family,** but the transferee need be no actual relation. If the transaction partakes of the nature of a gift, **there is every reason from a fiscal point of view to add back the margin of price which the vendor has**

⁴² *Hatrick v CIR* [1963] NZLR 641 (CA) at 661.

⁴³ *Edge v CIR* [1956] NZLR 799 (SC).

⁴⁴ *Edge v CIR* [1958] NZLR 42 (CA) and *R v Islam* [2009] UKHL 30.

⁴⁵ *Edge v CIR* [1958] NZLR 42 (CA).

⁴⁶ *Edge* (CA) at 50.

voluntarily foregone; and this is what the statute, in my opinion was intended to do.
[Emphasis added]

81. Turner J also stated that “this section does not apply to transactions which take place bona fide in the ordinary course of trade, but only to transactions containing something of the nature of a gift”.⁴⁷ Turner J viewed s 102 as an anti-avoidance provision. Vendors avoiding income tax on the disposal of property, while having claimed a deduction for acquisition, were intended to be caught by s 102.
82. Therefore, s GC 1 applies to family and close relationship transactions, for the purposes of s CZ 39, where residential land has been transferred to the transferee for no consideration or below market value. Section GC 1 deems such land as having been transferred for the market value. The transferor is treated as having disposed of the residential land at market value.

Other disposals below market value

83. Section FC 1 provides a value for property that is disposed of under the following relevant transactions:
- the transfer of property on a distribution by a trustee of a trust to a beneficiary of the trust, unless the distribution is part of an arrangement under which the beneficiary pays an amount for the property that would reasonably be expected to be paid on a disposal at arm’s length (s FC 1(1)(c));⁴⁸ and
 - the transfer of property on the making of a gift (s FC 1(1)(e)).⁴⁹
84. A trustee makes a distribution when the trustee transfers property to a person because the person is a beneficiary of the trust (s HC 14(1)). A distribution is **made** when the property vests absolutely in interest in the person (s HC 14(3)).

⁴⁷ *Edge* (CA) at 51 and 52.

⁴⁸ The transfer of property on a distribution by a trustee of a trust to a beneficiary of the trust is a disposal because it meets the ordinary meaning of disposal discussed from [110], and s CZ 39 does not exempt these transactions from its ambit.

⁴⁹ Gifts of residential land are included in the ambit of s CZ 39. Section YA 1 refers to gifts as part of the definition of the “bright-line date”, and a gift meets the ordinary meaning of disposal discussed from [110].

85. The term “gift” is not defined in the Act. The *Concise Oxford English Dictionary* defines a gift as “a thing given willingly to someone without payment, a present”. In *FCT v McPhail*, Owen J said:⁵⁰

... that to constitute a “gift”, it must appear that the property transferred was transferred voluntarily and not as the result of a contractual obligation, and that no advantage of a material character was received by the transferor by way of return.

86. The Court of Appeal in the *Church of Jesus Christ of Latter-Day Saints Trust Board v CIR*,⁵¹ in the context of donation tax credits, accepted this reasoning in *McPhail*.
87. Section FC 2 treats the disposals of property on a distribution by a trustee to a beneficiary, or on the making of a gift, as a disposal by the transferor and an acquisition by the transferee at the market value of the property for the transferor. The disposal is treated as occurring on the date of the transaction.
88. Therefore, s FC 2 applies to treat family and close relationship transactions for the purposes of s CZ 39 as occurring at market value where residential land has been transferred on a distribution by a trustee or on the making of a gift. However, if the distribution by the trustee is part of an arrangement under which the beneficiary pays an amount for the land that would reasonably be expected to be paid on a disposal at arm’s length, this is the amount for which the land has been disposed of for the purposes of s CZ 39.

When is the amount “derived”?

89. One of the requirements of s CZ 39 is that the person must “derive” the amount in question. Section BD 3(2) (General rule) provides the general principle that an amount of income is allocated to the income year in which the amount is derived. Section BD 3 then states:

⁵⁰ *FCT v McPhail* (1968) 117 CLR 111 (HCA) at 116.

⁵¹ *Church of Jesus Christ of Latter-Day Saints Trust Board v CIR* [2020] NZCA 143.

BD 3 Allocation of income to particular income years

...

Interpretation of derive

- (3) When the time of derivation of an amount of income is being determined, regard must be had to case law, which—
- (a) requires some people to recognise income on an accrual basis; and
 - (b) requires other people to recognise income on a cash basis; and
 - (c) more generally, defines the concept of derivation.

...

90. Section BD 3(3) states that case law defines the concept of derivation. It is settled law that the word “derived” means more than merely received. It connotes the source or origin rather than the fund or place from which the income was taken and means flowing, springing, emanating from or accruing.⁵²
91. The general principle is that income is “derived” when it is earned and has “come home” to the taxpayer. This will be the point at which a legally enforceable debt arises or the right to be paid otherwise crystallises. Where the earning process in respect of an amount is complete, then that amount will have been derived.⁵³
92. As to the timing of derivation, the Supreme Court in *Duthie v Roose* concluded that the income from the disposal of land is, as a general principle, derived at settlement.⁵⁴ This is the time when the vendor has the right to sue the purchaser for the purchase price as a debt.
93. A gift of residential land is treated as a disposal by the transferee at the market value. For the purposes of s CZ 39, the derivation of income occurs on the same date as the disposal (through the valuation mechanism in s FC 2).

⁵² *CIR v Philips (NV) Gloeilampenfabrieken* [1955] NZLR 868 (SC).

⁵³ *Arthur Murray (NSW) Pty Ltd v FCT* (1965) 114 CLR 314 (HCA).

⁵⁴ *Duthie v Roose* [2017] NZSC 152.

Amount is from disposing of residential land

94. Section CZ 39 applies to a person who derives an amount “from disposing of residential land”. This raises two questions:
- What is “residential land”?
 - What is a disposal?

What is residential land?

95. For disposals of residential land covered in this statement (generally between 29 March 2018 to 26 March 2021 (inclusive)), the following definition of “residential land” applies:

residential land,—

- (a) means—
 - (i) land that has a dwelling on it:
 - (ii) land for which the owner has an arrangement that relates to erecting a dwelling:
 - (iii) bare land that may be used for erecting a dwelling under rules in the relevant operative district plan; but
- (b) does not include land that is—
 - (i) used predominantly as business premises:
 - (ii) farmland

96. Therefore, for “land” to be residential land, it must have a dwelling on it or there must be an arrangement to put a dwelling on it, or it must be bare land that may be used for erecting a dwelling (subject to exclusions).
97. “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”. For the purposes of the definition of residential land, a dwelling also includes certain serviced apartments.
98. Farmland and business premises are excluded from residential land and are not considered in this statement.⁵⁵ This is because the property in the family and close

⁵⁵ See QB 18/17: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks and QB 19/13: Income tax – when does the business premises exclusion to the bright-line test apply?

relationship transactions considered in this statement is not farmland or business premises. "Land" is defined in s YA 1 as including any estate or interest in land. "Estate or interest in land" and "interest" are defined in s YA 1:

estate in relation to land, **interest** in relation to land, **estate or interest in land**, **estate in land**, **interest in land**, and similar terms—

- (a) mean an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder; and
- (b) include a right, whether direct or through a trustee or otherwise, to—
 - (i) the possession of the land (for example: a licence to occupy, as that term is defined in section 122 of the Land Transfer Act 2017):
 - (ii) the receipt of the rents or profits from the land:
 - (iii) the proceeds of the disposal of the land; and
- (c) do not include a mortgage

interest,—

...

- (d) in relation to land, **interest in land**, **estate or interest in land**, and similar terms are defined under the definition of **estate**

99. Section YA 1 states that an estate or interest in land can be either legal or equitable, as well as vested, contingent, or in possession, reversion or remainder. In the Commissioner's view, this is referring to proprietary estates or interests in land.⁵⁶ An estate or interest in land also includes:

- a right (direct or through a trustee or otherwise) to the possession of the land (such as a licence to occupy);
- receipt of rents or other profits from the land; and
- the proceeds of the disposal of the land.

100. For the purposes of the Act, an estate or interest in land does not include a mortgage.

⁵⁶ See IS 22/03: Income tax – application of the land sale rules to co-ownership changes and changes of trustees at [29] to [32].

Estates in land

101. An estate in land is simply an interest or a “bundle of rights” in the land. Fisher J in *Re Rural Banking & Finance Corp of NZ Ltd v Official Assignee of van Enckevort* explained this concept:⁵⁷

If neither the bankrupt nor the Assignee is the owner who, if anyone, does own it? For the answer it is necessary to turn to the fundamental principles upon which New Zealand land law is based. Since the Norman conquest, English land has been governed by the doctrine of tenure. By that doctrine the Crown is the overlord of all land in the kingdom. Subjects hold the land as mere tenants under grants emanating, directly or indirectly from that source. Strictly speaking subjects own not the land itself but merely an ‘estate’ in the land which confers certain rights to use of the land.

102. As most of the land in New Zealand is formally held by the Crown, the “tenant” does not own the land itself but an estate in the land. Estates in land are classified as freehold or less than freehold. *Hinde, McMorland and Sim Land Law in New Zealand* states:⁵⁸

So today an estate is freehold if it is of uncertain duration and it is less than freehold if the date of its termination is fixed or capable of being fixed.

103. An estate that is less than freehold is usually a leasehold estate.
104. Estates in land may exist as “legal estates” and “equitable estates or interests”. McLelland J in *Re Transphere Pty Ltd* explained the relationship between legal and equitable estates where trust relationships are present:⁵⁹

An absolute owner holds only the legal estate, with all the rights and incidents that attach to that estate. Where a legal owner holds property on trust for another, he has at law all the rights of an absolute owner but the beneficiary has the right to compel him to hold and use those rights which the law gives him in accordance with the obligations which equity has imposed on him by virtue of the existence of the trust. Although this right of the beneficiary constitutes an equitable estate in the property, it is engrafted on to, not carved out of, the legal estate.

⁵⁷ *Re Rural Banking & Finance Corp of NZ Ltd v Official Assignee of van Enckevort* (1990) 1 NZ ConvC 190,589 (HC), at 593.

⁵⁸ DW McMorland and others, *Hinde, McMorland and Sim Land Law in New Zealand* (online ed, LexisNexis) at [3.003].

⁵⁹ *Re Transphere Pty Ltd* (1986) 5 NSWLR 309 at 311.

105. An absolute owner holds only the legal estate. A trustee of a trust holds the legal estate in the land, and a non-discretionary beneficiary holds the equitable estate in the land. The equitable estate is not carved out of the legal estate but is engrafted or impressed on to it.⁶⁰
106. Another type of equitable interest in land arises under an agreement for sale and purchase of land. A purchaser will have an equitable interest in the land if they are entitled to specific performance. Specific performance requires the vendor to transfer the land to the purchaser or prevents the vendor from acting inconsistently with the agreement.⁶¹
107. The disposal of any estate or interest in land (legal or equitable) is, therefore, potentially within the scope of s CZ 39. Most dealings in land involve transfers of title to the legal estate, so the family and close relationship transactions considered in this statement all involve transfers of legal title. But the conclusions would be equally applicable to transfers of equitable interests in land.
108. The Commissioner does not consider that the form of co-ownership of land (that is, joint tenancy or tenancy in common) is itself an “interest in land”.⁶²

What is a disposal?

109. Section YA 1 provides an inclusive definition of the verb “dispose” for the purposes of s CZ 39:

dispose,—

- (a) in sections CB 6A to CB 16, CB 18, CB 19, CB 21, CB 22, CZ 39 and subpart EL (which relate to the disposal of land), for land, includes—
- (i) compulsory acquisition under any Act by the Crown, a local authority, or a public authority:
 - (ii) if there is a mortgage secured on the land, a disposal by or for the mortgagee as a result of the mortgagor’s defaulting under the mortgage:

...

⁶⁰ *Hinde, McMorland and Sim Land Law in New Zealand* at [4.012].

⁶¹ *Bevin v Smith* [1994] 3 NZLR 648 (CA) at 665.

⁶² IS 22/03: Income tax – application of the land sale rules to co-ownership changes and changes of trustees at [32] and [33].

110. The Commissioner considers what is a disposal of land in IS 22/03. IS 22/03 concludes that the ordinary meaning, case law, legislative history and context indicate that “disposal” in the land sale rules (including s CZ 39):⁶³

- requires complete alienation of the land by the disposer – the land must be ‘got rid of’ by the person;
- requires dealing with the land – so that one person loses ownership of the land and another (including the same person in a different capacity) gains it (or gains a corresponding interest in respect of the same underlying land).

Therefore, in the Commissioner’s view, disposal in the land sale rules does not include transfers from and to the same person in the same capacity.

111. In summary, the main reasons for the above conclusions are as follows:⁶⁴

- The Act contains various definitions of dispose. The one relevant for the land sale rules requires consideration of the ordinary meaning of dispose. The courts have noted that dispose may have a very wide meaning, but that the context in which the word is used is key to determining the meaning it should be given.
- In the Commissioner’s view, the ordinary meaning, case law, legislative history and context indicate that disposal in the land sale rules requires the characteristics set out at [110]. This is for three main reasons:
 - Consistent with dictionary definitions, at the most fundamental level a disposal involves complete alienation from the disposer of the property being disposed of. That is, the property is “got rid of” – being no longer in the control or possession of the disposer in any capacity.
 - Nothing in the history of the land sale rules suggests they were ever intended to apply to something that may technically be a disposal for property law purposes but does not involve any dealing with land (that is, ownership moving from one person to another).
 - Contextual indications in the land sale rules support this view in two particular ways:
 - The heading to subpart CB (Income from business or trade-like activities) seems consistent with a view that the land sale rules are intended to apply where there is some kind of dealing with land.

⁶³ IS 22/03 at [2].

⁶⁴ IS 22/03 at [5].

- The existence of s CB 6A(3B) (and s CZ 39(6)) ensures the bright-line clock does not re-start when title is transferred because the trustees of a trust change. In the Commissioner's view, it would be anomalous to consider that Parliament intended that the mechanical transfer in this situation, with no change in the legal or equitable ownership of the underlying land, would be ignored for the purposes of the bright-line clock but could itself trigger the application of the bright-line test.

112. A change to the form of co-ownership (from joint tenancy to tenancy in common or vice versa), where the proportional shares or notional shares do not change, is not a disposal for the purposes of the land sale rules.⁶⁵
113. A disposition of the legal interest in a freehold estate involves the owner "getting rid of" the legal interest. However, the owner of a legal interest in land can dispose of an equitable interest in it alone (for example, settling land on a trust). If a person holds an equitable interest in land only, the disposition of it would also constitute a disposal for the purposes of s CZ 39. Section CZ 39(2)(b) covers disposals of equitable interests alone.
114. Gifts are also disposals of land for the purposes of s CZ 39 and so are transfers of property on a distribution by trustees of a trust to a beneficiary of the trust. Gifts of residential land are included in the ambit of s CZ 39 by the definition of bright-line date in s YA 1. And s CZ 39 does not exempt transfers from trustees of a trust to a beneficiary of the trust.
115. Section CB 23B means the s CZ 39 bright-line test may apply to a disposal of part of the land:

CB 23B Land partially disposed of or disposed of with other land

Sections CB 6A to CB 23, CZ 39, and CZ 40 (which relate to the bright-line test for residential land) apply to an amount derived from the disposal of land if the land is—

- (b) part of the land to which the relevant section applies:
- (c) the whole of the land to which the relevant section applies:
- (d) disposed of together with other land.

⁶⁵ IS 22/03 at [3].

116. Therefore, s CZ 39 does not limit the disposals of residential land to disposals of the whole of the interest in land and can include disposals of not all interests or of a part of an interest.
117. A disposition of a legal or equitable interest in land must be in writing.⁶⁶ However, this requirement does not affect the creation or operation of resulting, implied or constructive trusts, the making or operation of a will, or the disposition of any interest in land by operation of law.⁶⁷ A deed relating to a land transaction must also be in writing.⁶⁸

Bright-line period is less than 5 years

118. For a transaction to be subject to the s CZ 39 bright-line test, the bright-line period has to be less than 5 years. The bright-line period is the period beginning with the relevant date described in s CZ 39(2) to (6) and ending with the bright-line date for residential land.
119. Section CZ 39(2) to (6) establishes the bright-line acquisition date with the general rule in s CZ 39(2). The family and close relationship transactions considered in this statement are in the context of s CZ 39(2) only. Therefore, this statement does not consider the modified bright-line acquisition dates for:⁶⁹
- subdivisions (s CZ 39(3));
 - leases with perpetual right of renewal (s CZ 39(4));
 - estate or interest acquired upon completion of land development or subdivision (s CZ 39(5));
 - joint tenancy converted to tenancy in common (s CZ 39(5B));
 - tenancy in common converted to joint tenancy (s CZ 39(5C));
 - land-owning person (s CZ 39(5D)); and

⁶⁶ Section 25(1)(b) of the Property Law Act 2007.

⁶⁷ Section 25(4) of the Property Law Act 2007.

⁶⁸ Section 9 of the Property Law Act 2007.

⁶⁹ Section CZ 39(5B), (5C), (5D) and (6) are discussed in New legislation: Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, Bright-line test changes, *Tax Information Bulletin* Vol 34, No 5 (June 2022): 3 at 133–145. Conversions from joint tenancies to tenancies in common and vice versa and changes of trustees are covered in detail in IS 22/03.

- beginning of 5-year period for transfers by registration if trustees change (s CZ 39(6)).

120. For the same reasons, this statement also does not consider the modified bright-line acquisition dates for:⁷⁰

- residential land transferred for certain family trusts (s CZ 39(6B));
- residential land transferred to Māori authorities or similar eligible persons for certain family trusts (s CZ 39(6C)); and
- certain transfers of residential land included in settlement of claim under the Treaty of Waitangi (s CZ 39(6D)).

121. Therefore, the bright-line acquisition date relevant to this statement is:

- the date on which the instrument to transfer the land to the person was registered (s CZ 39(2)(a)); or
- the date of acquisition of the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date (s CZ 39(2)(b)).

What is the date of registration?

122. The registration date is the date when the instrument of the transfer of the residential land to the person is registered under the Land Transfer Act 2017 (or under a foreign law of a similar nature if the land is outside New Zealand).

123. Section 51(1) of the Land Transfer Act 2017 explains that, on the land's registration, a person as the owner of an estate or interest in land obtains a title to the estate or interest that cannot be set aside.

What is the date of acquisition?

124. If there is no date of registration, then the date of acquisition is relevant. The date of acquisition is defined in s CZ 39(9) to mean "the latest date on which the person acquires the estate or interest in land".

⁷⁰ Subsections (6B), (6C) and (6D) of s CZ 39 each state that it applies "despite subsections (2) to (5C)". These subsections refer to the bright-line acquisition dates in ss CB 6AB, CB 6AC and CB 6AE respectively. They are discussed in New legislation: Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, Bright-line test changes, *Tax Information Bulletin* Vol 34, No 5 (June 2022): 3 at 133–145.

125. In the context of s CZ 39(9), the “latest date” the person acquires the estate or interest in land depends on the type of interest acquired. If it is a legal interest, the latest date is the date of registration and para (a) of s CZ 39(2) will apply.
126. It follows then that the date of acquisition in para (b) of s CZ 39(2) applies to the acquisition of equitable interests. It is considered the reference to the “latest date” is consistent with the date of registration being the latest date of acquisition for legal interests.
127. However, unlike with legal interests, there are not various points in time that an equitable interest could be said to be acquired. Therefore, the date of acquisition is the date the equitable interest arises. For off-the-plans sales, the acquisition date is when the person enters into a binding sale and purchase agreement with the vendor to buy off-the-plans.⁷¹

What is the bright-line date?

128. The definition of the “bright-line date” in s YA 1 states:⁷²

bright-line disposal date and **bright-line date** means, for a disposal of residential land,—

(a) the earliest of—

- (i) the date that the person enters into an agreement for the disposal:
- (ii) the date on which the person makes a gift of the residential land:
- (iii) the date on which the person’s residential land is compulsorily acquired under any Act by the Crown, a local authority, or a public authority:
- (iv) if there is a mortgage secured on the residential land, the date on which the land is disposed of by or for the mortgagee as a result of the mortgagor’s defaulting; or

(b) if none of paragraph (a)(i) to (iv) apply, the date on which the estate or interest in the residential land is disposed of

129. Relevant to this statement, the “bright-line date” is either:

⁷¹ QB 17/02 at [31]-[32], [51]-[52], [64]-[65] and Example 4.

⁷² “Bright-line disposal date” is referred to in s CZ 39(5B), (5C), (6B), (6C) and (6D). “Bright-line date” is referred to in s CZ 39(2) to (5).

- the earlier of the date when the person enters into an agreement for the disposal of residential land or makes a gift of residential land; or
 - if there is no such agreement for the disposal or making of a gift, the date on which the person disposes of an estate or interest in the residential land.
130. For standard sales of residential land, the end date for the bright-line period is the date the person enters into an agreement to sell the land.
131. For gifts of residential land, the end date for the bright-line period is the date the person makes the gift of the residential land. This will be the date when the donor has done everything necessary to transfer the land and render the gift binding.⁷³
132. For all other disposals, the end date for the bright-line period is the date the land was disposed of. The date that land is disposed of is not defined in the Act, so ordinary rules apply. It is considered that the date that land is disposed of under ordinary rules will be when the vendor has divested themselves of all of their interests in the residential land.⁷⁴

Exception for an executor, administrator or beneficiary

133. The exception from the s CZ 39 bright-line test for an amount derived by an executor, administrator or beneficiary from disposing of land that was transferred to them on the death of a person is in s CZ 39(7):

Exception: disposal of land by executor, administrator, or beneficiary

- (7) This section does not apply to an amount that an executor or administrator described in section FC 1(1)(a) (Disposals to which this subpart applies), or a beneficiary described in section FC 1(1)(b), derives from disposing of residential land that was transferred to them on the death of a person (*see also*: section FC 9 (Residential land transferred to executor, administrator, or beneficiary on death of person)).

134. An executor or administrator referred to in s CZ 39(7) is described in s FC 1(1)(a) as an executor or administrator to whom the estate has been transferred on the death of the person. A beneficiary referred to in s CZ 39(7) is described in s FC 1(1)(b) as “a beneficiary who is beneficially entitled to receive the property under the will or the rules governing intestacy”.

⁷³ *Milroy v Lord* (1862) 4 De GF & J 264 at 274, 45 ER 1,185 at 1,189 (Ch).

⁷⁴ *Henty House Proprietary Ltd (in vol liq) v FCT* (1953) 88 CLR 141 (HCA).

135. These transfers are also excluded from the s CZ 39 bright-line test but under s FC 9(2):

FC 9 Residential land transferred to executor, administrator, or beneficiary on death of person

What this section applies to

- (1) This section applies in the circumstances described in section FC 1(1)(a) or (b) when residential land is transferred on a person's death and section FC 5 does not apply.

Residential land

- (2) Section CB 6A and CZ 39 (which relate to the bright-line test for residential land) do not apply to the transfer of the residential land, including any intervening transfer to an executor or administrator (*see also*: sections CB 6A(2B) and CZ 39(7)).

...

136. Therefore, the following transfers and disposals are excluded from the s CZ 39 bright-line test:⁷⁵

- residential land transferred on the death of a person to an executor or administrator (s FC 9(2));
- residential land transferred on the death of a person to an executor or administrator that was disposed of by the executor or administrator (s CZ 39(7));
- residential land transferred from an executor or administrator to a beneficiary under a will or under rules of intestacy (s FC 9(2)); and
- residential land transferred from an executor or administrator to a beneficiary under a will or rules of intestacy that was disposed of by the beneficiary (s CZ 39(7)).

Analysis | Tātari – Family and close relationship transactions

137. Having discussed the requirements of s CZ 39, this statement now discusses whether s CZ 39 applies to the following family and close relationship transactions when the ownership of residential land (that is not a main home) changes from:

⁷⁵ Section FC 5 applies to transfers under ss CB 9 to CB 11 and CB 14, which relate to the disposal of land.

- parents to their child to assist the child with buying their first home;
- one partner to themselves and their new partner; and
- all the beneficiaries who inherited the land under a will to some of the beneficiaries.

Parents and child

138. The Commissioner has been informed of instances when parents try to assist their child to buy a house because the child:
- is not able to do it without such assistance; or
 - needs extra time to access their KiwiSaver funds.
139. The child sometimes provides a part of the initial deposit for the purchase by the parents or the parents fully cover the deposit. The child lives in or rents the property and may pay or reimburse the parents for all or some of the mortgage and other expenses associated with the property.
140. The property is eventually transferred from the parents (in their personal capacity or as trustees of a trust, nominees or shareholders of a company) to the child. The value of the property could have increased during the time the parents or entity owned it.
141. The Commissioner concludes that the s CZ 39 bright-line test applies to the following family transactions because a person has derived an amount from disposing of residential land (assuming all other requirements of s CZ 39 are met):
- a disposal from parents, as individuals, to their child (see Example 1 after [147]);
 - a disposal from a company (which is not a look-through company), where the parents are shareholders, to their child (see Example 2 after [147]); and
 - a disposal from parents, who are the trustees of a trust, to their child who is a beneficiary of the trust (see Example 3 after [147]).
142. If the amount derived from the disposal is below the market value of the residential land, it is treated as being the market value (see Examples 1 and 3 after [147]).
143. A transfer from parents, who are nominees for their child under s YB 21, to their child is not a disposal for the purposes of s CZ 39. For example, a transfer from parents who are bare trustees for their child to their child who is a beneficiary of the bare trust is not a disposal. The criteria that help determine whether parents are nominees under s YB 21 for their child are covered in [53] to [68]. See Examples 4 and 5 after [147].

144. Situations can arise when parents take out a loan to purchase residential land for their child and assume personal obligations for the repayment of the loan. The Commissioner considers that in these situations this is an active duty so the parents are not acting as bare trustees.
145. Likewise, the Commissioner considers that parents who borrow funds to purchase a property for their child are not their child's agents. They do not create or affect the child's relationship with third parties (for example, the lending institution). They borrow funds and purchase the property in their own right, not on behalf of their child.
146. Deductions are allowed under part D for the cost of the residential land, such as acquisition costs and capital improvements (s DB 23 (Cost of revenue account property) as limited by s EL 20 (Allocation of deductions related to bright-line disposals of residential land)). The deduction is taken in the income year in which the land is disposed of (s EA 2 (Other revenue account property)).
147. Any earlier deductions carried forward under the residential rental ring-fencing rules in subpart EL (Allocation of deductions for excess residential land expenditure) may be allowed to be allocated to the income year under s EL 5 (When residential portfolios sold) or s EL 7 (When property A sold). Any allowable deductions reduce the amount of income taxable under the s CZ 39 bright-line test.

Example | Tauira 1 – Sale from parents, as individuals, to their child for below market value

Blake has savings but not enough to buy a house with an asking price of \$900,000. Blake's parents decide to buy the house on behalf of themselves. They obtain a mortgage for \$900,000 to purchase the property under their names. Blake moves in and lives in the property and makes payments in the nature of rent to his parents to partially reimburse them for their mortgage interest expenses and other expenses relating to the property.

Four years later, Blake's parents' financial circumstances change so they decide to sell the property to him for the sum of \$900,000, which is the same as what they paid when they acquired it. The bank lends Blake \$720,000 (80% of \$900,000). Blake also pays \$180,000 from his savings to his parents directly.

The market value of the property at the time of the sale from Blake's parents to Blake has, however, risen to \$1.2m.

For s CZ 39 to apply, Blake's parents must derive an amount from disposing of residential land (assuming all other requirements are met). In accordance with s GC 1,

the “amount”, for the purposes of s CZ 39, is \$1.2m, despite the parents agreeing to sell the property below its market value (\$900,000).

The amount was derived by Blake’s parents from disposing of residential land. It was residential land because it was an estate in fee simple with a dwelling on it. Blake’s parents have disposed of their interest in land as there has been a sale of a legal interest in land. Therefore, s CZ 39 applies to Blake’s parents. While Blake’s parents derived an amount of \$1.2m, they will be allowed a deduction under part D for the cost of the property (including the \$900,000 they paid for the property).

If Blake’s parents had acquired and disposed of a lesser share in the property to Blake, s CZ 39 would have applied to the lesser share.

Example | Tauira 2 – Sale from a company (which is not a look-through company), where the parents are shareholders, to their child

Charlie wants to buy a house in Invercargill that costs \$500,000. They had to be a cash buyer, but because it would take them too long to sort out their KiwiSaver funds, they could miss out on the house. Their parents, who are the only shareholders in Parents Ltd (which is not a look-through company), stepped in and purchased the house for Charlie for \$500,000 under the name of Parents Ltd. Charlie is not a shareholder in Parents Ltd. Six months later, Parents Ltd sells the house to Charlie for \$500,000, which was still its market value.

For s CZ 39 to apply, Parents Ltd must derive an amount and the amount must arise from disposing of residential land (assuming all other requirements are met). Parents Ltd has derived an amount of \$500,000 as this is the monetary sum that it received and is the market value of the house.

The amount was derived by Parents Ltd from disposing of residential land. It was residential land because it was an estate in fee simple with a dwelling on it. Parents Ltd has disposed of its legal interest in land as there has been a sale of the land. Therefore, s CZ 39 applies to Parents Ltd. While Parents Ltd derived an amount of \$500,000, they will be allowed a deduction under part D for the cost of the property (including the \$500,000 it paid for the property).

The facts of Example 2 indicate that Parents Ltd may have acquired the house with a purpose or an intention of disposing of it to Charlie. If that was so, s CB 6 would apply instead of s CZ 39.

Example | Tauira 3 – Transfer from parents who are the trustees of a trust to their child who is a beneficiary of a trust

For the last 18 months, trustees of the Lachlan Family Trust (a complying trust) have owned a house in Kerikeri, which is usually vacant. Don and Grant are the trustees of the trust, and Hunter is one of the discretionary beneficiaries of the trust. Don and Grant are Hunter's parents. Don and Grant, in their capacity as trustees, have resolved to transfer the house to Hunter for no consideration. The market value of the property is \$700,000.

For s CZ 39 to apply, the trustees must derive an amount and the amount must arise from disposing of residential land (assuming all other requirements are met). The trustees are treated as having disposed of the property to Hunter at market value (ss FC 1(1)(c) and FC 2). Therefore, they have derived an amount of \$700,000 as this is the market value of the property.

The amount was derived by the trustees from disposing of residential land. It was residential land because it was an estate in fee simple with a dwelling on it. The trustees have disposed of their legal interest in land as it has been transferred to Hunter. Therefore, s CZ 39 applies to the trustees. While the trustees derived an amount of \$700,000, they will be allowed a deduction under part D for the cost of the property (including the amount they paid for the property).

Note that this transaction is not a gift for the purposes of s FC 1(1)(e), as s FC 1(1)(c) is the section that deals with transfers of property from trustees of a trust to a beneficiary of the trust.

Example | Tauira 4 – Transfer from parents who are bare trustees for their child to their child

Jacob is working overseas and plans to return to New Zealand at the end of the year. He has saved enough money to afford to buy a modestly priced house mortgage-free. This money is a combination of Jacob's savings and money he inherited from his grandmother. Jacob's parents, Teresa and Manaia, believe property prices may increase by the time Jacob returns, which may make it harder for Jacob to find an affordable house. Teresa and Manaia live in Dunedin, which is where Jacob wants to

be when he returns. As Jacob is very busy with his work, he would like his parents to purchase a house for him and handle all the conveyancing.

Jacob asks his parents to act on his behalf as bare trustees. They agree that Jacob will choose the property and the parents will use his money to buy it. The parents will register the property under their names until Jacob returns, when they will transfer it to him. This understanding can be clearly ascertained from contemporaneous emails exchanged between them.

Jacob transfers his money to his parents, and the parents purchase the property he chose for \$350,000. There is no mortgage against the house. The property is registered in the parents' names and sits empty awaiting Jacob's return. The parents arrange for basic maintenance like lawn mowing. When Jacob returns in 10 months, the property is transferred from his parents to him.

Jacob's parents acted in their capacity as bare trustees for Jacob so they are nominees for the purposes of s YB 21. Section YB 21 means Jacob is the "person" who holds the property that is registered under his parents' names. As Jacob is deemed to hold the interest in the property instead of his parents, he is deemed to have held the legal title in the property from when his parents acquired it.

Section CZ 39 does not apply to Jacob because a transfer from and to oneself in the same capacity is not a disposal for the purposes of the land sale rules. Therefore, Jacob is not subject to the s CZ 39 bright-line test.

Example | Tauira 5 – Sale from parents to their child with no bare trust relationship

Lucia wants to buy a house in a provincial town in New Zealand with an asking price of \$900,000. Lucia is not in a position to secure a mortgage and does not have a deposit. However, she is starting a well-paying job in the next couple of months and thinks she should be in a position to own a house within the next few years. Lucia's parents, Emilio and Anna, agree to help her out and buy a house on behalf of themselves.

Emilio and Anna obtain a mortgage for \$720,000 to buy a house. They are the principal borrowers in relation to this sum, which means they assume personal obligations to repay the mortgage. They pay a deposit of \$180,000. Lucia is living with her parents to save money and the house is rented out. Her parents take care of the mortgage repayments and other property expenses.

In a few years, Lucia is ready to purchase a house. She has saved enough for a deposit and obtains a mortgage. Emilio and Anna decide to sell the house they acquired to her for \$900,000, which is still the market value of the house.

There is no bare trust for Lucia, and Emilio and Anna are not bare trustees. This is because bare trustees can have only passive duties. Assuming personal obligations for the mortgage in this situation is not a passive duty. Therefore, Emilio and Anna are not nominees for the purposes of s YB 21.

For s CZ 39 to apply, Emilio and Anna must derive an amount and the amount must arise from disposing of residential land (assuming all other requirements are met). Emilio and Anna derive an amount of \$900,000 from disposing of residential land. The house is residential land because it is an estate in fee simple with a dwelling on it. They have disposed of their legal interest in land as they sold it to Lucia. Therefore, s CZ 39 applies to Emilio and Anna. While they derived an amount of \$900,000, they will be allowed a deduction under part D for the cost of the property (including the \$900,000 they paid for the property).

If the market value of the house had increased from \$900,000, Emilio and Anna would have derived the increased amount instead (s GC 1).

New partner

148. The Commissioner has been asked whether the bright-line test applies when the ownership of residential land changes from one partner (A) to themselves and their new partner as co-owners (A and B).
149. In the Commissioner's view, "disposal" in the land sale rules (including s CZ 39) does not include transfers from and to oneself in the same capacity. Therefore, partner A disposes of only half of the land to partner B, and s CZ 39 applies to that extent (assuming all other requirements are met) (see Example 6 after [152]).
150. Any subsequent disposals by partners A and B to another person will be subject to s CZ 39 (assuming all other requirements are met) (see Example 7 after [152]).
151. Deductions will be allowed under part D for the relevant share of the cost of the residential land (see [146] and [147]).
152. If partner A had subsequently transferred their share of the land to partner B under a settlement of relationship property, s CZ 39 would not apply (s CZ 39(1B) and s FB 3A). A "settlement of relationship property" means a transaction under a relationship

agreement that creates a disposal and acquisition of property between the parties (s FB 1B). A "relationship agreement" is an agreement for the purpose of Part 6 of the Property (Relationships) Act 1976 (that is, a contracting out or prenuptial agreement), or a court order under s 25 of the same Act (s YA 1).

Example | Tauria 6 – Transfer from one partner to both partners as co-owners

Josh and Zhuo are in a relationship and decide to buy a house in New Plymouth where they are going to live together. Josh sells the house he owns and has lived in in New Plymouth to purchase a new house for \$640,000. Josh and Zhuo own the new house as equal co-owners. Zhuo indirectly contributes to the purchase of the new house by transferring the rental property in Auckland that she has owned for 3 years (with a market value of \$640,000) to herself and Josh as co-owners.

For s CZ 39 to apply to the transfer of the rental property, Zhuo must derive an amount and the amount must arise from disposing of residential land (assuming all other requirements are met). Despite Josh not providing Zhuo with any monetary sum in relation to the transfer, the amount is represented by the money's worth of half of the share that Zhuo has acquired in the new house she bought with Josh (\$320,000).

The amount is from disposing of Zhuo's rental property because Zhuo and Josh agreed to include Zhuo as a co-owner of the new house if she added Josh as a co-owner of Zhuo's rental property.

As Zhuo has disposed of half of her interest in her rental property to Josh, s CZ 39 applies to Zhuo for the amount of \$320,000. While Zhuo has derived an amount of \$320,000, she will be allowed a deduction under part D for half of the cost of the property (including half of the amount she paid for the property).

The same outcome would apply if Josh had provided no consideration for the transfer of the property from Zhuo to Zhuo and Josh. This is because s GC 1 would apply and Zhuo would be taxable on the market value of the transferred interest (that is, \$320,000).

Example | Tauria 7 – Sale from partners, as co-owners, to a third party

Due to changing circumstances, Zhuo and Josh as co-owners of the rental property that was initially owned by Zhuo (referred to in Example 6), sell the property 1 year later to Ahmed for \$700,000.

The sale of the rental property is subject to s CZ 39 because Zhuo and Josh have derived an amount from disposing of residential land (assuming all other requirements are met). They have both owned their half shares in the rental property for less than 5 years (that is, Zhuo for 4 years and Josh for 1 year). They will each be allowed a deduction under part D for the cost of their share in the rental property.

If Zhuo had held her half share in the rental property for more than 5 years, then s CB 23B would have applied so that only Josh would have derived \$350,000. However, Josh would have been allowed a deduction under part D for his share of the cost of the property (including the \$320,000 money's worth he provided for his share).

Inherited property

153. The Commissioner has been asked whether the s CZ 39 bright-line test applies when the ownership of residential land changes from all the beneficiaries who inherited a property under a will or rules of intestacy to some of the beneficiaries.
154. The transfer from one beneficiary of their share to other beneficiaries is exempted from the s CZ 39 bright-line test by s CZ 39(7). This is because that share was acquired under a will or rules of intestacy (see Example 8 after [156]).
155. However, subsequent disposals by the remaining beneficiaries of the property to a third party are exempted only to the extent of their original shares in the land acquired under a will or rules of intestacy. Section CB 23B means that the s CZ 39 bright-line test can apply to a part of the land (see Example 9 after [156]).
156. Deductions will be allowed under part D for the cost of the residential land (see [146] and [147]).

Example | Tauira 8 – Sale of share of inherited land from one beneficiary to the other beneficiaries

Siblings Ella, Riley and George are the beneficiaries under the will of Ms McDonald who recently passed away. They are set to inherit her house in equal shares (one-third each). Following Ms McDonald's death, all of her assets, including the house, were passed on to the executor of her estate, Mr Pauls, for administration and distribution to the beneficiaries.

The house was transferred to the siblings and they decide to rent it out. Riley decides she would rather have her investments elsewhere, so she asks Ella and George to buy

her out. Ella and George agree and acquire Riley's one-third share for one-third of the market value of the house.

These three disposals of residential land are excluded from s CZ 39. The transaction:

- from the deceased, Ms McDonald, to Mr Pauls is excluded by s FC 9(2) (as referred to in s CZ 39(7));
- from Mr Pauls to Ella, Riley and George is excluded by s FC 9(2); and
- from Riley, in relation to the sale of her one-third share, to Ella and George is excluded by s CZ 39(7).

Example | Taura 9 – Sale of inherited land to a third party

In 12 months' time, Ella and George sell the house they inherited (referred to in Example 8) that they now co-own equally to a third party, Mere.

The sale of residential land by Ella and George to Mere is excluded from s CZ 39 by s CZ 39(7) only to the extent of the two-third share that they inherited under the will, represented by two-thirds of the sale price. The one-third share they acquired from Riley was not acquired by Ella and George under a will.

Section CZ 39 applies to one-third of the sale price. Section CZ 39 can apply to a part of the disposed land. Ella and George have derived an amount from disposing of residential land (assuming all other requirements are met) to Mere. They will each be allowed a deduction under part D for the cost of the share they acquired from Riley.

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