

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

When is land acquired for a purpose or with an intention of disposal so that the amount derived from the sale is income?

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QB 25/08

This question we've been asked (QWBA) provides guidance about the circumstances in which an amount derived from the disposal of land acquired with a purpose or intention of disposal is income under s CB 6. The QWBA explains how s CB 6 applies, and its relationship with the 2-year bright-line test. The QWBA also discusses some common misconceptions about s CB 6 and includes examples illustrating when it will apply.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – s CB 6

REPLACES | WHAKAKAPIA

- **QB 16/06:** Income tax – land acquired for a purpose or with an intention of disposal

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

Question | Pātai

When is land acquired for a purpose or with an intention of disposal so that the amount derived from the sale is income?

Answer | Whakautu

If you buy land for a purpose or with an intention of selling it, the amount derived from the eventual sale, whenever that occurs, will be income under s CB 6 unless one of the exclusions from that rule (for residential land or business premises) applies.

Selling the land does not have to be your dominant or only purpose or intention.

Explanation | Whakamāramatanga

What is the relevant taxing provision?

1. Section CB 6(1) provides that:

CB 6 Disposal: land acquired for purpose or with intention of disposal

- (1) An amount that a person derives from disposing of land is income of the person if they acquired the land—
 - (a) for 1 or more purposes that included the purpose of disposing of it;
 - (b) with 1 or more intentions that included the intention of disposing of it.

2. As s CB 6 states, an amount you derive on the disposal of land is income if you acquired the land for a purpose or with an intention of disposing of it. Disposal does not have to be your dominant or only purpose or intention. Disposal in this context means disposal by way of sale or similar.
3. There are two exclusions from this – for residential land and for business premises. Even if you acquired the land for a purpose or with an intention of disposing of it, you will not be taxed under s CB 6 on the sale if one of those exclusions (discussed further below from [5]) applies.
4. If s CB 6 does not apply, there are other land sale rules that may be relevant. This includes the 2-year bright-line test (see further from [17]). Different exclusions apply depending on which land provision is being considered, and these exclusions have

different criteria. You should not assume that because you can use an exclusion from one taxing provision other taxing provisions will also not apply. For example, you might potentially fall within the “residential exclusion” from s CB 6, but not within the “main home exclusion” from the 2-year bright-line test.

What are the exclusions from s CB 6?

5. As noted above, if you acquired land for a purpose or with an intention of disposing of it you will not be taxed under s CB 6 if you satisfy one of the two exclusions from that provision – for residential land (s CB 16) and for business premises (s CB 19). The requirements for each of those exclusions are set out below.

Residential exclusion from s CB 6

6. Section CB 16 sets out the residential exclusion from s CB 6. If the land has a house on it, or you build one, and you occupy the house mainly as a residence, you will not be taxed under s CB 6 on any profit you make when you sell the property. This exclusion also applies if the land is held in a trust, and a beneficiary of the trust occupies the house mainly as a residence.
7. The house must be acquired and occupied, or built and occupied, mainly as a residence. This means your occupation of the house cannot be incidental to another more significant purpose, for example, selling the house (*Case G76* (1985) 7 NZTC 1,348, *Case K21* (1988) 10 NZTC 218 and *Case M102* (1990) 12 NZTC 2,634).
8. This exclusion applies to the land that has the house on it. It also applies to land related to the land with the house on it if the related land is 4,500 square metres or less, or if it is bigger than that, if the larger area is required for the reasonable occupation and enjoyment of the house.¹
9. You cannot use this exclusion if you have a regular pattern of acquiring and disposing of houses, or building and disposing of houses. See [QB 25/09: When do I have a “regular pattern” of transactions that means I cannot use exclusions from the land sale rules for my residence or for my main home?](#) for guidance on when a person has a pattern of transactions that prevents them from using the residential exclusion.

¹ For example, in *Parry v CIR* (1984) 6 NZTC 61,820 (HC), the High Court accepted a larger area of 4.1126 hectares was necessary for reasonable occupation of the house as, due to subdivision requirements, it would not have been possible to reduce the area of the land.

10. This residential exclusion is different from the main home exclusion from the 2-year bright-line test, and has different requirements.

Business premises exclusion from s CB 6

11. Section CB 19 sets out the business premises exclusion from s CB 6. The exclusion will apply for business premises you acquired and occupied or built and occupied mainly to carry on a substantial business from. If the exclusion applies, you will not be taxed under s CB 6 on any profit you make when you sell the property.
12. A property mainly used for investment (eg, being rented out) is not premises acquired and occupied mainly to carry on substantial business from, so does not fall within the exclusion (*Case D20* (1979) 4 NZTC 60,558).
13. To use this exclusion, the land and the premises must be reserved for the use of the business, and the area of the land can be no greater than that required for the reasonable occupation of the premises and the carrying on of the business.
14. You cannot use this exclusion if you have a regular pattern of acquiring and disposing of, or building and disposing of, premises for businesses.
15. See [QB 19/14: Income tax – When does the business premises exclusion in s CB 19 apply to preclude land sales from being taxed under ss CB 6 to CB 11?](#) for more information about the business premises exclusion in s CB 19.
16. Remember that this exclusion has different requirements from the business premises exclusion for the bright-line test. See [QB 25/14: When does the business premises exclusion to the bright-line test apply?](#) for information about the business premises exclusion from the bright-line test in s CB 6A.

How does the purpose or intention rule relate to the 2-year bright-line test?

17. The 2-year bright-line test in s CB 6A applies to residential land disposed of on or after 1 July 2024, if the person's bright-line end date (which is typically the date the person enters into an agreement for disposal of the land) is within two years of their bright-line start date (which in typical land transactions is the date the transfer to the person is registered). There are other bright-line tests that applied to land disposed of before 1 July 2024.
18. The bright-line test (including previous tests) can apply only if none of ss CB 6 to CB 12 apply. This means you need to first consider the application of those provisions. For that reason, if you acquired land for a purpose or with an intention of disposing of it

and none of the exclusions to s CB 6 apply, you will be taxed under s CB 6 rather than s CB 6A, even if the disposal is within 2 years of your bright-line start date.

What factors are relevant when considering whether s CB 6 applies?

19. As noted above, an amount you derive on the disposal of land will be income under s CB 6 if you acquired the land for a purpose or with an intention of disposing of it, unless one of the exclusions applies.
20. Keep in mind the following points when considering whether s CB 6 applies:
 - What matters is your purpose or intention when you acquired the land.
 - A purpose or intention of disposing of the land does not need to be the only purpose or intention you had when you acquired the land. It also does not need to be your dominant or main purpose or intention. It is enough if disposal is one of your purposes or intentions.
 - Disposing of the land must be more than a vague idea or just a possibility or option in the future. You must have a firm purpose or intention of disposing of the land.
 - The test of whether you had a purpose or intention of disposing of the land is subjective. But what you say your purpose or intention was will be assessed against all of the evidence.
 - Evidence of your purpose or intention before you acquired the land (for example, during the whole acquisition process) may be relevant.
 - The extent of commitments you made or steps you took shortly after you acquired the land may also be relevant in testing what your subjective purpose or intention was when you acquired the land (eg, if these contradict what you say your purpose or intention was).
 - The length of time you held the land, and if you have a pattern of acquiring and disposing of land within relatively short timeframes, is likely to be relevant.
 - It is up to you to show that you did not acquire the land for a purpose or with an intention of disposing of it.
21. These points are derived from cases, including: *CIR v Boanas* (2008) 23 NZTC 22,046 (HC), *Case N59* (1991) 13 NZTC 3,457, *Harkness v CIR* (1975) 2 NZTC 61,017 (SC), *Anzamco Ltd (in liq) v CIR* (1983) 6 NZTC 61,522 (HC), *Case Y3* (2007) 23 NZTC 13,028 and *Jurgens & Doyle v CIR* (1990) 12 NZTC 7,074 (HC).

When do you test what my purpose or intention was?

22. As noted above, it is your purpose or intention at the time you acquired the land that is relevant to whether s CB 6 applies.
23. The rules in s CB 15B generally establish when you are treated as acquiring land for the purposes of the land provisions.² In a typical land sale, this will be when you enter into a binding contract to purchase the land, even if there are some conditions that you need to meet. See [QB 25/10: On what date is a person treated as acquiring land for the purposes of the land sale rules?](#) for more information about the date of acquisition under the land sale rules.
24. The date of acquisition may be different in some circumstances. For example, it may differ if you acquired the land through exercising an option (s CB 15B(3)), or if a company obtains land under an agreement entered into before it was formed (s CB 15B(2)).

What if I did not have any firm intention when I bought the land?

25. If, at the time you acquired the land, you did not have a firm purpose or intention of disposing of it, you will not be taxed on the eventual sale under s CB 6.
26. However, if the Commissioner questions whether you acquired the land with a purpose or for an intention of disposal, you must be able to show that you did not. What you say your purpose or intention was will be assessed against all of the evidence. As to what evidence may be relevant, see from [46].

What if my intention changes and I decide not to sell the land?

27. The only thing that is relevant is your purpose or intention at the time you acquired the land. If you acquired the land with a purpose or for an intention of disposing of it, but change your mind and decide to do something else (eg, rent the property out), you will still be taxed on any eventual sale (subject to any exclusions applying).

² These rules about when land is acquired apply for disposals of land on or after 22 November 2013.

What if I own the land for more than 10 years before I sell it?

28. A common misconception is that if you hold the land for more than 10 years you will not be taxed on the sale. This is not correct. If you acquired the land with a purpose or for an intention of disposal, s CB 6 will apply to tax any profit you make on the sale whenever you eventually sell the land (subject to the exclusions discussed from [5]).

What if I have rented out the property and paid tax on the rental income?

29. As noted above, if you acquired the land with a purpose or for an intention of disposing of it, it does not matter if you rent it out in the meantime (whether because you always planned to rent the property out before selling it, or because you changed your mind and decided to rent the property out instead of selling it straight away). You will still be taxed when you eventually sell the land. This is the case even though the rental income will have been subject to tax. The rental income and any profit on the sale are both taxed under the Act (see s CC 1).

What if I sell only some of the land?

30. If you acquired the land with a purpose or intention of disposing of it, it does not matter if you divide the land and sell only some of it at any one time – you will still be taxed on the sale of all of the land, whenever you sell it. Similarly, it does not matter if you sell the land you acquired together with some other land. The sale of the original piece of land you acquired with a purpose or for an intention of disposal will be taxed under s CB 6 no matter what you later do with the land or its boundaries (see s CB 23B).
31. If you divide land, there are other provisions that could also be relevant to whether you are taxed on the disposal of the land. See, for example, s CB 12 (Disposal: schemes for development or division begun within 10 years) and s CB 13 (Disposal: amount from major development or division and not already in income).

What if I buy some land intending to subdivide it, keep one lot and sell the rest?

32. If you acquire land intending to keep some and sell the rest, you will only be taxed under s CB 6 on the disposal of the part you acquired with the intention of selling. You would need to have satisfactory evidence to show how much of the land or what part

of the land you did not acquire for a purpose or with an intention of disposal. See for example: *Bedford Investments Limited v CIR* [1955] NZLR 978 (SC), *Harkness v CIR* and *Church v CIR* (1992) 14 NZTC 9,196 (HC).

What if I buy the land through a trust, company or partnership?

- 33. Section CB 6 can apply regardless of whether the property is acquired by an individual person or an entity such as a trust, company or partnership.
- 34. If the owner is a trust or company, it is generally the purposes or intentions of the trustees or directors that are relevant in deciding if s CB 6 applies. See for example: *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346 (CA), *Trustees of the B Trust v C of IR* [2013] NZTRA 5, *FCT v Whitfords Beach Pty Ltd* 82 ATC 4031 (HCAFC), *Allied Pastoral Holdings Pty Ltd v FC of T* 83 ATC 4015 (SCNSW), and *Aotea Group Securities Ltd v C of IR* (1986) 8 NZTC 5,052 (HC).
- 35. If the owner is a partnership, it is the purpose of the partnership that is relevant. See s HG 2(1) and *CIR v Boanas*.

Does s CB 6 apply only to sales of freehold land?

- 36. No. "Land" is defined in the Act as including any estate or interest in land, and as including an option to acquire land or an estate or interest in land. You could be taxed under s CB 6 if you dispose of **any** land interest, not just the freehold estate. For example, you could be taxed if you dispose of a leasehold, unit title or cross-lease interest, an option to acquire land, or an equitable interest in land (eg, by transferring the right to acquire land under a sale and purchase agreement to someone else). However, the expiry of an interest in land, such as the expiry of a lease or the expiry of an option, is not a disposal.

Can I gift the land instead, so I do not have to pay tax?

- 37. No. Property cannot be gifted (which includes settling it on a trust) to get around paying tax on its sale. The Act treats a gift of land you acquired with a purpose or intention of disposal as being made at market value. As a result, you would be subject to tax on that amount, less any allowable deductions (see ss FC 1 and FC 2).
- 38. Similarly, you cannot dispose of the property for less than market value to reduce the tax you would have to pay on the sale. A below market value sale is also treated as

occurring at market value, and you would be subject to tax on that amount, less any allowable deductions (see s GC 1).

What if I did not buy the land, or if I got it from someone I was associated with?

39. If you received the land passively, for example, as a gift, you will generally not be taxed under s CB 6, because you did not acquire it with a purpose or with an intention of disposal (see, eg, *A G Healing and Co Ltd v CIR* [1964] NZLR 222 (SC) and *McClelland v FCT* (1970) 120 CLR 487 (PC)).
40. However, you may be taxed on the disposal of land you received passively (or otherwise) from someone you were associated with. This may happen if the person you acquired the land from would have been taxed under s CB 6 if they had kept the land and disposed of it when you did (see s CB 15). The person you acquired the land from may already have been taxed under s CB 6 when they transferred the land to you. Regardless, you would also potentially be subject to tax under s CB 6 on the difference between your cost base for the land and the amount you derive when you dispose of it.
41. You may be taxed under s CB 6 on a similar basis in other circumstances. For example, if you dispose of land you received under a relationship property agreement and the transferor would have been subject to tax under s CB 6, or if you dispose of land you received from a deceased person's estate and the deceased person would have been subject to tax under s CB 6.³
42. There are also special rules that may apply if you received the land by way of a distribution from a company (s FC 1), or if an amalgamated company receives it as part of certain amalgamations (s FO 17).

Can I get any tax deductions for disposal of land subject to s CB 6?

43. Yes. If the amount you derive from selling land is income under s CB 6, you will get a deduction for the cost of the land and any capital improvements you made to it, to the extent you incurred those costs in deriving the income (ss DA 1, and DA 2(2) and

³ Sections FB 3, FB 5, FC 3, and FC 4.

DB 23). The deduction is taken in the income year in which you dispose of the land (see s EA 2).⁴

44. There is a different timing rule for deductions for the cost of revenue account property that ceases to exist (s EA 2). For example, if you had a revenue account leasehold interest or option and it expired or (in the case of an option) was exercised, you may still get a deduction even though the land may not have been disposed of. See further [QB 15/13: Income tax – Whether the cost of acquiring an option to acquire revenue account land is deductible](#).
45. You may be able to deduct other expenditure, such as interest on money borrowed to purchase the land, insurance premiums, and expenditure on repairs and maintenance that are not capital improvements. Deductions for these expenses will be allowed to the extent they are incurred in deriving the income and are not private in nature (ss DA 1, DA 2 and DB 6). Deductions for these expenses are available in the income year they were incurred. See [IS 23/10: Deductibility of holding costs for land](#) for more information about what you can deduct.

What evidence is relevant to show that I did not have a purpose or intention of disposal when I acquired the land?

46. Any evidence that shows you did not have a purpose or intention of disposing of the land when you acquired it will be relevant. This may include:
- records from the real estate agent or the financial institution that provided finance for the purchase about why you acquired the property;
 - records of discussions with your accountant or financial advisor;
 - proof of a change in your circumstances that led to the sale;
 - minutes of board meetings;
 - resolutions of directors or trustees; or
 - anything else that shows your purposes or intentions in acquiring the property.
47. Remember that if s CB 6 applies, it does not matter when you sell the property. You should keep any relevant documentary evidence about what your purpose or intention in acquiring property was, even beyond the normal 7-year timeframe for keeping tax records.

⁴ Disposal in the land sale rules requires complete alienation of the land by the disposer. In a typical land sale, this will occur at settlement.

Other taxing provisions that could apply if s CB 6 does not

48. If s CB 6 does not apply to you (see from [19]), there are other land sale rules in the Act that may still tax you on the sale. You might be taxed on the amount you derived from disposing of land if any of the following apply:

- You acquired the land for the purpose of a business (carried on by you or by an associated person) of dealing in land, developing land, dividing land into lots, or erecting buildings (s CB 7).
- You used the land as a landfill before disposing of it and certain other requirements are met (s CB 8).
- You dispose of the land within 10 years of acquiring it, if at the time you acquired it you were (or were associated with someone who was) in the business of dealing in land, or developing or dividing land (ss CB 9 and CB 10).
- You dispose of the land within 10 years of completing improvements to it, if at the time the improvements were started you were (or were associated with someone who was) in the business of erecting buildings (s CB 11).
- The land was part of an undertaking or scheme, meeting certain criteria, that involved the development of land or the division of land into lots (ss CB 12 and CB 13).
- You dispose of the land within 10 years of acquiring it and 20% or more of the increase in its value arises from any one of various factors such as a change to the rules of a district plan, the granting of a consent, or a decision of the Environment Court under the Resource Management Act 1991 (s CB 14).⁵
- You received the land from someone you were associated with, if the amount derived from the disposal would have been income of the associated person if they had retained and disposed of the land (s CB 15).
- None of sections CB 6 to CB 12 apply, the land is residential land, and the bright-line end date for your disposal of the land is within 2 years of your bright-line start date (s CB 6A).⁶

49. There are exclusions from each of these rules that may be relevant to you.

⁵ See s CB 14(2) for the full list of factors.

⁶ "Residential land" is defined in s YA 1. As noted above at [17], your bright-line start date is typically the date the land transfer is registered to you. The bright-line end date for a disposal of land is typically the date you enter into an agreement for the disposal, but may vary depending on the circumstances (see s CB 6A(4)).

What if I have possibly taken an incorrect tax position for past property sales?

50. If you think you may have taken a tax position for property sales in past tax years that is different from the Commissioner's position on how these provisions apply, you should discuss the matter with your tax advisor, or Inland Revenue, and consider making a voluntary disclosure.

Examples | Tauria

51. The following examples help explain how s CB 6 applies, and dispel common misconceptions that Inland Revenue encounters in its property compliance activity. The examples assume the exclusions to s CB 6 do not apply. They also do not consider whether any of the other land sale rules in the Act apply.

Example | Tauria 1 – Change of purpose or intention between contract and settlement

On 10 September 2024, Tabitha and Taj entered into a sale and purchase agreement to buy a house for \$2 million. They planned to move into the house with their three children. On 21 September 2024, before settlement of the purchase, Tabitha and Taj were approached with an unsolicited offer to purchase the property for \$2.25 million. They decided this offer was too attractive to turn down, and were confident they could find another equally desirable family home for that amount. Tabitha and Taj therefore accepted the offer on 23 September 2024, entering into a sale and purchase agreement to sell the house. Tabitha and Taj's purchase of the property was settled on 25 September 2024, and their sale of the property was settled the following week on 2 October 2024.

For the purposes of s CB 6, Tabitha and Taj acquired the land on 10 September 2024, when they entered into the sale and purchase agreement to buy the property. At that time, their intention was for the house to be their family home. It does not matter that by 25 September 2024, when their purchase of the property was settled, they intended to dispose of it, and indeed had already entered into a sale and purchase agreement to do so. It was only because of an attractive, unsolicited offer that Tabitha and Taj changed their minds about living in the property and decided to dispose of it instead. At the date they acquired the property (10 September 2024), they did not intend to dispose of it.

The extent of commitments made or the steps taken shortly after land was acquired may be relevant in testing what someone's purpose or intention was. In this case, if Tabitha and Taj can provide evidence that the offer was unsolicited, the fact that they entered into a contract to sell the land shortly after they entered into the contract to buy it is not inconsistent with their stated purpose at the time they entered into the contract to buy the land.

The amount derived from the sale is therefore not income to Tabitha and Taj under s CB 6.

It is presumed that none of sections CB 7 to CB 12 apply.

However, the 2-year bright-line test applies to Tabitha and Taj's sale of the land, because their bright-line end date (23 September 2024) is within 2 years of their bright-line start date (10 September 2024). The bright-line start date is 10 September 2024 because the instrument to transfer the land was not registered before the bright-line end date. None of the exclusions to the bright-line test apply.

Example | Tauira 2 – Change of purpose or intention after acquisition, and property held for over 10 years

On 11 October 2014, Laura and Connor entered into a sale and purchase agreement to purchase a property that they intended to renovate and on-sell. They advised their bank of this intention, as they needed to borrow sufficient funds to pay for the renovations. The purchase of the property was settled on 30 October 2014, and Laura and Connor started the renovations. After the renovation work was completed, Laura and Connor decided not to sell the property at that time, but to rent it out instead. Laura and Connor have paid tax on the rental income. In 2024, they decided to sell the property, and did so on 4 December 2024.

For the purposes of s CB 6, Laura and Connor acquired the land on 11 October 2014, when they entered into the sale and purchase agreement to buy the property. At that time, their intention was to renovate the house and sell it. It does not matter that Laura and Connor later changed their minds and decided to rent the property out instead of selling it. At the date they acquired the property, their purpose or intention was to dispose of it.

Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) applies, because Laura and Connor did not live in the property or carry on a business from it.

The amount they derived from the sale of the property is therefore income to Laura and Connor under s CB 6.

Further, it is not relevant that the rental income was subject to tax. The Act taxes rental income as well as the proceeds on the sale of the property.

It is not relevant that Laura and Connor held the property for more than 10 years before selling it. If land is acquired with a purpose or for an intention of disposal, the amount derived will be income whenever the property is eventually sold.

Laura and Connor can get a deduction in the year of sale for the amount they paid to acquire the property and for the cost of any renovations that were capital in nature.

Laura and Connor are also allowed deductions (in each income year, as incurred) for the interest on the money they borrowed to purchase the property and undertake the renovations, the cost of insurance on the property, and the cost of any repairs and maintenance on the property that are not capital in nature.

Example | Tauria 3 – Purpose or intention to be assessed against all of the evidence

As noted above, the examples in this QWBA do not consider whether any of the land sale rules other than s CB 6 (and, where relevant, s CB 6A) apply. More specifically, this example does not consider whether Kevin is carrying on a business relating to land, so does not address s CB 7.

Kevin acquired 10 properties over a 10-year period. Eight of those properties have been sold to date. Kevin considers that none of those sales give rise to income under s CB 6, stating that he acquired all of the properties for long-term rental. He states that he sold the eight properties in question due to financial pressure, the cost of servicing the mortgages, difficult tenants, or because of unsolicited offers to purchase the properties. Kevin states that any renovation work done on the properties was for the purpose of deriving higher rental income.

However, Kevin on-sold all of the eight properties within a relatively short period after their acquisition, and most of them after some renovation work. The average time the properties were held is approximately one year. Kevin held three of the properties for less than 6 months. After selling each of the eight properties, he purchased a new property within an average of six months. Kevin has only returned rental income from two of the properties.

The test of whether a taxpayer had a purpose or intention of disposing of land when they acquired it is subjective. However, a person's stated purpose or intention needs to be assessed against all of the evidence.

In this case, Kevin's explanations for each of the sales are not supported by the evidence as a whole. He did not hold any of the properties for long-term rental purposes, which is what Kevin says they were acquired for. Indeed, he only returned rental income (for a brief period) from two of the properties. The explanations for each of the sales are not supported by the evidence – including for the properties that were briefly rented out. The fact that new properties were purchased within an average of six months after each sale undermines Kevin's assertion that the sales were due to financial pressure and the cost of servicing the mortgages. The pattern of purchases, renovation (in most cases) and relatively fast re-sale of the properties, largely without them having been rented out indicates that Kevin acquired the properties with a purpose or for an intention of disposing of them. Kevin must be able to show that he did not acquire each of the properties with a purpose or for an intention of disposing of them, and he has not done this.

Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) applies to any of the properties, because Kevin did not live in any of them or carry on a business from any of them.

Therefore, the Commissioner considers that the amounts derived from the sales of the eight properties in question are income to Kevin under s CB 6.

In the year he sold each property, Kevin can get a deduction for the amount he paid to acquire the property and for the cost of any renovations to that property that were capital in nature.

Kevin is also allowed deductions (in each income year, as incurred) for the interest on the money he borrowed to purchase the properties and undertake the renovations, the cost of insurance on the properties, and the cost of any repairs and maintenance on the properties that are not capital in nature.

Because s CB 6 applies, the bright-line test does not apply.

Example | Tauria 4 – It is for the taxpayer to show that land was not acquired with a purpose or for an intention of disposal

Hugh and Meg purchased five residential properties in 2023. They renovated the properties, and sold them towards the end of 2024 for a total profit of \$2.2 million. Hugh and Meg have stated that they have relatives overseas who had applied for New Zealand residency and who intended to live in the properties indefinitely once they came to New Zealand. Hugh and Meg assert that they only sold the properties in 2024 because the residency applications were unsuccessful. Hugh and Meg have not provided any evidence that any relatives overseas had applied for New Zealand residency and had those applications rejected.

If the Commissioner forms the view that you acquired the land with a purpose or for an intention of disposal, it is up to you to show that you did not.

In these circumstances, the Commissioner is not satisfied that Hugh and Meg did not acquire the five properties with a purpose or for an intention of disposal. They have provided no evidence to support their stated purpose of acquiring the properties as future homes for relatives seeking residency.

Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) applies to any of the properties, because Hugh and Meg did not live in any of them or carry on a business from any of them.

The Commissioner therefore considers that the amounts they derived on the sales of the properties are income to Hugh and Meg under s CB 6.

Hugh and Meg can get a deduction in the year of sale for the amounts they paid to acquire the properties and for the cost of any renovations that were capital in nature.

Hugh and Meg are also allowed deductions (in each income year, as incurred) for the interest on the money they borrowed to purchase the properties and undertake the renovations, the cost of insurance on the properties, and the cost of any repairs and maintenance on the properties that are not capital in nature.

Because s CB 6 applies, the bright-line test does not apply.

Example | Tauria 5 – More than one purpose or intention

Chris purchased a property in August 2021. The property was marketed as being an attractive investment – ideal as a rental property, and expected to have “great annual

capital growth". Chris decided to buy the property to rent it out for 3 to 5 years, by which stage he expected to be able to realise the capital gain he sought to make on the property. Chris has paid tax on the rental income. He sold the property in October 2024 for a sizeable profit.

The suggestion in the marketing material that the property was expected to have great annual capital growth and could be rented out in the meantime does not determine Chris's purpose or intention in buying the property. However, Chris acknowledges that he purchased the property with a short to medium term investment horizon in mind, after which he anticipated selling it to realise the capital gain he expected to make.

It does not matter that Chris acquired the property for more than one purpose, and disposal was only one of those purposes. When he acquired the property, Chris had a firm purpose of disposing of it in 3 to 5 years, though he planned to rent it out in the interim.

Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) applies, because Chris did not live in the property or carry on a business from it.

The amount derived from the sale of the property is therefore income to Chris under s CB 6.

It is not relevant that the rental income was subject to tax. The Act taxes rental income as well as the sale of the property.

Chris can get a deduction in the year of sale for the amount he paid to acquire the property and for the cost of any capital improvements he made to the property.

Chris is also allowed deductions (in each income year, as incurred) for the interest on the money he borrowed to purchase the property, the cost of insurance on the property, and the cost of any repairs and maintenance on the property that are not capital in nature.

Because s CB 6 applies, the bright-line test does not apply.

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QB 25/14: When does the business premises exclusion to the bright-line test apply?

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About this document | Mō tēnei tuhinga

Questions we’ve been asked (QWBAs) are issued by the Tax Counsel Office. QWBAs answer specific tax questions we have been asked that may be of general interest to taxpayers. While they set out the Commissioner’s considered views, QWBAs are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner’s advice](#) (Commissioner’s statement, Inland Revenue, December 2012). It is important to note that a general similarity between a taxpayer’s circumstances and an example in a QWBA will not necessarily lead to the same tax result. Each case must be considered on its own facts.