Inland Revenue
Te Tari Taake

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

When do I have a "regular pattern" of transactions that prevents me from using exclusions from the land sale rules for my residence or for my main home?

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QB 25/09

This question we've been asked (QWBA) provides guidance about when someone will have a "regular pattern" of transactions that prevents them from using the residential exclusion from s CB 6, and when someone will have a "regular pattern" of transactions that prevents them from using the main home exclusion from the 2-year bright-line test.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 16 and CB 16A.

REPLACES (FOR DISPOSALS ON OR AFTER 1 JULY 2024):

- **QB 16/07**: Income tax – land sale rules – main home and residential exclusions – regular pattern of acquiring and disposing, or building and disposing

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

Question | Pātai

When do I have a "regular pattern" of transactions that prevents me from using exclusions from the land sale rules for my residence or for my main home?

Answer | Whakautu

The Act contains land sale rules that might tax you on the profit from land you sell or otherwise dispose of. But exclusions from those rules may apply if you are selling your residence or main home. If an exclusion from a land sale rule applies, you will not be taxed under that provision. The exclusions differ, depending on which provision you could be taxed under.

One exclusion (in s CB 16) called the "residential exclusion" is relevant if you might be taxed under ss CB 6 to CB 11. However, you cannot use that exclusion if you bought the residence with a purpose or with an intention of disposal (meaning s CB 6 applies), and you have a "regular pattern" of acquiring and disposing of or building and disposing of houses that you occupied mainly as residences.

Another exclusion (in s CB 16A) called the "main home exclusion" is relevant if you might be taxed under the 2-year bright-line test in s CB 6A. However, you will not be able to use that exclusion if you have already used the main home exclusion twice in the last 2 years or if you have a "regular pattern" of acquiring and disposing of residential land that had your main home on it.

Whether you have a regular pattern of transactions that prevents you from using the relevant exclusion depends on the number of similar transactions you have made previously and the intervals of time between them. It is a matter of fact and degree whether you have a regular pattern of such transactions.

There is no hard-and-fast rule about the number of times or how frequently you can acquire and sell houses that you live in without being taxed. However, generally at least three prior transactions are needed to establish a regular pattern.

A "pattern" requires a similarity or likeness between the transactions. The reason or purpose for each transaction does not matter – it is the similarity of the transactions that is important. For a pattern to be "regular" the transactions must occur at sufficiently uniform or consistent intervals.

When looking at whether a particular transaction is subject to tax, only previous transactions are relevant in deciding whether you have a regular pattern. The transaction at issue is not taken into account.

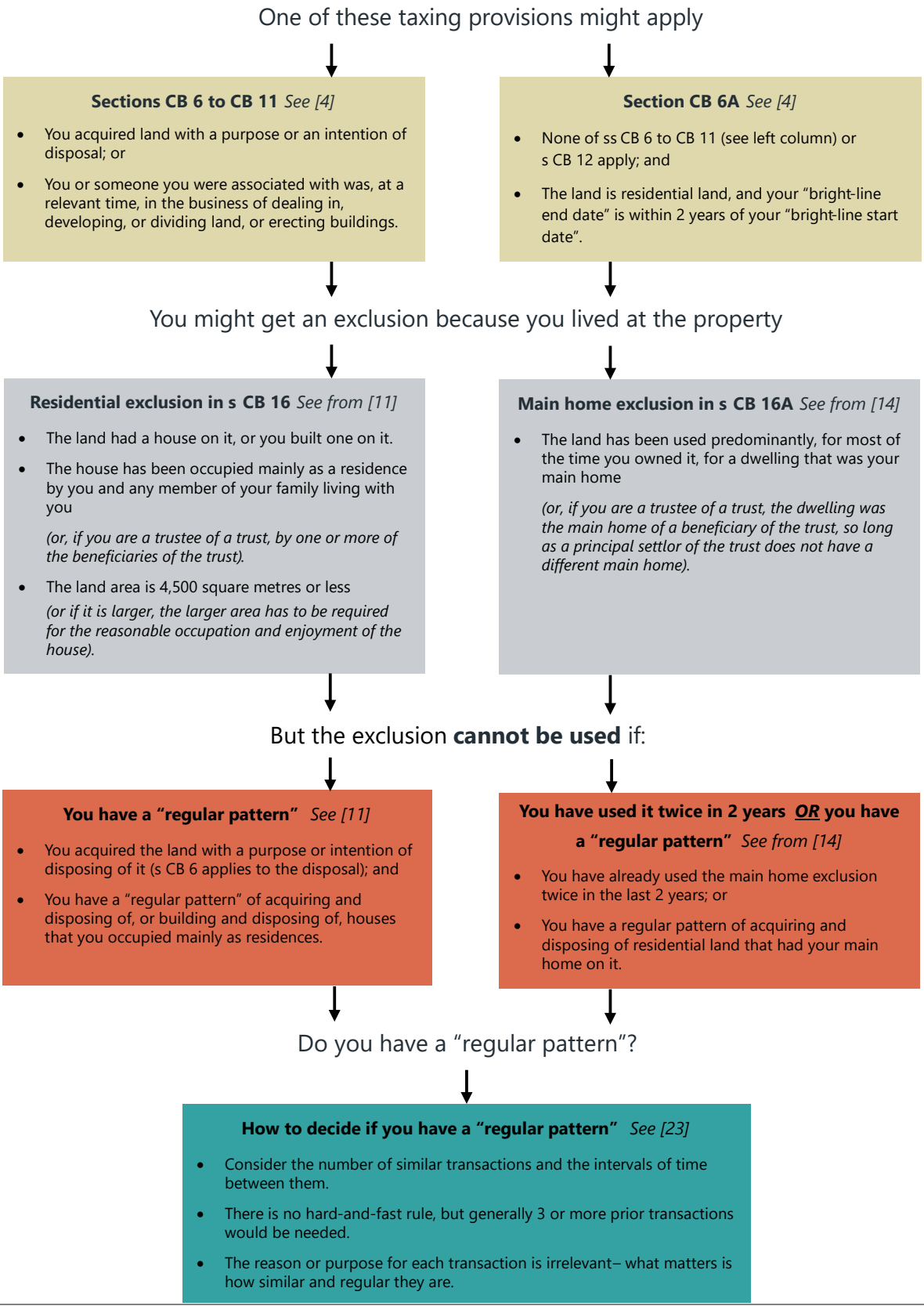
The regular pattern carve-outs from the residential exclusion and main home exclusion apply both to individuals and to a group of persons who occupy all the relevant properties together.

As noted above, you cannot use the main home exclusion from the 2-year bright-line test if you have already used it twice in the 2 years before the bright-line end date for land you are selling. This cap applies even if you do not have a regular pattern of acquiring and disposing of residential land.

Flowchart – the taxing provisions and exclusions that may be relevant if you sell your house

1. Figure | Hoahoa 1 shows the main taxing provisions that could apply if you sell your house, the requirements for the residential exclusion and for the main home exclusion that you might be able to use because it was your house, and when you cannot use those exclusions. For a list of all the land sale rules that might apply see [4].

Figure | Hoahoa 1: Flowchart – Which exclusions might apply



Explanation | Whakamāramatanga

2. Before the issue of whether there is a "regular pattern" arises, one of the taxing provisions in ss CB 6A to CB 11 must potentially apply, and the residential exclusion or the main home exclusion must potentially apply (see Figure | Hoahoa 1 on page 3). This QWBA briefly sets out the criteria for those taxing provisions and exclusions, but the focus is on when there will be a "regular pattern" of transactions that means the relevant exclusion cannot be used.

3. The residential exclusion from ss CB 6 to CB 11 applies to a "dwellinghouse", and the 2-year bright-line test applies to a "dwelling". Those terms could include other dwellings that are not stand-alone houses, such as a unit or an apartment. This QWBA sometimes uses the term "house" for ease of reference, but this should be read as including all types of dwelling.

What taxing provisions might apply?

4. The Act contains various land sale rules. These rules might tax you on the proceeds of land you sell or otherwise dispose of. You might be taxed on the proceeds of disposing of land if any of the following apply:

   - You acquired the land for a purpose or with an intention of disposing of it (s CB 6).
   - You acquired the land for the purpose of a business (that you or an associated person carry on) of dealing in land, developing land, dividing land into lots, or erecting buildings (s CB 7).
   - 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 began, 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 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 and 20% or more of the increase in its value arises from any 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).[1]
- You received the land from someone you were associated with, who would have been taxable if they had retained and disposed of the land (s CB 15).
- None of ss CB 6 to CB 12 apply, the land is residential land, and your "bright-line end date" is within 2 years of your "bright-line start date" (s CB 6A). This applies if your "bright-line end date" is on or after 1 July 2024.[2] Your bright-line start date is typically the date the land title is registered to you, and your bright-line end date is typically the date you enter into a contract to sell the land. However, see s CB 6A(2) and (4) for situations where there is a different bright-line start and end date.

But I am not taxed if I lived in the property, am I?

5. Exclusions from each of the above rules might be relevant to you if you lived in the property. If one of those exclusions applies, you will not be taxed on the sale of the property under any provision to which the exclusion applies. However, you may still be taxed under another provision.

6. There are exclusions from most of the land sale rules for your residence, and there is an exclusion from the 2-year bright-line test for your main home.

7. Section CB 16 is the residential exclusion from ss CB 6 to CB 11, s CB 17 is the residential exclusion from ss CB 12 and CB 13, and s CB 18 is the residential exclusion from s CB 14. Section CB 16A is the main home exclusion from the 2-year bright-line test. Each of these exclusions has different requirements.

8. This QWBA is about one of the criteria of the residential exclusion in s CB 16, and the main home exclusion in s CB 16A. Both of those exclusions have a requirement that you do not have a regular pattern of transactions. If you do have a regular pattern of the relevant transactions, you **cannot use** the residential exclusion or the main home exclusion (whichever applies to your circumstances), even though you lived at the property.

9. Note that the residential exclusions in s CB 17 (relevant for ss CB 12 and CB 13) and s CB 18 (relevant for s CB 14) do not have a "regular pattern" carve out. This means the

[1] See s CB 14(2) for the full list of factors.

[2] Historically there have been different bright-line test periods, see para [18].

existence of a regular pattern of relevant transactions will not prevent a person from using those exclusions.

10. This QWBA explains when a "regular pattern" of transactions will prevent you from using the residential exclusion in s CB 16, and when it will prevent you from using the main home exclusion in s CB 16A.

Requirements for the residential exclusion from ss CB 6 to CB 11

11. The residential exclusion in s CB 16 is relevant if the sale of your home might be taxed under any of ss CB 6 to CB 11 (those provisions include the purpose or intention provision, and the dealer, developer, subdivider and builder provisions).[3]

12. To qualify for the exclusion in s CB 16, you have to meet **all** of the following requirements:

- You acquired the land with a house on it, or built one on it.
- The house has been occupied mainly as a residence by you and any member of your family living with you or, if you are a trustee of a trust, by one or more of the beneficiaries of the trust. This means your occupation of the house cannot be incidental to another more significant purpose such as sale (see, for example, *Case G76* (1985) 7 NZTC 1,348, *Case K21* (1988) 10 NZTC 218, *Case M102* (1990) 12 NZTC 2,634 and *Case 5/2013* (2013) 26 NZTC 2,004).
- If there is any land related to the land with the house on it, the total area of the related land must be 4,500 square metres or less. If it is larger than that, the larger area must be required for the reasonable occupation and enjoyment of the house.
- If section CB 6 applies to the disposal, you cannot have engaged in a regular pattern of acquiring and disposing of houses that you occupied mainly as residences (discussed from [23]). If you are looking to use the residential exclusion from ss CB 7 to CB 11, there is no need to satisfy this element.

13. In practice, it may not be necessary to consider whether a person has engaged in a regular pattern of acquiring and disposing of houses occupied mainly as a residence. If a person has bought and sold multiple houses in a short period such that the "regular pattern" carve out is relevant, the occupation of each house may potentially be incidental to another more significant purpose, such as sale. In accordance with the

[3] Which also apply if you are associated with a dealer, developer, subdivider or builder, even if you are not one yourself.

bullet points in paragraph [12], the residential exclusion would not be available if that were the case. However, as this item focuses on the regular pattern carve out, the issue of whether a house was occupied mainly as a residence is not covered in detail.

Requirements for the main home exclusion from the 2-year bright-line test

14. The main home exclusion in s CB 16A is relevant if the sale of your home may be taxed under the 2-year bright-line test (s CB 6A).

15. To qualify for the exclusion in s CB 16A, you have to meet **all** of the following requirements:

- You have used the land predominantly, for most of the bright-line period (ignoring any construction period for your home) for a dwelling that was your main home.[4] The bright-line period is the period beginning with your bright-line start date and ending with your bright-line end date.[5]
- You have not already used the main home exclusion twice within the 2 years immediately before your bright-line end date.
- You have not engaged in a regular pattern of acquiring and disposing of residential land that had your main home on it (discussed from [23]).

16. If you have a "regular pattern" of acquiring and disposing of residential land that had your main home on it, you will still be taxed on the sale of the land even if you have not already used the main home exclusion twice in the 2 years before your bright-line end date.

17. The 2-year bright-line test can only potentially apply to a disposal of land if the "bright-line end date" is on or after 1 July 2024. However, you must take into account all acquisitions and disposals, including those before that date, in deciding whether you have a "regular pattern" of acquiring and disposing of residential land that had your main home on it.

18. Previous bright-line tests apply to land disposed of before 1 July 2024:

- The original 2-year bright-line test applies to land acquired on or after 1 October 2015 and before 29 March 2018.

[4] Note, if you are a trustee of a trust, the exclusion can apply if the dwelling was the main home of a beneficiary of the trust. This is as long as a principal settlor of the trust does not have a main home or, if they do, it is the property you are disposing of.

[5] See the last bullet point at [4] for the typical meanings of those terms.

- The 5-year bright-line test applies to land acquired on or after 29 March 2018 and before 27 March 2021.
- The 10-year bright-line test applies to land acquired on or after 27 March 2021 (for new builds the test is 5 years).

19. Like the current test, these bright-line tests have main home exclusions, but the requirements for when residential land would be a "main home" differed in some respects between the different tests. This QWBA focuses on the current 2-year bright-line test, but previous bright-line tests may be relevant when looking at transactions before 1 July 2024. The "regular pattern" requirement has remained constant for all bright-line tests.

The regular pattern relates to land you occupied mainly as a residence, or that had your main home on it

20. As noted at [12] and [15], for a "regular pattern" to prevent the relevant exclusion from applying, it has to be a regular pattern of acquiring and disposing of land that you occupied **mainly as a residence** (in the case of s CB 6), or that had your **main home** on it (in the case of the 2-year bright-line test). This means having a regular pattern of acquiring and disposing of land used for other purposes (eg, business or investment) is not relevant. Similarly, if you have a regular pattern of speculative buying and selling of land you have not lived on, that will not be relevant.

Regular pattern also applies to groups of persons

21. The regular pattern carve-outs from the residential exclusion and main home exclusion also apply to a group of persons who occupy all the relevant properties together. For example, if you and your spouse live together in a house in your name, and then you sell it to move into a house your spouse bought under their name, both of those houses are relevant when considering whether you have a regular pattern of acquiring and disposing of relevant land. But if you live separately in houses you each own, and then sell them both to move in together, your spouse's previous house would not form part of any potential regular pattern for you or vice versa.

22. In addition, this group of persons can include a non-natural person like a company if one of the individuals in the group has significant involvement in, or control of, the activities of the non-natural person. This means you could still have a regular pattern of sales if you buy and sell the houses you live in through different trusts or companies you control. Significant involvement or control means the individual can direct, alone or as part of a group, the activities of the non-natural person.

So what is a regular pattern?

23. The High Court and the Taxation Review Authority have considered several cases that involved whether the taxpayer had a "regular pattern" of acquiring and disposing of houses or building and disposing of houses, which would prevent them from using the residential exclusion in s CB 16. The same principles are relevant when considering whether there has been a regular pattern of acquiring and disposing of residential land for the purposes of the main home exclusion from the 2-year bright-line test (in s CB 16A).

24. In *Parry v CIR* (1984) 6 NZTC 61,820 (HC), the High Court outlined at 61,284 what is needed to establish a regular pattern in what is now s CB 16.

25. The following is a summary of principles based on the reasoning in *Parry,* alongside some points addressed in *Case 5/2013*, *Case M102* and *Case C9* (1977) 3 NZTC 60,058. These are the key things that must be considered when deciding whether there is a regular pattern for the purpose of the residential exclusion in s CB 16 (for land sales under s CB 6) or the main home exclusion in s CB 16A:

- For transactions to form a "pattern", there must be similarity or likeness between them.
- The reason or purpose for each transaction is irrelevant – it is the similarity of the transactions that is important.
- Assessing the similarity between the transactions involves considering factors such as the type and location of each of the sections of land, the type of house, the method of erection (if you built the house), the use to which each of the houses was put (in particular, whether you occupied them),[6] and any other relevant characteristics of the transactions.
- For a pattern to be established, there must be more than one transaction. The greater the number of similar transactions, the more likely there is a pattern.
- For a pattern to be "regular", the transactions must occur at sufficiently uniform or consistent intervals.
- The number of similar transactions and the intervals of time between them must be assessed, and it is a matter of fact and degree whether there is a regular pattern of such transactions.

[6] As noted at [20], the regular pattern must be one of acquiring and disposing of land that you occupied mainly as a residence, or that had your main home on it. As such, whether, and the extent to which, you occupied any particular property is important in terms of the relevance of that transaction to determining whether you have a regular pattern.

- It is possible that two similar previous transactions could be sufficient for there to be a regular pattern (*Case C9*). However, the Commissioner accepts that generally at least three prior transactions would be needed for there to be a regular pattern.
- You must have engaged in a regular pattern of the relevant type of transactions independently of and before the transaction in question. In deciding whether you have a regular pattern of transactions, the Commissioner does not take into account the transaction being considered as potentially subject to tax.

26. While relevant, factors concerning the similarity between transactions, such as the type and location of each section of land, and the type of house, are unlikely to hold much weight on their own. However, these factors may form part of the overall enquiry as to whether a regular pattern exists. For example, one of the dwellinghouses being in a different town, or being a townhouse rather than a bungalow, would not mean the person does not have a regular pattern. However, these factors, in the context of all the circumstances of the transactions as a whole, might further support the view that a regular pattern does or does not exist.

27. As noted at [12] and [15], the type of regular pattern that will prevent you from using the exclusion for your house is:

- **In the case of s CB 6 (the purpose or intention provision)**, a regular pattern of acquiring and disposing of houses that you occupied mainly as residences (either by acquiring land with a house on it or acquiring land and erecting a house on it); or
- **In the case of the 2-year bright-line test (s CB 6A)**, a regular pattern of acquiring and disposing of residential land that had your main home on it.

Can I renovate and sell a house every year or 2 and not be taxed, provided I lived in the house?

28. A common misconception is that you can renovate and sell a house every year or 2 and not be taxed on the sale, provided you lived in the house. This is not correct. Whether you are taxed on the sale of a house you have lived in depends on whether there is a taxing provision you might be caught by (these are listed at [4]), and if so whether you meet the requirements for an exclusion from that provision.

29. As noted at [12] and [15], you cannot use the exclusions for your house if you have:

- a regular pattern of acquiring and disposing of, or building and disposing of, houses that you occupied mainly as residences (if s CB 6 – the purpose or intention provision applies); or
- a regular pattern of acquiring and disposing of residential land that had your main home on it (in the case of the 2-year bright-line test (s CB 6A)).

30. If you renovated and sold your house every year, you would establish a regular pattern that would prevent you from being able to use the residential exclusion from s CB 6 or the main home exclusion from the 2-year bright-line test.

31. Note that even if you do not have a regular pattern of acquiring and disposing of residential land that had your main home on it, you would not be able to use the main home exclusion from the 2-year bright-line test if you had already used it twice in the 2 years before the "bright-line end date" for land you are selling.

32. If you renovate and sell houses that you live in at less frequent intervals, for example, every 2 or more years, you would at some stage establish a regular pattern. If s CB 6 was potentially applicable (if you purchased the land with a purpose or an intention of disposing of it), your regular pattern may prevent you from using the residential exclusion and you might be taxed on the sale of a house you lived in.

33. If you renovate and sell a house you live in but do not have any regular pattern of doing so, you could still potentially be taxed under one of the undertaking or scheme provisions (s CB 12 in particular).[7] Section CB 12 could apply if your renovations involved more than minor development or division work. The meaning of "minor" in s CB 12 is discussed in IS 20/08: **Income Tax – When is development or division work "minor"?** If there is any potentially applicable taxing provision, the exclusions from that provision would need to be considered, as they may apply to exclude the sale from being taxed.

34. There is no hard-and-fast rule about how many times or how frequently you can buy and sell, build and sell, or renovate and sell houses without being taxed.

What if I have to sell multiple houses because of circumstances outside my control?

35. The reason or purpose for buying and selling or building and selling houses is irrelevant in deciding whether you have a regular pattern of transactions – even if the

[7] In the context of s CB 12, development work does not include building work: *Dobson v CIR* (1987) 9 NZTC 6,025 (HC).

reason or purpose for the sale is outside your control. What matters is whether you have engaged in a regular pattern of transactions of the relevant type.

36. If you sold one or two houses that you lived in, you would not be taxed on the sale proceeds (provided you met the other criteria for the residential exclusion or the main home exclusion), as you would not have a regular pattern involving disposal at that point. If you sold more than that, the question of whether you have a regular pattern may arise, regardless of the reasons for the sales. As noted at [25], this would involve considering the number of similar transactions and the intervals of time between them. Generally, you would need to have at least three prior transactions for there to be a regular pattern.

If I cannot use the residential or main home exclusion and have to pay tax on a land sale, can I get any tax deductions?

37. If one of the land sale rules applies to tax you on the proceeds of selling land, you will get a deduction for the cost of the land, which includes any capital improvements you make to it. The deduction is allowed in the income year in which you dispose of the land (see s EA 2).

38. You may also be able to deduct other expenditure, such as interest on money borrowed to purchase the land, insurance premiums, and the cost of repairs and maintenance. Deductions for these expenses will be allowed to the extent that they are incurred in deriving the income and are not private in nature (ss DA 1, DA 2 and DB 6). This will depend on which land sale rule applies to tax the sale and how the property was used while you owned it. See IS 23/10: **Deductibility of holding costs for land** for more information on the costs you may be able to deduct and when.

Examples | Tauira

39. The following examples help to illustrate how the law applies. Their focus is on the "regular pattern" aspect of both the residential exclusion from s CB 6 and the main home exclusion from s CB 6A. Each example therefore assumes the transactions have satisfied all other criteria for the relevant exclusion. The examples also assume that the relevant taxing provision is applicable, subject to the potential availability of the residential exclusion or the main home exclusion.

40. For ease of understanding, references to acquisition and sale are treated as the same as the start and end dates for the relevant bright-line tests. In practice, however, these dates are likely to be different.

Example | Tauira 1 – A "regular pattern" of transactions established

Melody and David are keen house renovators and have purchased four properties to improve and sell at a profit. The following table sets out these purchases and sales.

Property	Date acquired	Land and activity	Date sold
1 (N Road)	June 2018	Cottage in inner-city Wellington purchased. Melody and David undertook renovations over the period of ownership, while they lived in the house.	May 2020
2 (P Street)	May 2020	Bungalow in Wellington suburb purchased. Melody and David undertook renovations and landscaping over the period of ownership, while they lived in the house.	July 2022
3 (E Place)	July 2022	House in Wellington suburb purchased. Melody and David built off-street parking during the period of ownership, while they lived in the house.	February 2023
4 (J Avenue)	January 2023	Larger family home in Wellington suburb purchased, as Melody and David had started a family. They undertook some minor redecorating during the period of ownership, while they lived in the house.	March 2025

Melody and David purchased all four properties for a purpose and with an intention of selling them after they had completed some improvements. Their aim was to renovate the properties while they lived in them and sell them at a profit, enabling them to move up the property ladder. As such, it is assumed the sales will be subject to tax under s CB 6 – the purpose or intention provision – unless the residential exclusion in s CB 16 applies.

It could be argued that Melody and David did not occupy each of the properties mainly as a residence, on the basis that their occupation was incidental to the purpose of renovation and sale to move up the property ladder. However, this example does not consider this element, and instead focuses on whether there is a regular pattern. Therefore, this example proceeds on the assumption the other criteria for the residential exclusion are satisfied. At issue is whether Melody and David are prevented

from using the residential exclusion from s CB 6. They cannot use this exclusion if they have engaged in **a regular pattern of acquiring and disposing of houses that they occupied mainly as residences**.

Can Melody and David use the residential exclusion?

When they sold each of the first three properties (N Road, P Street and E Place), Melody and David did not yet have a regular pattern of acquiring and disposing of houses. A regular pattern must exist independently of the transaction being considered. By the time they sold E Place, there were only two prior acquisitions and sales. The Commissioner accepts that generally at least three transactions are needed for there to be a regular pattern. This means Melody and David would have been able to use the residential exclusion from s CB 6 for each of the first three sales.

By the time they sold the J Avenue property, Melody and David had previously acquired and disposed of three houses that they had lived in. Therefore, it is necessary to consider whether those three prior transactions amount to a regular pattern of acquiring and disposing of houses the couple occupied mainly as residences. If they do amount to a regular pattern, Melody and David will not be able to rely on the residential exclusion from s CB 6 for the sale of the J Avenue property.

To establish a regular pattern, there must be a similarity or likeness between the transactions. In this case, there is. The N Road, P Street and E Place properties were all residential properties in Wellington that Melody and David acquired, occupied, renovated and sold. It does not matter that the renovations done to each property were different. The pattern only needs to involve acquiring and disposing of houses that have been occupied mainly as residences.

For a pattern of acquisition and disposal to be regular, the transactions need to occur at sufficiently uniform or consistent intervals. In this case, Melody and David held the properties for 1 year 11 months, 2 years 2 months, and 7 months, respectively. These three properties were acquired and disposed of over a period of 4 years 8 months. The Commissioner considers that the intervals between the transactions are consistent enough to establish a regular pattern. The intervals between the transactions need not be identical.

Because Melody and David have engaged in a regular pattern of acquiring and disposing of houses that they occupied mainly as residences, they cannot use the residential exclusion in s CB 16. Therefore, the proceeds from the sale of the J Avenue property will be income to Melody and David under s CB 6. Melody and David can deduct the costs of the property and the redecorating, to the extent that those costs

are not private in nature. Melody and David can use IS 23/10 for guidance on apportioning those expenses to account for private use.

Can Melody and David use the main home exclusion for the first three sales?

Because s CB 6 does not apply to the first three sales, it is necessary to consider if any other land sale rule could apply to those transactions. It is assumed the only other relevant land sale rule is the bright-line test. In this case, the first three sales were made within the relevant bright-line test periods, based on when they were acquired and sold, so the sales will be taxed under the bright-line test unless the main home exclusions apply. Assuming they meet the other requirements for the relevant main home exclusions, at issue is whether Melody and David are prevented from using the main home exclusion for any of those sales on the basis that either they have engaged in a regular pattern of acquiring and disposing of residential land or they have already used the main home exclusion twice in the 2 years before each sale.

As established for the residential exclusion from s CB 6, which requires the same considerations, when they sold the first three properties (N Road, P Street and E Place), Melody and David did not yet have a regular pattern of acquiring and disposing of houses. By the time they sold E Place, there had only been two prior acquisitions and sales, and generally three would be required for a regular pattern. Melody and David would also not be prevented from using the main home exclusion due to using it twice in the previous 2 years. While they would have used the main home exclusion twice by the time they sold the E Place property, it was not used twice within the preceding 2 years.

For these reasons, Melody and David can use the relevant main home exclusions in s CB 16A for the first three sales, so those sales will not be taxed under the bright-line test.

Example | Tauira 2 – A "pattern" of transactions, but not a "regular pattern"

Enzo, who is in the business of dealing in land, has purchased and sold dozens of residential properties over the last decade as part of his business. In that time, he has also sold four properties that he lived in, as the following table sets out.

Property	Date acquired	Land and activity	Date sold
1 (Q Street)	February 2016	Apartment in Auckland CBD purchased. Enzo, and later his partner, lived in it.	June 2017
2 (M Place)	July 2017	House on the North Shore purchased, as Enzo and his partner decided to adopt a child. The family lived in it for the period of ownership.	December 2022
3 (G Road)	December 2022	Larger house in Auckland purchased to accommodate the expanding family. The family lived in it for the period of ownership.	October 2025
4 (T Road)	October 2025	House on a larger residential property outside of Hamilton purchased with the intention of renovating and reselling while the family lived in it. The family lived in it until early January 2026, but did not renovate as the family sold it when Enzo's partner accepted a job offer in Sydney. The sale of the house was settled at the end of January 2026.	January 2026

Because Enzo is in the business of dealing in land and he sold all of the above properties within 10 years of acquisition, Enzo (and his partner, where relevant) may be taxed on the proceeds of the sales under s CB 9. In addition, the T Road property may be taxed under s CB 6 as Enzo acquired it with a purpose or intention of resale. However, whether ss CB 6 or CB 9 apply depends on whether Enzo and his partner can rely on the residential exclusion in s CB 16.

If neither provision applies because the residential exclusion applies, the bright-line test is also relevant to the first sale (Q Street) and the last sale (T Road). This is because Q Street was acquired after 1 October 2015 and disposed of within 2 years, and T Road was disposed of after 1 July 2024 within 2 years of the bright-line start date. Whether these sales are taxed depends on whether Enzo (and his partner, where relevant) can rely on the main home exclusion in s CB 16A.

Can Enzo (and his partner, where relevant) use the residential exclusion?

Yes. Regarding s CB 9, Enzo (and his partner, where relevant) acquired the properties with houses on them, and it is assumed that they occupied the houses mainly as their residences. It is also assumed that the area of each property was 4,500 square metres or less. Therefore, Enzo and his partner can use the residential exclusion for the Q Street, M Place, and G Road properties.

However, as s CB 6 applies to the T Road property, it is necessary to consider whether Enzo and his partner are prevented from using the residential exclusion from s CB 6, which they will be if they have engaged in **a regular pattern of acquiring and disposing of houses that they occupied mainly as residences**.

The numerous residential properties Enzo has purchased and sold as part of his business are not relevant to the decision as to whether there is a regular pattern of the type that would prevent Enzo and his partner from relying on the residential exclusion.

By the time Enzo and his partner sold the T Road property, Enzo (and his partner, where relevant) had previously acquired and disposed of three houses that they lived in. The question is whether those three transactions amount to a regular pattern of acquiring and disposing of houses that were occupied by the couple mainly as residences. If these transactions do amount to such a regular pattern, Enzo and his partner will not be able to rely on the residential exclusion from s CB 6 for the sale of the T Road property.

For a **pattern**, the transactions must have a similarity or likeness between them. In this case, they do have the necessary similarity or likeness. The Q Street, M Place and G Road properties were all residential properties in Auckland that Enzo and his partner acquired, occupied, and sold.

For a pattern of acquisition and disposal to be **regular**, the transactions need to occur at sufficiently uniform or consistent intervals. In this case, the properties were held for 1 year 4 months, 5 years 5 months, and 2 years 10 months, respectively. Enzo (and his partner, where relevant) acquired and disposed of three properties over a period of 9 years 8 months. The Commissioner considers that the intervals between the transactions are not consistent enough for this to be a regular pattern.

Because Enzo and his partner have not engaged in a **regular pattern** of acquiring and disposing of houses that they occupied mainly as residences, they can use the residential exclusion in s CB 16. As noted above, it is assumed they meet the other

requirements for the exclusion. Based on this reasoning, Enzo and his partner will not be taxed under s CB 6 on the sale of the T Road property.

Because s CB 6 does not apply to the sales, it is necessary to consider if any other land sale rule could apply. It is assumed the only other relevant land sale rule is the bright-line test.

Can Enzo (and his partner, where relevant) use the main home exclusion?

Yes. Enzo and his partner did not have a regular pattern of acquiring and disposing of houses they lived in when they sold the Q Street property. There were no relevant acquisitions and sales by this point, and the Commissioner accepts that generally at least three transactions are needed for there to be a regular pattern. In addition, Enzo and his partner had not used the main home exclusion at all before the Q Street property was sold, which means they are not excluded due to using it twice in the previous 2 years. As they meet the other requirements for the main home exclusion, the main home exclusion is available for the sale of the Q Street property. It follows that Enzo and his partner will not be taxed on the sale of the Q Street property under the original 2-year bright-line test that existed between 2015 and 2018 (s CB 6A).

For the T Road property, Enzo and his partner had not used the main home exclusion since Q Street was sold in June 2017. As with the residential exclusion, the Commissioner considers that the acquisitions and sales of the Q Street, M Place and G Road properties do not make up a regular pattern.

Because, at the time of the sale of the T Road property, Enzo and his partner have not used the main home exclusion within the previous 2 years, and have not engaged in a regular pattern of acquiring and disposing of residential land that had their main home on it, they can use the exclusion when they sell the T Road property. Therefore, Enzo and his partner will not be taxed on the sale of the T Road property under the current 2-year bright-line test (s CB 6A).

Example | Tauira 3 – Transactions not similar enough to be a "pattern"

Hemi and Kirrily have acquired and sold five properties since they married 8 years ago, as the following table sets out.

Property	Date acquired	Land and activity	Date sold
1 (C Road)	May 2017	Investment property purchased before Hemi and Kirrily went overseas on their "OE", so they could get a foot on the property ladder. They rented out the property from the time of purchase until they sold it.	November 2021
2 (A Street)	November 2021	House purchased when Hemi and Kirrily returned to NZ and sold their investment property. Property held in a trust over which Kirrily is a trustee with significant control. The couple lived in it for the period of ownership.	October 2024
3 (H Street)	September 2024	Inherited Kirrily's father's unit following his death. The couple listed the unit for sale soon after, and never lived in it.	October 2024
4 (K Avenue)	November 2024	When Kirrily and Hemi inherited the H Street property, they decided to sell it and the A Street property and buy a larger house (the K Avenue property) and a bach (the B Esplanade property). They lived at the K Avenue property for the period of ownership.	February 2025
5 (B Esplanade)	November 2024	Seaside bach purchased with the proceeds from the sales of the A Street and H Street properties. The couple stayed in the bach most weekends during the period of ownership. They sold both the bach (the B Esplanade property) and the K Avenue property when Kirrily was diagnosed with a life-threatening illness. The couple decided to use their equity to fund experimental medical treatment in Germany.	February 2025

The sales of the C Road and A Street properties are not potentially subject to tax under any of the land sale rules in the Act as those sales were outside the relevant bright-line periods and there are no other potentially relevant provisions. The H Street property is also not subject to tax because an exception to the 2-year bright-line test applies for inherited properties (and again, there is no other potentially relevant provision).

However, the K Avenue and B Esplanade properties were both sold after 1 July 2024 within 2 years of their bright-line start date, and are both "residential land" for the purposes of the 2-year bright-line test. As such, it is necessary to consider whether the sales of the K Avenue and B Esplanade properties are taxed under the 2-year bright-line test. This turns on whether Hemi and Kirrily can rely on the main home exclusion in s CB 16A.

Can Hemi and Kirrily use the main home exclusion for the K Avenue property?

Yes. Hemi and Kirrily used the K Avenue property predominantly, for most of the bright-line period, as their main home. Therefore, the only issue is whether Hemi and Kirrily are prevented from using the main home exclusion, which they will be if they have either:

- already used the main home exclusion twice within the 2 years immediately before the "bright-line end date"[8] for the K Avenue property; or
- engaged in **a regular pattern of acquiring and disposing of residential land that had their main home on it**.

Hemi and Kirrily have not used the main home exclusion at all before, so they will only be prevented from using the main home exclusion for the sale of the K Avenue property if they have engaged in a regular pattern of acquiring and disposing of land that was their main home.

By the time they sold the K Avenue property, Hemi and Kirrily had previously acquired and disposed of three residential properties – the C Road, A Street and H Street properties. The question is whether those three transactions amount to a regular pattern of acquiring and disposing of houses the couple occupied mainly as residences.

A trust established by Kirrily acquired the A Street property, but it is still relevant to whether they have a regular pattern. Kirrily has significant control of the trust as

[8] In this case, the date that Hemi and Kirrily entered into the contract to sell the K Avenue property.

trustee, and Hemi and Kirrily occupied the property, so for the purpose of s CB 16A they are a "group of persons".

However, in this case, the transactions clearly do not amount to a regular pattern. This is because, for a pattern to exist, there must be a similarity or likeness between the transactions. These transactions do not have the necessary similarity or likeness. The C Road, A Street and H Street properties were all residential properties, but one (the C Road property) was an investment property, the second (the H Street property) was inherited, and the third (the A Street property) was their home. The acquisitions and sales of those properties are not sufficiently similar so as to amount to a "regular pattern".

Because Hemi and Kirrily have not used the main home exclusion before and have not engaged in a regular pattern of acquiring and disposing of residential land that had their main home on it, they could use the exclusion when they sold the K Avenue property. Based on this reasoning, Hemi and Kirrily will not be taxed on the proceeds of the sale of the K Avenue property under the 2-year bright-line test (s CB 6A).

Can Hemi and Kirrily use the main home exclusion for the B Esplanade property?

No. Hemi and Kirrily did not use the house on the B Esplanade property as their main home. Their main home at the time was the K Avenue property. Therefore, they could not use the main home exclusion when they sold that property, and the proceeds of the sale of the property were income to them under the 2-year bright-line test (s CB 6A). Hemi and Kirrily could deduct the cost of the B Esplanade property, and could deduct any other expenditure that they incurred in deriving the income, to the extent it was not private in nature. Hemi and Kirrily could look to IS 23/10 for guidance on what costs they may be able to deduct.

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Legislative references | Tohutoro whakatureture

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