Vol 37 No 5 June 2025

# TAX INFORMATION Bulletin

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Inland Revenue
Te Tari Taake

ISSN 1177-620X (Online)

# YOUR OPPORTUNITY TO COMMENT

Inland Revenue regularly produces a number of statements and rulings aimed at explaining how taxation law affects taxpayers and their agents. Because we are keen to produce items that accurately and fairly reflect taxation legislation and are useful in practical situations, your input into the process, as a user of that legislation, is highly valued.

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| Ref | Draft type | Title | Comment deadline |
|---|---|---|---|
| | Work programme | Public advice and guidance work programme 2025-26 | 6 June 2025 |
| PUB00494 | Interpretation statement | Income tax – Whether money or property received by New Zealand tax residents from overseas is income from a foreign trust | 19 June 2025 |
| ED0265 | Operational statement | Mutual transactions of associations (including clubs and societies) | 25 June 2025 |
| PUB00496 | Question we've been asked (two items) | GST listed services rules | 27 June 2025 |

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# IN SUMMARY

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## Case summaries



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# NEW LEGISLATION

This section of the TIB covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council. These commentaries are first published on the Tax Policy website shortly after any new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes.

## Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025

**Public Act 2025 No 09**

Issued: April 2025

The commentary articles provide an explanation of the changes made by the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025. The Act introduces a generic response to emergency events, along with other provisions

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NEW LEGISLATION

2025/09-001

## Overview

The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 was introduced on 26 August 2024. It received its first reading on 29 August 2024, its second reading on 4 March 2025 and its third reading on 25 March 2025. The new Act received Royal assent on 29 March 2025.

The Act amends:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- KiwiSaver Act 2006
- Gaming Duties Act 1971
- Stamp and Cheque Duties Act 1971
- Income Tax Act 2004
- Student Loan Scheme Act 2011
- Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022
- Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023
- Child Support Act 1991
- Accident Compensation Act 2001
- Local Government Act 2002
- Resale Right for Visual Artists Regulations 2024
- Goods and Services Tax (Grants and Subsidies) Order 1992.

### Legislative amendments

The Act:

- sets the annual rates of income tax for the 2024–25 tax year
- introduces a generic response to emergency events
- gives legislative effect to the Crypto-Asset Reporting Framework
- incorporates amendments made to the Common Reporting Standard
- introduces "scheme pays" for the taxation of transfers from recognised overseas pension schemes
- allows retrospective registration for approved issuer levy
- increases the exempt employee share scheme threshold
- authorises a one-off information-sharing arrangement between Inland Revenue and the Ministry of Business, Innovation and Employment to encourage uptake of the New Zealand Business Number
- allows young persons aged under 16 to enrol in KiwiSaver provided one of their guardians contracts directly with a provider
- ensures appropriate tax outcomes for artists and other right holders who receive resale royalties under the Resale Right for Visual Artists Act 2023
- provides that the Auckland Future Fund (AFF) is exempt from income tax
- implements the final-year fees-free scheme (which replaced the first-year fees-free scheme)
- adds seven charities to the list of donee organisations
- makes other remedial amendments.

2025/09-002

# Annual income tax rates for 2024–25

*Section BB 1 and schedule 1 of the Income Tax Act 2007*

## Summary of amendment

Section 3 of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 sets the annual income tax rates that apply for the 2024–25 tax year at the rates specified in schedule 1 of the Income Tax Act 2007. These rates reflect the changes made in Budget 2024.

## Effective date

The amendment is effective for the 2024–25 tax year.

## Background

Section BB 1 of the Income Tax Act 2007 requires that the income tax rates be set by an annual taxing Act.

# Generic response to emergency events

2025/09-003

## Generic response to emergency events

*Sections CC 2B, CC 2C, CE 1, CW 16B, CW 16C, CW 19B, CZ 29B, CZ 37, DB 70, EZ 80, EZ 81, YA 1, and subpart FP of the Income Tax Act 2007*

*Sections 3, 6J, 183ABA, 226H, 226I, and schedule 7 of the Tax Administration Act 1994*



### Summary of amendments

The amendments improve Inland Revenue's ability to provide timely tax relief following emergency events by building certain tax relief measures into the legislation, any of which could be activated by an Order in Council.

### Effective date

The amendments took effect on 1 April 2025.

### Background

Tax relief has been provided during past emergency events and in the subsequent recovery phase depending on the nature of the event. These responses were initiated through a combination of Commissioner of Inland Revenue (the Commissioner) discretions, Orders in Council and primary legislative amendments.

A more streamlined and timely process has been put in place for the measures that would have previously required primary legislation to activate. This process has been achieved by building the measures into the legislation and using Orders in Council to activate them when there is an emergency event that warrants their use. This will still leave Ministers with discretion over which measures to apply to a particular emergency. Such a generic approach had been suggested by the Finance and Expenditure Committee that considered the proposed tax relief measures for the 2023 North Island flooding events, as contained in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024.

### Key features

The new step-down approach has involved amending primary legislation to incorporate, on a generic basis, the tax measures from past major emergency events that proved to be useful to affected taxpayers, (such as taxation rollover relief and turning off the bright-line test). These measures are largely contained in new subpart FP of the Income Tax Act 2007 (ITA).

A new activating provision in the Tax Administration Act 1994 (TAA) enables activation of any of those measures by Order in Council in a future emergency. An Order in Council should take no more than two months to activate, compared with up to a year when amending primary legislation This provides earlier certainty for taxpayers impacted by an emergency event.

The amendments also:

- involve changing the current Order in Council power to remit use of money interest (UOMI) into a Commissioner's discretion to expedite the activation, and
- include a new limited information-sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue (in previous emergencies) being generally[1] unable to share relevant information to help other agencies deliver assistance when requested to do so.

### Detailed analysis

#### Process for past events

For past emergency events, tax responses have been initiated through a combination of:

- Commissioner discretions for:
  - waiving late filing and payment penalties
  - early withdrawals from/late deposits into the income equalisation deposits scheme, and
  - the declaration of an event as an emergency event so support payments to relieve the adverse impacts of that event are not included as family scheme income for Working for Families purposes.

1 An exception was made for the COVID-19 pandemic, when specific legislation was enacted that allowed information to be shared.

- Orders in Council for:
  - the remission of UOMI
  - declaring certain support payments not to be taxable grants or subsidies for GST purposes, and
  - extension of filing times for research and development tax credits.
- Primary legislative amendments when there is an unexpected tax liability (such as depreciation recovery income, or the application of the bright-line test to a local authority property buy-out) that would not have arisen but for the event. This category is the principal issue.

Amending primary legislation can be resource-intensive and creates uncertainty for taxpayers while the necessary Parliamentary approvals are obtained, even though such legislation is generally backdated to the beginning of the event.

Although each event has its own characteristics, comparable legislative changes were provided for the Canterbury and Hurunui/Kaikōura earthquakes, and the 2023 North Island flooding events. This included the provision of capped tax-free employer payments and fringe benefits to support employees who needed alternative accommodation and transport, as well as the extension of the time period for tax-free accommodation allowances for those working away from home on major earthquake and flood-related reconstruction projects.

Legislative tax measures were also enacted for the Mycoplasma bovis outbreak. These enabled the additional income arising from the forced sale of livestock to be spread over six years to match expected stock replacement.



### Emergency event definition

The amendments rely on existing definitions of "emergency" and the declarations of an emergency under other legislation, rather than creating a totally new definition for income tax purposes. This approach had already been used to enable the Commissioner to declare an emergency event so that support payments made to relieve the effects of that event would not be included as family scheme income for Working for Families purposes.

A definition of "emergency event" as an emergency in accordance with section 4 of the Civil Defence Emergency Management Act 2002[2] and declared an emergency under that Act has been inserted in section 3(1) of the TAA (with a consequential cross-reference in the definition section of the ITA). For the purposes of the Civil Defence Emergency Management Act, an emergency declaration is either:

- a state of national emergency under section 66 of that Act, or
- a state of local emergency under section 68 of that Act.

The exercise of powers under section 121 or 122 of the Biosecurity Act 1993 to examine, test for, and destroy a particular biosecurity pest/risk has also been included in the definition. This covers situations such as the programme for eradicating Mycoplasma bovis or any future foot and mouth outbreak.

This combination of events is considered the most appropriate to cover the likely broad range of natural disasters that could occur in New Zealand. It could also potentially cover major technological failures that could arise, for example, from a cyberattack.

2 **emergency** means a situation that—

(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and

(c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act.

A state of national emergency has been declared three times in New Zealand, in response to:

- the February 2011 Christchurch earthquake
- the COVID-19 pandemic, and
- Cyclone Gabrielle flooding.

However, there have been substantially more local emergencies over the same period. For example, the flooding that occurred in Auckland over Auckland Anniversary weekend 2023 was initially only designated a local emergency. It was only once flooding had also occurred in the Gisborne and Hawke's Bay regions that the Government declared a state of national emergency existed and incorporated the Auckland floods. Another example is the Hurunui/Kaikōura earthquakes, which were declared a local emergency.

From a tax perspective, some events, such as a drought or very localised event, have required fewer measures and have been largely handled through the Commissioner's discretions. That process will continue. More widespread and/or protracted events have needed a wider set of measures regardless of whether they have been declared a national or local emergency. This means the generic measures need to cover both. The common theme for tax purposes is that the event creates unexpected income for a significant number of taxpayers.

The provisions enable relevant responses to be decided at the time, rather than being automatically activated or triggered by an emergency event. The streamlined activation process facilitates this, with the definition of "emergency event" simply setting the boundary as to what events might ultimately lead to activation of any of the generic tax measures. Ministerial decisions will still be required, and Orders in Council initiated, for situations not covered by the Commissioner's discretions.

The Order in Council will specify the start date of the emergency event to avoid any ambiguity. The emergency event period will generally end on the last day of the income year that is five years after the income year in which the emergency event occurred. That five-year period can, however, be extended by Order in Council made under new section 6J of the TAA, in recognition that some emergency events involve a protracted period of settlement and recovery. For example, relief was extended for the Canterbury earthquakes but that required changing primary legislation. Using the Order in Council process removes the potential complications and time pressures that could arise from trying to enact an extension through primary legislation.

### Remission of UOMI

The Act makes an amendment to section 183ABA of the TAA that allows the Commissioner to remit UOMI following the declaration of an emergency event. This is a change in process only, because currently the Commissioner can choose not to charge interest on late payments by taxpayers when enabled to do so by an Order in Council. The Order in Council power is retained for rare situations when an event has not been declared an emergency under the Civil Defence Emergency Management Act 2002, but it is still considered warranted to remit UOMI.

### Information sharing

The Act includes an amendment to schedule 7 of the TAA to provide Inland Revenue with an information-sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue being generally unable to share information in a timely manner to help other agencies deliver assistance in previous emergencies (except for the COVID-19 pandemic). Such a power contributes to a more coherent and efficient whole-of-government response.

The power is activated by Order in Council and gives the Commissioner a discretion to share sensitive revenue information with other agencies that need and request that information to help in delivering assistance in an emergency, provided certain requirements are met.

The specific requirements are:

- The power is only available for events that are declared national emergencies. The Commissioner needs to be satisfied that sharing the information is reasonable, practical, and not undesirable. For example, sharing the information will not undermine the integrity of the tax system.
- The information is readily available.
- A written agreement needs to be drawn up and agreed between the Commissioner and the party that requested the information specifying the information to be shared.

- In addition, the following implicit safeguards apply:
  - The power is consistent with the Civil Defence National Emergencies (Information Sharing) Code 2020.[3] That code sets out the situations when government agencies can share information with other agencies in an emergency.
  - Information can only be shared for as long as is necessary to fulfil the purpose of the information requests for that event.

### Included measures

The generic measures are summarised in the following table.

| Measure | Previous mechanism | New mechanism | When previously used |
|---|---|---|---|
| Taxation rollover relief[4] for:<br>• revenue account property<br>• depreciable property<br>• amortisable land improvements | Primary legislation | Order in Council | Canterbury and Kaikōura earthquakes<br>2023 North Island flooding events |
| Depreciation amendments associated with rollover relief | Primary legislation | Order in Council | Canterbury and Kaikōura earthquakes<br>2023 North Island flooding events |
| Capped employer payments and fringe benefits, and extended tax-free accommodation period | Primary legislation | Order in Council | Canterbury earthquakes<br>2023 North Island flooding events |
| Income spreading provisions for forced livestock sales | Primary legislation | Order in Council | Mycoplasma bovis outbreak commencing 2017 |
| Turning off the bright-line test and other time-based land sale rules[5] | Primary legislation | Order in Council | Canterbury earthquakes<br>2023 North Island flooding events<br>(Local/central government buy-outs were provided in both cases) |
| Information sharing for a specific event | N/A | Order in Council providing Commissioner with discretion to share information for a national emergency, subject to safeguards | COVID-19 pandemic response, through specific primary legislation |
| Remission of UOMI | Order in Council | Generally, Commissioner discretion | Regularly used for large-scale emergencies including Hawke's Bay gastro-medical event |

These measures were selected based on the measure:

- having been applied to multiple past emergency events (either local or national emergency events) or it being a measure for a specific type of emergency event (ie, a biosecurity event)
- being used by affected taxpayers, and
- having limited fiscal impact.

3 Issued by the Privacy Commissioner under the Privacy Act 2020.

4 Deferral of the unexpected income resulting from an insurance payout on a destroyed asset provided the asset is replaced.

5 If a residential property is sold within a set period of time after being acquired, the owner may have to pay income tax on any gain on the sale.

If a past measure was used by a relatively limited number of taxpayers, was overly complex, or had a significant fiscal cost, it was excluded because the measure would likely not be used in future emergency events. Measures with a significant fiscal cost should continue to be subject to both Ministerial and Cabinet decision-making and Parliamentary approval. This ensures that discretionary decision-making is limited. A number of the additional measures suggested by submitters to the Finance and Expenditure Committee were not included in the package of measures on the above grounds.

### Consequential amendments

Several consequential amendments are required to the ITA to ensure that the emergency event measures interact correctly with the wider tax rules. These amendments are contained in new sections CC 2B, CC 2C and CW 19B and amended sections CE 1, CW 16B, CW 16C, CZ 29B, and CZ 37. These consequential amendments include ensuring that any income or exempt income under new subpart FP is, respectively, income or not income under Part C of the ITA.

### Detailed analysis of measures

The tax technical detail for the relevant past generic measures can be found in:

- **Tax Information Bulletin Vol 36, No 4, May 2024**.
- **Special report: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021** (28 April 2021).
- **Special Report: Tax relief for North Island flooding events** (4 April 2023).

### New subpart FP

This new subpart covers most of the generic measures. Section FP 1 provides an outline of the subpart and its measures. Section FP 2 provides that the subpart applies when the Governor-General has made an Order in Council under section 6J of the TAA declaring that one or more of the provisions in subpart FP apply in relation to the relevant emergency event. Section FP 3 contains the subpart definitions.

## Taxation rollover relief

These changes provide the option of taxation rollover relief for any of the following assets destroyed[6] by an emergency event:

- **Land or buildi**ngs held as revenue account property for which insurance or other compensation is provided, which results in a profit over its cost price (see new sections FP 5 to FP 7).
- Depreciable property subject to depreciation recovery income because of an insurance payout (see new sections FP 8 to FP 11).
- Amortised farmland improvements for which income arises because of an insurance payout (see new section FP 12).

The taxation rollover relief defers the unexpected income that arises in such situations provided the person intends to replace the assets. The relief is for a maximum of five years. Some general guidance on the rollover provisions is contained in new section FP 4.

#### Common features

In all three cases, the additional income is suspended until the replacement asset is acquired, subject to the five-year maximum period. When the asset is replaced (or partially replaced if the replacement expenditure is incurred gradually), the suspended income impacts on the cost of the replacement asset, reducing that cost for tax purposes. The income suspension also ceases if the business ceases operations or no longer intends to acquire a replacement asset, in which case the suspended income is brought to account in that earlier income year.

Because rollover relief is optional, the taxpayer will need to elect to use their chosen option and notify the Commissioner of their election. Generally, this must be done by the date their return of income is required to be filed for each income year that they elect to use rollover relief. The Commissioner may allow the person to file the notice at a later date if the Commissioner considers there are exceptional circumstances.

6 Irreparably damaged or useless for income-earning purposes.

Whether there are "exceptional circumstances" will depend on the facts and circumstances of the particular case, and on whether those facts and circumstances provide a person with a reasonable justification for not filing a notice by a due date. Certain information (such as a description of the affected property, the amount replaced in the year, and the remaining amount of suspended income) is required as part of the notification. Its purpose is to ensure that the taxpayer turns their mind each year to deciding whether they still intend to replace the asset.

**Points of difference**

The formula varies for each of the three types of rollover relief because the income being deferred differs. This is best illustrated by the following examples.

**Example 1: Revenue account asset**

A taxpayer's revenue account building located in the Manawatū is destroyed by a flooding event. The flooding event has been declared an emergency event and new sections FP 4 to FP 7 have been selected from the tax relief measures and activated by Order in Council.

The building originally cost $1.5 million. The replacement insurance proceeds are $3 million, and the replacement building (costing $3 million) is completed on 15 June 2037. In the absence of rollover relief, the building owner will have taxable income of $1.5 million (under section CG 6). New section FP 6 allows the owner to defer that income tax liability by allocating an amount of $1.5 million to the replacement building.

As a result of negotiations between the building owner and the insurance company, the insurance proceeds can be reasonably estimated on 30 September 2034.

In the tax return for the tax year ending on 31 March 2035, the building owner files an election to defer the $1.5 million of income pending replacement of the building. Provided the taxpayer continues to elect to defer the income, it remains suspended for the tax years ending on 31 March 2036 and 31 March 2037.

Because the replacement building is completed on 15 June 2037, the tax return for the tax year ending 31 March 2038 will include the new building at a cost of $1.5 million (being the $3 million cost of the new building less the $1.5 million rollover relief, in accordance with new sections FP 6 and FP 7). New section FP 6(1) provides that the person's suspended recovery income is the amount by which the compensation exceeds their cost deductions for the destroyed property. New section FP 7 reduces the cost of the replacement property by reference to the replacement cost adjustment in section FP 6(3) or (5), as relevant. In this example, section FP 6(5) is relevant because the replacement cost and the insurance payout are equal.

A notice will have to be filed with the tax return for the year ended 31 March 2038 advising that the deferred income has been rolled into the tax base for the replacement asset. The taxpayer must also give notice that the amount of unallocated suspended income has been reduced by $1.5 million to $0. The notice requirements are contained in section 226H of the TAA.

When the replacement asset is eventually sold, the difference between the $1.5 million cost and the sales proceeds will be taxable, provided the building is sold for more than $1.5 million. (In this context, new section FP 7 specifies the cost of the revenue account property for the purposes of section DB 23.)

**Example 2: Depreciable asset**

Plant and equipment destroyed by an earthquake had a cost of $1 million. The earthquake has been declared an emergency event and new sections FP 8 to FP 11 have been selected as one of the tax relief measures.

On the day of the earthquake, the plant and equipment had an adjusted tax book value of $700,000. The owner receives an insurance payout of $1 million. The net depreciation recovered is, therefore, $300,000, and this becomes the suspended recovery income. The replacement assets are acquired over two years at a cost of $400,000 per year. In year three, the owner decides to acquire no more replacement assets.

Under new section FP 9, the $300,000 suspended recovery income is allocated as follows:

- Year 1 ($400,000 x $300,000) / $1,000,000 = $120,000
- Year 2 ($400,000 x $300,000) / $1,000,000 = $120,000

The cost of the replacement plant and machinery, for depreciation purposes, is reduced in total by $240,000, in accordance with new section FP 10 and in conjunction with new section FP 11. (New section FP 11 specifies the value or cost of the replacement item for the purposes of the depreciation provisions in subpart EE, depending on which depreciation method the taxpayer is using.)

In accordance with new section FP 8, the remaining suspended recovery income balance of $60,000 (representing the portion of assets not replaced) is taxed (under section CG 1) in the year the taxpayer decides to make no further investment in replacement property.

**Example 3: Farmland improvement**

Crop support frames costing $50,000 have been amortised under section DO 4 of the ITA (improvements to farmland). Their amortised value is $26,500 when they are destroyed by a cyclone. The cyclone has been declared an emergency event and new section FP 12 has been selected as one of the tax relief measures. Insurance proceeds of $75,000 are received.

The remaining expenditure ($26,500) can be deducted under section DO 11.

Under new section FP 12, the insurance payout is income to the extent of the various deductions that have been allowed ($50,000 in total).

The taxpayer elects, under new section FP 12, to apply rollover relief to this amount of income and replaces the destroyed frames at a cost of $75,000.

In accordance with new section FP 12(5), the cost of the replacement frames for the purposes of amortisation under section DO 4 is $25,000 because the insurance income of $50,000 is less than the replacement cost of $75,000 by that amount

## Depreciation amendments associated with rollover relief

### Deductibility of expenses when no income-earning activity

New section FP 13, in conjunction with new section DB 70, addresses the situation when some taxpayers are no longer able to deduct their ongoing expenses or loss relating to their income-earning activity. For example, this may occur when land is not physically accessible due to silt or a building is not accessible due to an earthquake, resulting in the business activity being so disrupted by the emergency event that there is no longer a sufficient nexus between the expenses and the income-earning activity.

The new sections provide certainty on the deductibility of expenses or losses for affected taxpayers who intend to continue their income-earning activities. To qualify, the person must:

- have an income-earning activity in the "affected area" immediately before the emergency event, and
- during the period of interruption, have incurred expenditure or loss (the interruption expenditure) in meeting an obligation relating to the income-earning activity and that interruption expenditure does not meet the requirements of the general deductibility permission (in section DA 1 of the ITA), but would have done so but for the interruption, and
- resume the income-earning activity before an income year that is five income years after the income year in which the emergency event first occurs.

If all these conditions are met, the person is allowed to deduct the expenditure in the year their income earning is resumed.

**Damaged depreciation property that is uneconomic to repair**

The standard tax depreciation rules do not provide an appropriate outcome when there is an insurance payout on an asset damaged by an emergency event and the asset has been assessed as uneconomic to repair. This is because the tax rules distinguish between assets that are repairable and those that are irreparably damaged or rendered useless for earning income. Assets that are uneconomic to repair are generally included in the former category because they can be technically repairable. The consequence is that a taxpayer might face a significant unexpected tax liability when an insurance amount was received for the damaged asset.

To help overcome this problem, new section FP 14 provides for a deemed disposal and reacquisition of assets that are damaged by an emergency event and are assessed by the person receiving the insurance payout as uneconomic to repair. This better aligns their depreciation treatment with that of assets that have been irreparably damaged by an emergency event. Rollover relief is then available for those assets.

The asset is deemed to be reacquired for nil consideration on the same day as the deemed disposal (which is for the amount of insurance), meaning that any post-emergency event repairs to the damaged building are capitalised rather than being treated as deductible expenditure.

In some cases, it may take the taxpayer a while to reach a judgement that the asset is not economic to repair. The Finance and Expenditure Committee noted that Inland Revenue assured them they would act in a taxpayer friendly way should the timing of the deemed disposal result in interest and penalties.

**Example 4: Asset uneconomic to repair**

An asset has a cost of $5 million, accumulated depreciation deductions of $4 million, and an adjusted tax value of $1 million. It is damaged by an earthquake. The earthquake has been declared an emergency event through an Order in Council and new section FP 14 has been selected from the tax relief measures. The company that insures the asset decides it has an obligation under the insurance policy to pay out $10 million.

The owner makes the reasonable assessment that the asset is no longer fit for purpose and is uneconomic to repair. The insurance payout is sufficient to fund a replacement. The damaged asset is retained by the insured party and put to another, less productive, use.

New section FP 14 will apply in these circumstances. The damaged asset is treated as being disposed of for $10 million and reacquired for nil consideration on the date of the earthquake that caused the asset to be uneconomic to repair. Because the asset was treated as having been disposed of, the owner of the asset could apply the optional matching rule in new section FP 14 to smooth the timing of income calculated under section EE 48.

Under section EE 48, the result is:

- original cost – $5 million
- depreciation deductions – $4 million
- adjusted tax value – $1 million
- amount for disposal (consideration) – $10 million
- depreciation recovery income – $4 million
- capital gain – $5million.

Provided a replacement asset is acquired, rollover relief (under new sections FP 8 to FP 11) is available to the asset owner for the $4 million of depreciation recovery income.

**Cap on depreciation recovery income**

Any insurance proceeds that exceed the sum of the asset's adjusted tax value and expenditure on repairing the asset are taxable under section EE 52 of the ITA. As a result, the tax rules may end up taxing more than the amount of earlier depreciation deductions allowed for the asset. In the context of an emergency event, this means that some taxpayers may face significant unanticipated income tax liabilities in relation to damaged (but repairable) assets.

Accordingly, if activated, new section FP 15 limits depreciation recovery income to the amount of depreciation deductions previously taken when insurance proceeds are received for a repairable depreciable asset damaged by the relevant emergency event.

**Example 5: Depreciation recovery income cap**

An asset valued at $5 million is damaged by a flooding event but is repairable. The flooding event has been declared an emergency event and new section FP 15 has been selected as one of the tax relief measures.

The asset has an adjusted tax value of $1 million, with depreciation deductions of $4 million taken. Insurance proceeds of $7 million are received, with $1 million of the proceeds being spent on repairing the asset. Under section EE 52, the depreciation recovery income is $5 million. However, new section FP 15 caps the amount of depreciation recovery income at $4 million. The remaining $1 million is treated as a capital gain.



**Property that is available for use**

For an item of property to be depreciated for tax purposes, it must be used in a business or be available for use. However, it was not clear how this rule should be applied when access to depreciable property is temporarily restricted because of an emergency. New section FP 16, when activated as one of the emergency responses for a particular emergency event, addresses this issue by treating the item as being available for use during the period of restricted access. This is on the proviso that the asset was available for use immediately before the restriction was imposed. Depreciation could therefore be claimed.

**Optional timing rule when damage results in disposal**

New section FP 17 provides an optional rule to smooth the timing of income and deductions when insurance proceeds have been received for depreciable property that has been irreparably damaged or rendered useless for earning income because of an emergency event. The timing rule also applies to depreciable assets that are uneconomic to repair and to which new section FP 14 applies.

The optional rule applies to individual items of depreciable property, in line with the general approach under the depreciation rules. The new section provides that any income or deductions is recognised at the earlier of:

- the first income year in which:
  - the insurance receipt is, or has been, derived or able to be reasonably estimated, and
  - the cost of disposing of the item is, or has been, incurred or able to be reasonably estimated, and
  - the consideration from the disposal of the item is, or has been, derived or able to be reasonably estimated, or
  - the income year that is five income years after the income year in which the emergency event first occurred.

Whether insurance proceeds and other amounts can be reasonably estimated is essentially a question of fact, which depends on the individual circumstances of each case.

New section FP 17 overrides the normal depreciation timing rules. The section could also be applied to assets depreciated in a pool. A person who opts to use the matching rule is required to use it for all their items of depreciable property that meet the criteria for applying the rule. This is to prevent taxpayers "cherry-picking" the assets to which they apply the rule. A taxpayer's election to use the matching rule is reflected in the tax position they take in their return of income for each tax year – no prior notice of election is required.

**Example 6: Optional timing rule for disposal**

Equipment originally costing $10,000 is irreparably damaged by a storm. The storm has been declared an emergency event and new section FP 17 has been selected as one of the tax relief measures.

The asset's tax book value is $7,000, with $3,000 of accumulated depreciation deductions. The disposal costs are reasonably estimated in the 2034–35 income year to be $1,000. The insurance proceeds received for the asset are reasonably estimated in the 2035–36 income year as being $9,000. The equipment has a scrap value of $100, which is reasonably estimated in 2034–35. Applying the new matching rule, any income or deductions are recognised in the 2035–36 income year because this is when all the insurance proceeds, disposal costs and disposal proceeds could be reasonably estimated. Accordingly, in the 2035–36 income year, new section FP 17 applies to determine the amount of depreciation recovery income or depreciation loss.

**Optional timing rule when damage does not result in disposal**

New section FP 18 introduces an optional rule to smooth the timing of income and deductions when insurance proceeds have been received for a depreciable asset that has been damaged in an emergency event, but the asset is repairable.

The rule is broadly similar to new section FP 17 in design except, in this case, the asset is economically repairable. Again, the owner needs to choose to apply the timing rule to all their depreciable assets that meet the requirements, including assets depreciated in a pool. The timing rule provides that any income or deductions are recognised at the earlier of:

- the first income year in which:
  - the insurance receipt is, or has been, derived or able to be reasonably estimated, and
  - the cost of repairing the asset is, or has been, incurred or able to be reasonably estimated, or
- the income year that is five income years after the income year in which the emergency event first occurred.

**Example7: Optional timing rule when no disposal**

Machinery originally costing $100,000 is damaged by a flooding event. The flooding event has been declared an emergency event and new section FP 18 is one of the tax relief measures activated by Order in Council.

The asset's adjusted tax value is $60,000, with $40,000 of accumulated depreciation deductions. The insurance proceeds are estimated in 2032–33 as being $110,000. Repair costs are estimated in the 2034–35 income year to be $20,000, and $10,000 is actually incurred in each of the 2034–35 and 2035–36 income years.

Applying the matching rule, any income or deductions are recognised in the 2034–35 income year because this is when the insurance proceeds and total repair costs can reasonably be estimated. Accordingly, in the 2034–35 income year, sections CG 4 and EE 52 apply.

The repair costs are deductible under the general deductibility rules.

Section CG 4 treats $20,000 of the insurance proceeds as taxable because this is the amount of insurance proceeds that recovers deductible expenditure.

Section EE 52 requires the amount by which the insurance proceeds are more than the repair expenditure to be deducted from the adjusted tax value, as follows:

Adjusted tax value of $60,000 less ($110,000 – $20,000) = –$30,000

As the result is negative, the adjusted tax value is reduced to nil and depreciation recovery income under section EE 52 is $30,000.

## Optional adjustment to assets under thin capitalisation rules

When activated, new section FP 19 provides an optional adjustment to how group assets are measured for the purposes of the thin capitalisation rules when assets have been damaged by an emergency event. The adjustment mitigates a timing problem that arises because insurance proceeds may be recognised for tax purposes at a later date than the damage caused by an emergency event.

The thin capitalisation rules are based on accounting measures of assets. For accounting purposes, damaged assets are immediately impaired or derecognised (that is, no longer considered an asset). In contrast, insurance proceeds cannot be recognised until they are reasonably expected.

New section FP 19 is designed to mitigate this timing difference by allowing certain taxpayers to carry back known insurance proceeds to the date on which an asset was impaired or derecognised as a result of damage caused by an emergency event. The amount that could be carried back is limited to the lesser of the amount of damage or the related insurance proceeds.

Without this option, a business could be temporarily disadvantaged in terms of how much debt they could carry on their balance sheet under the thin capitalisation rules, resulting in reduced interest deductions.

A person who chooses to use this option is required to notify the Commissioner and provide certain information.

### Tax relief for employers' welfare contributions to employees

Generally, payments and benefits provided by an employer to an employee are taxable, either as monetary remuneration or by way of fringe benefit tax (FBT).

Following an emergency event, employers may make ex-gratia welfare contributions of cash or benefits to their flood-affected employees. The generic tax-relief measures include two measures that allow certain amounts and benefits to be exempt from income tax or FBT.

The exemptions can be applied to:

- accommodation
- "sundry" fringe benefits when the employer cannot reasonably estimate which employees received which benefits, and
- the first $5,000 of monetary remuneration and fringe benefits of the kind that the employer can reasonably be expected to know which employees received which benefits.

These measures are inter-linked. New section FP 20, in conjunction with new section CW 19B, provides that income (which can include accommodation benefits) derived by an employee from an employer is exempt income if it meets all the following requirements:

- it is provided by the employer for the purpose of relief of employees from the adverse effects of an emergency event
- it would otherwise be assessable income
- it is derived in the eight-week period beginning on the first day of the relevant emergency event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the income as being exempt income of the employee.

**Example 8: Payment of accommodation allowance**

Klover Kiwifruit Ltd (KKL) has been adversely affected by a flood in the Northland area. Its kiwifruit orchard has been badly damaged. It is a family-owned business that has several long-serving staff (including some family members) who live in dwellings near the property. Those dwellings have been substantially damaged by the flooding and are not currently liveable.

Kevin Klover, the owner of KKL, tells staff to find alternative accommodation and advises that the company will provide the staff with an accommodation allowance until the staff can get back to some sense of normality after the impact of the flooding. KKL pays an accommodation allowance to its staff for eight weeks. All employees have the same entitlement and, therefore, it is not relevant that some payments were made to associated family members of Kevin.

The flooding event has been declared an emergency event and new section FP 20 has been selected from the tax relief measures and activated by Order in Council. Therefore, the staff (including the family members) could treat the accommodation allowance paid as exempt income because it meets the requirements of new section FP 20.

### FBT exemption

Similarly, new section FP 21 provides that a benefit received by an employee from an employer is exempt from FBT if all the following requirements are met:

- it is for the purpose of relief of employees from the adverse effects of an emergency event
- it will otherwise be a fringe benefit
- it is received in the eight-week period beginning on the first day of the relevant emergency event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the benefit as not being a fringe benefit.

If the employer can estimate the value of a benefit that an employee has received for an emergency event, the benefit is exempt from FBT to the extent that the $5,000 employee income exemption for the relevant emergency event under new section FP 14 was not used to exempt employee income.

**Example 9: Specific benefit**

Hannah is an employee of Harris Hardware Ltd (HHL), which is a hardware company based in Marlborough. Hannah is a keen cyclist and travels to work and most other places on her e-bike. She has access to a work ute during the day to allow her to fulfil delivery orders. No private use of the vehicle is permitted, and the vehicle is locked in a garage at HHL's premises during the evenings and at weekends.

Hannah lives in a rural area that was hit hard by an earthquake. The earthquake has been declared an emergency event and new sections FP 20 and FP 21 have been selected from the tax relief measures.

Hannah's e-bike was damaged during the earthquake, so she is unable to get around. Carl, the owner of HHL, allows Hannah to use the work ute to travel to and from home as well as to assist her neighbours in the clean-up of their properties. This private use of the vehicle usually incurs FBT.

HHL also provided a cash payment of $500 to each of its staff that was paid as exempt income under new section FP 20.

HHL could treat the provision of the vehicle as exempt from FBT up to the value of $4,500 (the maximum aggregate amount of exempt cash and fringe benefits permitted is $5,000).

### Projects of limited duration

New section FP 22 provides for a modified definition of "projects of limited duration" for projects related to a specific emergency event to recognise the extended timeframes that those rebuilding projects could take. If this measure is activated by Order in Council, the value provided, or expenditure incurred, by an employer on accommodation for employees working on those projects will be exempt income for the employees.

The provision then applies for the purposes of section CW 16B (Accommodation expenditure: out-of-town secondments and projects) when:

- the employment duties of an employee require them to work on a project of limited duration for rebuilding or recovery in areas affected by an emergency event, and
- the distant workplace is a workplace in the areas affected by the emergency event.

The usual three-year time limit in the definition of "project of limited duration" is then extended to five years.

**Example 10: Extended time limit**

Rory Roads Ltd (RRL) provides contracting services, primarily road building. They have a large plant based in Napier that services the area. They also have a plant based in Christchurch that services the South Island.

In May 2030, with the need to assist in rebuilding the roading infrastructure in the Napier area following a major earthquake, the owner of RRL asks 20 of the Christchurch crew to relocate to Napier to assist with the work for the foreseeable future. The earthquake has been declared an emergency event and new section FP 22 has been selected as one of the tax relief measures.

Rory provides those employees with accommodation in Napier for the duration of the project, which is expected to be four to five years. The exemption in new section FP 22 applies to treat the provision of that accommodation as exempt income (subject to the other criteria in section CW 16B being satisfied).

### Biosecurity emergency event tax relief

New section FP 23 enables the taxable income arising when breeding stock need to be culled in response to a qualifying biosecurity emergency event to be spread over six income years following a biosecurity emergency event, provided the stock is intended to be replaced.

**Background**

Some farmers may have significant unexpected taxable income through their herds being culled following a primary sector and government decision to eradicate or manage a biosecurity event in New Zealand. The income arises through the stock being sold or compensation being paid, or a combination of both.

The issue arises for farmers who have used a cost-based method (that is, national standard cost (NSC) or the self-assessed cost scheme/cost price method) to value their breeding stock on hand for tax purposes. This is because the difference between the total proceeds received from the cull and the cost of the stock would be income. This creates a cash-flow issue for those farmers who purchase replacement livestock after the cull. The replacement stock would be valued at its purchase price and could not, for tax purposes, be immediately written down to the homebred cost to offset the income.

To avoid this outcome, new section FP 23, if activated by Order in Council, enables the proceeds from the cull to be transferred from the year of the cull and to be spread evenly over the following six income years following the first occurrence of an emergency event. This ability to spread is optional.

**Key features**

The income could only be spread if:

- A person had, as part of their business, livestock of a type covered by the relevant Order in Council on hand at the start of the income year in which the culling of stock took place that they use for breeding and those stock were valued under either NSC or the cost price method at the end of the income year before the cull year. The focus on mixed-age breeding stock is to ensure that the spread is provided to those who have sizeable additional income as a result of the cull given that female breeding stock make up a high proportion of a standard herd. (Breeding stock includes not only mature female animals but also immature female stock intended for future breeding in the business, as well as any male animals used in breeding.)
- In the cull year, some or all the person's animals of that type of livestock needed to be destroyed because of the biosecurity emergency event, using the powers in either section 121 or 122 of the Biosecurity Act 1993. Those provisions enable Biosecurity New Zealand to examine organisms and give directions. Normally the whole herd is destroyed, but in some isolated cases only a portion needs to be destroyed.
- The person expects to have replaced a significant portion of the culled stock by the end of the income year following the cull year. (The expectation is that the culled livestock are replaced with purchased stock.)
- The replacement stock continues to be valued using, as relevant, NSC or the cost price method. This is to ensure that farmers cannot enter the herd scheme on more advantageous terms than those not affected by the biosecurity emergency event.

Given that a livestock owner might use a couple of valuation methods in combination, not all the breeding stock might be valued at cost. However, only the income derived from the culling of the breeding stock valued under NSC or the cost price method could be spread. The income equalisation scheme may be able to be used to mitigate the income implications of the cull for the income arising from the culling of stock valued under another valuation method or stock culled from a fattening stock business valued under NSC.

Owners of the affected livestock, including sharemilkers, are covered, that is, the ability to spread income from the cull is not limited to just the owners of farmland with livestock.

The qualifying proceeds from the cull comprise payments from the slaughterhouse, top-up compensation from the Government for the difference between the normal market value for the stock and the payments from the slaughterhouse, and, in some cases, further compensation to cover the additional cost of purchasing equivalent replacement stock.

The Order in Council enacting the provision will indicate the types and classes of livestock for which the spread is available for the specific biosecurity emergency event. The types of livestock will be selected from those listed in schedule 17 of the ITA. Although that schedule lists cattle (beef and dairy), deer, goats, pigs and sheep, the nature of the future emergency event will determine which of these types will be selected. Most likely, an Order will focus on cattle, sheep or deer, or a combination of these. The Mycoplasma bovis outbreak, for example, impacted cattle.

The livestock owner will need to indicate which type(s) of livestock their election covered and apply it separately for each type of livestock impacted by the cull. The spreadable amount will be calculated for each type and class of breeding animal using the formulae in new sections FP 24 and FP 25.

For each type of livestock, the formula basically multiples the number of breeding stock for the relevant class that are valued under either NSC or the cost price method by the total proceeds received for the stock in that class and divides it by the number of culled stock for that class. For an example of how this formula applied in the Mycoplasma bovis outbreak, see: **Special report: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021**.

If this option is used, the maximum amount that could be deposited in the taxpayer's main income equalisation scheme account is reduced in accordance with the amendments to sections EZ 80 and EZ 81 of the ITA.

New section FP 26 sets out the Order in Council making power specifying one or more types or classes of livestock set out in schedule 17 of the ITA to which sections FP 23 to FP 25 apply for a specific emergency event.

#### Relevant current legislation

The livestock valuation rules are contained in subpart EC of the ITA, including the requirements that apply when using multiple valuation options and the restrictions on switching between valuation options. These rules ensure that the cost of stock on hand is valued appropriately and that the cost of purchases is not deducted ahead of their being sold.

### Emergency event relief: Turning off bright-line and other timing tests

New section FP 27 ensures that the bright-line and other land-based timing tests in the ITA do not apply to a person who has had their land purchased by the Crown or a local authority following an emergency event.

The ITA contains a set of time-based tests that, if not met, result in any gain or loss on disposal of the property being either taxable or deductible. The most well-known test is the "bright-line". The bright-line test taxes property sold on or after 1 July 2024 if it is sold within two years of acquisition. There are also a series of 10-year tests for land dealers, developers and associated parties.

Normally the various time-based tests should potentially apply when there is a compensatory buy-out. However, also under normal circumstances, the owner could decide to hold on to the property for more than the minimum period to avoid the tax implications. However, the owner has, in effect, little option other than to sell when offered a compensatory buy-out (such as from the Crown or local authority) on a property that has been designated as unsafe for habitation because of an emergency event.

New section FP 27 turns off the bright-line and other timing tests so the buy-out means that not only are there no gains but also no losses for tax purposes.

New section FP 27 ensures that the timing tests are turned off regardless of the legislative vehicle used to make the buy-out offers, provided that the disposal is as a result of an emergency event.

# Crypto-Asset Reporting Framework

2025/09-004

## Crypto-Asset Reporting Framework

*Sections 3(1), 89C(lba), 94A(1), 94E, 142L, 142M, 143(2C), 185E(6), 185U, and 226E of the Tax Administration Act 1994*

### Summary of amendments

The amendments give legislative effect in New Zealand to the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard (CARF)* developed by the Organisation for Economic Co-operation and Development (OECD).

### Effective date

The amendments take effect on 1 April 2026. On this timeframe:

- New Zealand-based reporting crypto-asset service providers will be required to collect information on the transactions of reportable users that operate through them from 1 April 2026.
- These reporting crypto-asset service providers will need to report this information to Inland Revenue by 30 June 2027, and Inland Revenue will exchange this information with other tax authorities (to the extent it relates to reportable users resident in that other jurisdiction) by 30 September 2027.

### Background

The CARF provides for the collection and automatic exchange of information on crypto-assets. The CARF requires reporting crypto-asset service providers (RCASPs) to provide tax authorities with information on crypto-asset transactions for its reportable users. This information is then exchanged between tax authorities that have implemented the rules.

The material in this Act commentary item explains New Zealand's proposed implementation of the CARF. It does not provide comprehensive analysis of the rules themselves. The rules themselves, including associated commentary and guidance, are available on the OECD's website. Further information on where this material can be accessed is included at the end of this item.

Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Instead of relying on a financial institution to verify transactions, crypto-asset transactions are confirmed by computers operating on the crypto-assets network. This is known as distributed ledger technology and blockchain is a form of this technology.

Since the introduction of Bitcoin in 2009, the market for crypto-assets worldwide has experienced fast growth and development. There are currently more than 22,000 crypto-assets with a market capitalisation of almost NZ$4 trillion. The technological innovations brought about by the growth of crypto-assets and blockchain technology has also led to the development of new products, such as decentralised finance, non-fungible tokens, and the growth of the metaverse. Between 6% to 10% of New Zealanders own some crypto-currency according to three different online surveys that were conducted in 2022.[7] Inland Revenue analytics show that 80% of crypto-asset activity by New Zealanders is undertaken through offshore exchanges.

The rapid growth of crypto-assets has also led to the development of new investment products and payment practices. The characteristics of the technology that underlies crypto-assets, cryptography, poses unique challenges for tax administrations from a tax compliance perspective. The crypto-assets that utilise this technology can be stored and transferred in a decentralised manner, without reliance on traditional intermediaries. This has given rise to a new set of intermediaries, such as crypto-asset exchanges and wallet providers, that are currently subject to little regulatory oversight. In many cases, the intermediary will be located in a different jurisdiction to its users, and it is difficult for tax authorities to obtain information about their tax residents if this information is held offshore.

This development means that tax authorities do not have visibility over income derived through crypto-assets like they do with income generated through more traditional sources. Inland Revenue receives regular income information from employers and investment income payers. For employees, Inland Revenue receives income information from employers on a regular basis. For those with investment income, Inland Revenue receives information from companies, banks, and other investment vehicles on a regular basis. Inland Revenue relies on this information to administer the tax system. This information is used to make sure that taxpayers are paying the right amount of tax and are receiving correct entitlements under social policy schemes.

7 Financial Markets Authority, *2022 Investor Confidence Survey. Survey conducted* March and April 2022.
Financial Services Council, *Money and You* research report. Survey conducted January 2022.
Finder Cryptocurrency adoption index, August 2022.

On an international stage, there has been increased impetus to ensure that tax authorities retain visibility over income or investment earning opportunities that are facilitated for individuals through large-scale intermediaries. For example, the OECD developed the Common Reporting Standard (CRS), which already imposes information gathering and reporting obligations on financial institutions in relation to financial account information about people and entities investing outside their tax residence jurisdiction. More recently, the OECD has developed rules for the platform economy to ensure tax authorities have visibility over income that taxpayers earn through their activities on digital platforms (such as ride-sharing and short-stay accommodation). The platform economy reporting rules took effect in New Zealand on 1 January 2024.

Against this background, the OECD has developed the CARF, which is available for jurisdictions to implement. This OECD standard provides a standardised framework for the automatic exchange of tax-relevant information on crypto-assets. It makes changes to the CRS to ensure that crypto-related assets held through traditional financial intermediaries are subject to reporting. It also includes other minor technical amendments to improve the usability of the CRS.

The changes related to the CRS are covered in **Amendments to Common Reporting Standards** below.

All legislative references in this commentary item are to the Tax Administration Act 1994 (TAA) unless otherwise stated.

## Key features

The key features of the amendments include:

- incorporating the CARF into the TAA
- changes to the TAA necessary to support the interpretation and implementation of the CARF in New Zealand
- requiring RCASPs (and crypto-asset users) to comply with the requirements set out in the CARF, including self-certification procedures, due diligence requirements, reporting and record keeping
- new civil penalties that will apply if RCASPs and crypto-asset users do not comply with their obligations under the CARF
- a regulation-making power that will enable the Governor-General to make Orders in Council that block the effect of future changes to the CARF if necessary, and
- New Zealand will enable domestic reporting under the CARF to ensure that New Zealand RCASPs report information in respect of New Zealand residents.

## Detailed analysis

### Key terms

To help give effect to the CARF in New Zealand, a definition of "crypto-asset reporting framework" is included in section 3(1) of the TAA. This definition refers to Part I of the CARF document. A wider definition of "CARF document" is also included in section 3(1) and this definition refers to the OECD publication in its entirety, which also includes the amendments to the Common Reporting Standard. The CARF itself is set out in Part I of the CARF document.

New section 185U(1) also provides that any terms used in the TAA that relate to the CARF have the same meanings as they have in the CARF. This ensures that New Zealand's law remains consistent with the CARF, even though the CARF is incorporated by reference.

For the avoidance of doubt, it is noted that other Inland Revenue Acts currently contain definitions for "cryptoasset" and "cryptocurrency" (see section 2(1) of the Goods and Services Tax Act 1985 and section YA 1 of the Income Tax Act 2007 (ITA)) that, although broadly similar, differ slightly to the OECD CARF definitions. The definitions in those Acts continue to apply for the purposes of those Acts.

Although new section 185U(1) makes it clear that the OECD terms apply for the purposes of the TAA, this is subject to the proviso "unless the context otherwise requires". The intention here is that any defined term that is subsequently added to the TAA that conflicts with a term in the CARF can take on a separate meaning for the purposes of interpreting other provisions. However, the definitions set out in the CARF take precedence for any provisions in the TAA that pertain to New Zealand's implementation of the CARF.

### Key terms defined in CARF

Although the following terms are not defined directly in New Zealand legislation, they are terms that are defined in the CARF that are useful context to include in this commentary item.

A "**reporting crypto-asset service provider**" means any individual or entity that, as a business, provides a service effectuating exchange transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such exchange transactions, or by making available a trading platform.

The term "**relevant crypto-asset**" means any crypto-asset that is not a Central Bank digital currency, a specified electronic money product or any crypto-asset for which the reporting crypto-asset service provider has adequately determined that it cannot be used for payment or investment purposes.

The term "**exchange transaction**" means any:

- exchange between relevant crypto-assets and fiat currencies, and
- exchange between one or more forms of relevant crypto-assets.

The term "**crypto-asset user**" means an individual or entity that is a customer of a reporting crypto-asset service provider for purposes of carrying out relevant transactions. An individual or entity, other than a financial institution or a reporting crypto-asset service provider, acting as a crypto-asset user for the benefit or account of another individual or entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a crypto-asset user, and such other individual or entity is treated as the crypto-asset user. When a reporting crypto-asset service provider provides a service effectuating reportable retail payment transactions for or on behalf of a merchant, the reporting crypto-asset service provider must also treat the customer that is the counterparty to the merchant for such reportable retail payment transaction as the crypto-asset user with respect to such reportable retail payment transaction, provided that the reporting crypto-asset service provider is required to verify the identity of such customer by virtue of the reportable retail payment transaction pursuant to domestic anti-money laundering rules.

The term "**reportable user**" means a crypto-asset user that is a reportable person.

The term "**excluded person**" means (a) an entity the stock of which is regularly traded on one or more established securities markets; (b) any entity that is a related entity of an entity described in clause (a); (c) a governmental entity; (d) an international organisation; (e) a Central Bank; or (f) a financial institution other than an investment entity described in Section IV E(5)(b).

These terms are correct at date of publication. These terms are far from exhaustive. Please refer to the CARF itself for the rules and defined terms.

### Overview

In summary, the new rules affect:

- reportable users that operate through RCASPs and transact in relevant crypto-assets, and
- RCASPs that facilitate exchange transactions on behalf of reportable users.

Under the CARF, RCASPs must collect and report personal information (such as the name, address, date of birth and tax identification number) for all its reportable users, along with aggregate level data on all relevant crypto-asset transactions in relation to each reportable user. This data includes information on crypto-to-crypto transactions, crypto-to-fiat transactions and transfers of relevant crypto-assets (such as to a wallet address). RCASPs must also carry out due diligence procedures and obtain valid self-certification from crypto-asset users to determine whether they are a reportable user (by verifying their identity and tax jurisdiction).

An RCASP is required to report crypto-asset transaction information on its users to Inland Revenue. To the extent this information relates to New Zealand tax residents, Inland Revenue will use it for tax administration and compliance purposes, such as ensuring that New Zealanders pay the correct amount of tax on their crypto-asset income. When information relates to non-resident users, Inland Revenue will share this information with the relevant tax authority of the non-resident user, who could also use the information for tax administration purposes.

Although the CARF rules do not enable domestic reporting as a default setting, New Zealand will enable domestic reporting under the CARF to ensure that New Zealand RCASPs report information in respect of New Zealand residents. This will be achieved by adding New Zealand to the list Inland Revenue will maintain of "reportable jurisdictions" under the CARF. This list will be made publicly available ahead of the 1 April 2026 commencement date for the CARF in New Zealand.

**Example 11: Basic operation of CARF in New Zealand**

Jacob (a New Zealand tax resident) and Kelvin (a non-resident for tax purposes) operate through a New Zealand-based crypto-asset exchange called Bit-Trade to buy and sell crypto-assets.

Under the amendments to implement the CARF in New Zealand, Bit-Trade is an RCASP and must collect identifying information from Jacob and Kelvin and provide this, along with data on all relevant crypto-asset transactions for the pair, to Inland Revenue.

Inland Revenue:

- Can use the information it receives from Bit-Trade about Jacob for tax administration purposes (such as ensuring that Jacob has returned the correct amount of tax on any profit he has made from his crypto-asset trading activity).
- Must share the information it receives about Kelvin with the tax authority in the jurisdiction in which Kelvin is a tax resident. Kelvin's tax authority could then use this information for tax administration purposes.



**Example 12: Information to be reported under CARF**

Ben (a New Zealand resident) buys and sells bitcoin through a New Zealand crypto-asset exchange, "KraymondCoin".

Ben loads New Zealand dollars onto his exchange account at KraymondCoin and purchases 0.1 Bitcoin (BTC) for $10,000 (including a $30 transaction fee).

BTC goes up in value and, three months later, Ben decides to sell half of the BTC he has purchased. Ben sells 0.05 BTC for $6,000 and receives $5,980 after the exchange transaction fee is deducted.

BTC continues to rise and Ben worries that he is missing out. Two weeks later, Ben decides to purchase more, this time paying $12,000 for 0.075 BTC (including a $40 transaction fee).

Three weeks later, Ben sells 0.1 BTC for $18,000 (out of which he pays a $60 transaction fee).

Ben's acquisitions and disposals of BTC through KraymondCoin can be summarised as follows:

| Acquisitions of BTC | Disposals of BTC |
|---|---|
| 0.1 BTC = NZ$9,970 | 0.05 BTC = NZ$5,980 |
| 0.075 BTC = NZ$11,960 | 0.1 BTC = NZ$17,940 |
| Aggregate acquisition:<br>0.175 BTC = NZ$21,930 | Aggregate disposal:<br>0.15 BTC = NZ$23,920 |

The XML schema prescribes the format of reporting line items. However, at a high level, KraymondCoin is required to report the following aggregate information to Inland Revenue in respect of Ben's transactions under the CARF:

| | Gross amount paid/ received | Aggregate number of units | Number of relevant transactions |
|---|---|---|---|
| Acquisitions of BTC | NZ$21,930 | 0.175 BTC | 2 acquisition transactions |
| Disposals of BTC | NZ$23,920 | 0.15 BTC | 2 disposal transactions |

New section 185U(4)(d) requires that the information that relates to a tax year is reported to Inland Revenue within three months of the end of that tax year. The reporting period is for the 1 April to 31 March tax year, so information must be reported to Inland Revenue by 30 June following the tax year to which it relates.

Penalties are also applied to RCASPs and crypto-asset users that do not comply with their obligations under the CARF. These penalties are covered later in this commentary item.

### Implementing CARF in New Zealand

The CARF will be incorporated into New Zealand law by reference instead of full transposition. This is consistent with how other international information-sharing initiatives have been implemented in New Zealand.

Part 11B of the TAA contains provisions related to international-sharing agreements. This is made clear by section 185E, which states that the purpose of this Part is to give effect to and implement foreign account information-sharing agreements.

In light of this, new section 185E(6) provides that new section 185U imposes requirements on a person in relation to the CARF, thus giving effect to the CARF in New Zealand.

### Automatic flow-through of changes made to CARF

A key feature of the amendments is that any changes made at the OECD level to the CARF will automatically flow through into New Zealand law unless explicitly blocked by an Order in Council made by the Governor-General on recommendation of the Minister of Revenue. This is set out in section 226E and is covered later in this commentary item.

### Implementation and administration of CARF

New section 185U contains various provisions that are necessary to support the interpretation, administration, and implementation of the CARF in New Zealand.

New section 185U(2) provides that an RCASP must comply with the requirements of the CARF.

New section 185U(3) provides that a crypto-asset user must provide information to a person (such as an RCASP) if that information is necessary for that person to comply with the requirements of the CARF.

It is noted that, under the CARF, an RCASP is subject to the rules and has a reporting obligation in a jurisdiction if they satisfy any of the reporting nexus requirements (for example, being tax resident in a jurisdiction or having a regular place of business in that jurisdiction).

In circumstances when an RCASP has a reporting nexus to more than one jurisdiction, there is a hierarchy of nexus rules to enable the RCASP to determine in which jurisdiction they have the reporting obligation and to avoid double reporting. Because these rules are incorporated by way of reference to the OECD standard in New Zealand law, RCASPs should refer to the OECD CARF document itself to determine the relevant reporting obligation.

**Example 13: Application of CARF in New Zealand**

Crypto-ex is a large crypto-asset service provider that is headquartered and tax resident in the EU. Crypto-ex also has a regular place of business in New Zealand that deals with onboarding New Zealand customers and providing these customers with technical assistance when necessary.

Although Crypto-ex has a reporting nexus to New Zealand by virtue of having a place of business in New Zealand, it does not have a reporting obligation in New Zealand. This is because it is tax resident in the EU and, under the hierarchy of nexus rules in the CARF, tax residency in a jurisdiction is considered a higher nexus when determining in which jurisdiction the RCASP has a reporting obligation.

Crypto-ex therefore has a reporting obligation in the EU. This means the reporting requirements and due diligence procedures will be completed by Crypto-ex in the EU. The EU will exchange information with New Zealand to the extent it relates to New Zealand residents operating through Crypto-ex.

As previously mentioned, new section 185U(1) provides that, for the purposes of the TAA, terms used in the TAA that relate to the CARF have the same meanings as they have in the CARF.

New section 185U(4) further clarifies how certain provisions in the CARF apply in New Zealand. It specifies that:

- references to "jurisdiction" in the CARF are to be taken as references to New Zealand, unless the context requires otherwise (paragraph (a))
- the "effective date" for the CARF in New Zealand is 1 April 2026 (paragraph (b))
- the "reporting period" is a tax year, which is 1 April to 31 March (paragraph (c))
- the information subject to the reporting requirements under the CARF must be reported by the RCASP to Inland Revenue within three months of the end of the tax year to which the information relates (paragraph (d)).

New section 185U(4) also contains provisions related to record keeping and self-certification, which will be discussed below.

### Record-keeping requirements

New section 185U(4)(e) requires RCASPs to retain records of all documentation and data obtained under the CARF for a period of at least seven years after the end of the tax year to which the information relates.

Standard Practice Statement **SPS 21/02** *Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori* applies to customers who are required to keep records under the Inland Revenue Acts. It is intended that RCASPs must therefore keep records in accordance with **SPS 21/02**. This means that these records must be kept in New Zealand and in English or te reo Māori unless the RCASP has approval from the Commissioner of Inland Revenue to store records outside New Zealand or in another language.

### Due diligence procedures

An RCASP must conduct due diligence procedures for the purposes of determining whether a crypto-asset user is a reportable user. For these purposes, the RCASP must obtain valid self-certification from all crypto-asset users operating through it.

A self-certification contains identifying information about the user, including their tax residency, and must be signed or otherwise positively affirmed by the crypto-asset user to be valid.

For pre-existing crypto-asset users that are already operating through the RCASP prior to the implementation of the rules in New Zealand (ie, before 1 April 2026), the RCASP must obtain valid self-certification within a 12-month period following the effective date for the rules. New section 185U(3)(f) provides that the relevant date for the definition of "preexisting individual crypto-asset user" is 31 March 2026. Similarly, 31 March 2026 is the relevant date for the definition of "preexisting entity crypto-asset user" in new section 185U(3)(g). The effect of this is that the RCASP has a 12-month period until 31 March 2027 to obtain a valid self-certification in respect of pre-existing users (users who had an account with the RCASP prior to New Zealand's rules taking effect on 1 April 2026).

When establishing a relationship with a crypto-asset user who has not previously transacted through the RCASP (ie, a new user rather than a pre-existing user), the expectation is that the RCASP obtains valid self-certification when the user signs up to the platform and before facilitating exchange transactions on behalf of that user.

An RCASP that does not adhere to the self-certification requirements will be subject to New Zealand's penalty provisions. Similarly, a crypto-asset user that fails to provide an RCASP with the information necessary for the RCASP to comply with its obligations under the CARF will also be subject to penalties. The penalty regime is discussed later in this commentary item.

### Form, due date and use of information under CARF

The CARF requires RCASPs to provide information to tax authorities in accordance with the relevant XML schema. This ensures that the data tax authorities receive will be in a standardised format that is capable of being exchanged between tax authorities.

RCASPs that have a reporting requirement in New Zealand are required to provide information in respect of reportable users operating through them to Inland Revenue by 30 June each year (within three months following the end of the New Zealand tax year on 31 March). This reporting date is set by reference to the CARF and new section 185U(4)(d)).

This information is then exchanged by Inland Revenue with other foreign jurisdictions to the extent it relates to users resident in that jurisdiction. Under this exchange, Inland Revenue also receives information from other jurisdictions that have implemented the CARF in relation to New Zealand resident users operating through RCASPs in those jurisdictions.

Inland Revenue will use the information it receives under the CARF (and from foreign tax authorities) for tax administration purposes. This includes ensuring that crypto-asset users returned the correct amount of tax on their crypto-asset income.

### Enforcement and penalties

Jurisdictions that implement the CARF are required to implement effective enforcement provisions to address any non-compliance by:

- RCASPs with reporting obligations, and
- crypto-asset users who operate through RCASPs.

The Act makes new civil penalties in the TAA that could apply to RCASPs and crypto-asset users that fail to comply with their obligations under the CARF. The penalties are based on the penalties introduced to the TAA when the CRS and platform economy rules were implemented in New Zealand.

The definition of "civil penalty" in section 3(1) is amended to include references to the new penalty provisions for RCASPs (new section 142L) and crypto-asset users (new section 142M). This ensures that late payment penalties and use of money interest apply when penalties have been assessed if they have not been paid by the due date.

Consistent with the penalty provisions for CRS and the platform economy, the civil penalties under the CARF are also discretionary and must be assessed by the Commissioner before they become payable. New section 94E(1) provides that the Commissioner may make an assessment of the amount of a penalty under new sections 142L and 142M (the new penalty provisions) that, in the Commissioner's opinion, ought to be imposed. However, this discretion is tempered by new section 94E(2), which provides that the section does not apply to the extent to which a person establishes in proceedings challenging the assessment that the assessment is excessive or that they are not chargeable with the penalty.

The Commissioner can make an assessment of a penalty under new sections 142L and 142M without the need to issue a notice of proposed adjustment (NOPA), see amended section 89C(lba).

New sections 142L(6) (for RCASPs) and 142M(2) (for crypto-asset users) provide that any penalty assessed by the Commissioner under those sections becomes payable on the later of:

- 30 days after the date on which the Commissioner makes the assessment for the penalty, and
- the date set out by the Commissioner in the notice of assessment for the penalty as being the due date for payment of the penalty.

### Penalties when RCASPs fail to comply

New section 142L(1) provides that the section applies when an RCASP does not comply with the requirements they have in New Zealand under new section 185U. This means that an RCASP can be liable for penalties if they do not comply with their obligations under the CARF.

Under new section142L(2), an RCASP is liable for a penalty of $300 for each occasion that they do not comply with the requirements of the CARF. This is capped at a maximum of $10,000 per tax year under new section 142L(5)(a). RCASPs are not be liable if their non-compliance is due to circumstances outside their control, see new section142L(3). However, they are still liable for this penalty if a crypto-asset user has not provided them with a valid self-certification as required by the CARF, even if this is beyond their control.

An RCASP that does not obtain valid self-certification is still liable for penalties under new section 142L(3) on the basis that the OECD guidance requires jurisdictions to have strong measures in place to ensure valid self-certifications are obtained. Self-certification is an important component of the CARF that is used to verify the identity and tax residence of crypto-asset users and to therefore determine whether they are a reportable user under the CARF. The obligation to obtain valid self-certification from a crypto-asset user sits with the RCASP under the CARF. However, this penalty will not apply to an RCASP that prevents a crypto-asset user from transacting via the RCASP if they have not provided valid self-certification in accordance with the CARF.

New section 142L(4) sets out penalties that may be applied in circumstances when an RCASP does not take reasonable care to comply with the requirements of the CARF and no penalties have been imposed under new section 142L(2). In these circumstances, the Commissioner can assess penalties payable on each occasion the RCASP is identified as having failed to take reasonable care to meet a requirement of the CARF. On the first occasion, the Commissioner can assess a penalty of $20,000. On subsequent occasions, the Commissioner can assess a penalty of $40,000. The total amount of penalties that can be assessed for a tax year will be $100,000 under new section 142L(5)(b).

**Example 14: Penalties for RCASPs**

Inland Revenue anticipates receiving information from a New Zealand-based RCASP in respect of reportable users operating through it. Inland Revenue does not receive this information by 30 June (three months from the end of the tax year). Inland Revenue writes to the New Zealand-based RCASP and asks when to expect the information.

The RCASP responds stating that they refuse to comply with their obligations under the CARF.

On this occasion, the Commissioner imposes a $20,000 penalty under new section 142L(4).

Following the imposition of the penalty, the New Zealand-based RCASP starts to adhere to the reporting requirements and provides Inland Revenue with the relevant aggregate transaction information for its reportable users as required by the CARF.

Despite now providing information as required, Inland Revenue notices that the RCASP only obtains valid self-certifications from some of its users. Inland Revenue imposes multiple $300 penalties under new section 142L(2) for each occasion that the RCASP does not comply, quickly hitting the $10,000 cap in new section 142L(5). Inland Revenue also writes to the RCASP advising them of the self-certification requirements under the CARF. The RCASP responds, stating that the self-certification requirements are not a priority for them, and it continues to not obtain valid self-certification from crypto-asset users.

On this occasion, the Commissioner imposes a $40,000 penalty under new section 142L(4).

As the above example demonstrates, penalties under section 142L(2) are intended to apply for more minor breaches under the CARF. Penalties levied under section 142L(4) apply at a much higher standard, and will only be levied when the RCASP does not take reasonable care to comply with their obligations. Notwithstanding the above, all penalties are discretionary. Inland Revenue intends to take a light touch approach to penalties in the first instance, and aims to work with RCASPs to ensure compliance with the rules.

**Example 15: Penalties for RCASPs**

Kryptotrade is a New Zealand-based RCASP that reports to Inland Revenue under the CARF. In the information provided to Inland Revenue, several datapoints are missing for a small number of users. In this particular case, the data is missing the aggregate market value of transactions for two crypto-asset users for all their relevant crypto-asset transactions. These datapoints have been included for all Kryptotrade's other users.

Although this amounts to non-compliance with the requirements under the CARF, Inland Revenue decides not to issue any penalties to Kryptotrade in the first instance and writes to them outlining that this information is missing and must be provided under the CARF. Inland Revenue requests that this information is provided within 10 working days of the letter.

Kryptotrade does not respond to this request. Inland Revenue issues Kryptotrade with two $300 penalties under section 142L(2).

### Penalties when crypto-asset users fail to comply

A crypto-asset user is liable for a penalty of $1,000 under new section 142M for a failure to provide information to a person (for example, to an RCASP) if the information is necessary for the person to comply with the requirements of the CARF in relation to the crypto-asset user or related person.

**Example 16: Penalties for crypto-asset users**

Simon is a crypto-asset user who buys and sells crypto-assets through a New Zealand-based RCASP. Simon has been a customer of the RCASP since 2019 and is a pre-existing individual crypto-asset user under the CARF. Simon is a non-resident for tax purposes in New Zealand.

As Simon is a pre-existing user, the RCASP must obtain valid self-certification from Simon by 1 April 2027 (ie, by 12 months after the effective date of the CARF in New Zealand).

For the RCASP to obtain valid self-certification from Simon, Simon must provide the RCASP with personal information about himself, including his jurisdiction of residence for tax purposes, and ensure that his self-certification is signed or positively affirmed by him.

Simon does not provide this information because he knows that it could result in information about his crypto-asset transactions being shared with his tax authority.

Under new section 142M, the Commissioner can assess a penalty of $1,000 against Simon.



#### Absolute liability and strict liability offences will not apply

Section 143(2C) is amended to include a reference to the CARF. This ensures no person may be convicted of an absolute or strict liability offence for not complying with a requirement under the CARF.

### Regulations related to CARF

Section 226E contains a regulation-making power that enables the Governor-General to make Orders in Council that provide for the effect or lack of effect of a change to the CRS, the time period to which such changes may apply, and how that effect may apply to a person or group of persons.

Section 226E is amended to include reference to the CARF.

As a default position, changes made to the CARF by the OECD will take effect in New Zealand without the need for regulation or legislative change to incorporate the effect of those changes in New Zealand. This is intended to ensure that New Zealand's rules are equivalent with other OECD member countries that have also implemented the rules.

The purpose of the amendment to section 226E is to provide a mechanism to block changes from having effect in New Zealand that may be inappropriate. This could include, for example, changes that are optional and that the Government decides should not have legislative effect.

## Detailed guidance on CARF

The purpose of this Act commentary item is to focus on the specific amendments to New Zealand's tax laws to give effect to the OECD CARF.

The CARF itself is available on OECD's website at **https://web-archive.oecd.org/temp/2023-11-10/642426-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm**

# Amendments to Common Reporting Standard

2025/09-005

## Amendments to Common Reporting Standard

*Sections 3(1), 185N(7) and (12), and schedule 2 of the Tax Administration Act 1994*

### Summary of amendments

The Act gives effect to a number of amendments to the Common Reporting Standard (CRS) that were adopted by the Organisation for Economic Co-operation and Development (OECD) Council in June 2023. The amendments support the **Crypto-Asset Reporting Framework** (CARF) (outlined above) and also make several minor technical changes to improve the usability of the CRS. The Act also includes several consequential amendments that are necessary to implement the CRS amendments.

### Effective date

The amendments to the CRS take effect on 1 April 2026.

The first year for which reports under the amended CRS are required is the 2026–27 tax year, and these are due in 2027.

### Background

The OECD and G20 developed the CRS for automatic exchange of information (often referred to as "AEOI") to improve tax transparency and combat tax evasion. The CRS is the global framework for the collection, reporting and exchange of financial account information between tax authorities about persons that invest outside their jurisdiction of tax residence. The CRS requires in-scope financial institutions to meet specified due diligence and reporting requirements about non-resident account holders and controlling persons. An in-scope financial institution reports the specified account information to its domestic tax authority, and the authority then shares the information with the tax authority in the account holder's or the controlling person's jurisdiction of tax residence under the CRS.

These amendments to the CRS follow the first comprehensive review of the CRS and have been released together with the CARF. The amendments comprise changes to both the CRS Rules and Commentary and result in changes to the supporting XML schema.

New Zealand implemented AEOI and the CRS[8] in 2017. The approach adopted was to incorporate the CRS into the Tax Administration Act 1994 (TAA) by reference to the OECD standard, subject to modifications for New Zealand purposes. This approach reduces the risk of inadvertent differences between domestic legislation and the CRS and broadly enables amendments to flow into New Zealand law. As a result, only minimal changes are required to New Zealand legislation to give effect to the amendments to the CRS and to provide for New Zealand's specific requirements.

To support these amendments, Inland Revenue's guidance will be updated to set out the amended CRS obligations.

### Key Features

The CARF and the CRS are separate, complementary, frameworks. The amendments to the CRS ensure a smooth interaction between the CRS and the CARF. The amendments also incorporate several minor or technical amendments to improve the CRS.

The key amendments to the CRS:

- include new digital financial products that are alternatives to holding money or financial assets in an account that is currently subject to CRS reporting
- change the definition of financial asset to include derivatives referencing crypto-assets and the definition of investment entity to include those investing in crypto-assets
- introduce stronger due diligence procedures and more detailed reporting requirements to include contextual information about the account holders, controlling persons, and the financial accounts they own, and
- exclude capital contribution accounts intended for the incorporation of a new company or a pending capital increase.

8 See the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017.

For New Zealand purposes, the amendments are incorporated in New Zealand law automatically by section 185O of the TAA. The new definition of "CARF document" in section 3(1) of the TAA confirms the application of the CARF and the 2023 update to the CRS. This Act sets the effective dates for the amendments to the CRS and makes other changes to ensure its implementation in New Zealand.

## Detailed analysis

### New digital financial products

Electronic money products and central bank digital currencies are functionally similar to a traditional bank account and may therefore entail tax compliance concerns similar to those associated with bank accounts currently covered by the CRS.

The defined terms under Section VIII of the CRS are amended to ensure that the reporting and due diligence requirements under the CRS also apply to depository institutions that hold electronic money products and central bank digital currencies.

### Definitions of "financial asset" and "investment entity"

The CRS requires financial institutions to apply due diligence and reporting requirements to investments in derivatives and interests in funds and wealth management vehicles. The amendments expand the definitions of "financial asset" and "investment entity" in Section VIII of the CRS to include investments in derivatives referencing crypto-assets and interests in funds and wealth management vehicles that hold crypto-assets. The definition of "passive income" in section 3(1) of the TAA is amended accordingly to include relevant crypto-assets. However, unless they choose otherwise, financial institutions are not required to report the information on certain assets that have to be reported under the CARF.

### New due diligence and reporting requirements

New reporting requirements are included in Section I of the CRS to require additional information, such as the type of financial account, the roles of equity interest holders and controlling persons in an investment entity, and whether valid self-certification has been provided. The additional requirements in Sections II to VII of the CRS strengthen the due diligence procedures, such as the conditions under which financial institutions can rely on anti-money laundering (AML)/know your client (KYC) procedures.

### Exclusion of certain capital contribution accounts

The definition of "excluded account" in Section VIII of the CRS is amended to include capital contribution accounts. These accounts hold funds for a limited period of time for the purpose of the incorporation of a new company or a pending capital increase. To avoid misuse of such accounts, they can only be treated as excluded for a maximum period of 12 months.

### Other minor amendments

Under section 185O(3)(b) of the TAA, the CRS standard is treated as applying consistently with the Commentary on the CRS. The CRS update includes amended Commentary. This is intended to increase consistency in the application of the CRS and to incorporate guidance and responses to frequently asked questions that have been released by the OECD since the initial implementation of the CRS.

### New Zealand specific changes

#### Wider approach to CRS

New Zealand adopted the wider approach to the CRS. The wider approach is intended to minimise compliance effort by enabling due diligence to apply to all non-residents, regardless of whether the person is resident in a reportable jurisdiction (one with which New Zealand shares CRS information). The approach to due diligence is mandatory for all New Zealand financial institutions. Financial institutions are only required to report information on accounts that belong to a resident of a reportable jurisdiction. However, they have the option of reporting all account information to Inland Revenue, meaning that they do not need to further sort non-resident data.

The wider approach was given effect in New Zealand through schedule 2, part 1, item 2 of the TAA by replacing sections I to VII of the CRS with the text of Annex 5 included in the CRS publication. Annex 5 contains an extract from Sections I to VII that has been amended to reflect the wider approach.

Although the definition of "CRS standard" under section 3(1) of the TAA includes any future amendments to the CRS, parts of the current amendments to the CRS might be nullified under the current law because the wider approach in Annex 5 was not correspondingly amended by the OECD. As such, while there has been no change to the application of the wider approach to due diligence in New Zealand, schedule 2, part 1 of the TAA has been amended to ensure that any amendments to the CRS are automatically incorporated while also retaining the application of the wider approach. Additional items in schedule 2, part 1, have also been amended to ensure that the CRS works as intended.

**Lower/higher value accounts**

The CRS requires more stringent due diligence requirements for pre-existing individual and entity accounts with aggregate balances above certain thresholds (US$1 million for individual accounts and US$250,000 for entity accounts). This is intended to reduce the compliance burden.

An individual or entity account is deemed a pre-existing account if the financial account is maintained by a financial institution the day before the implementation of the CRS. The due diligence requirements that apply to the individual or entity account depend on the aggregate balance of the account.

With the inclusion of new financial assets, the amended CRS approved by the OECD includes an amended definition of "pre-existing account" to cater for financial accounts that should be treated as pre-existing accounts solely by virtue of the amendments to the CRS. However, corresponding adjustments have not been made to the provisions that determine if the account should be subjected to less or more stringent due diligence requirements.

The amendments under schedule 2, part 1 of the TAA clarify that the due diligence requirement that applies to a financial account that becomes a pre-existing account solely by virtue of the amendments to the CRS depends on the aggregate balance of the financial account.

**Qualified non-profit entities**

A non-profit entity, such as a charity, is required to report under the CRS if it meets the definition of a "reporting financial institution". Very few New Zealand charities are required to report under the CRS and there is no evidence that the existing treatment of non-profit entities has led to unintended consequences in New Zealand.

As such, New Zealand is not implementing the optional provision to include a "qualified non-profit entity" as a "non-reporting financial institution" (see the Commentary on Section VIII of the CRS).

**Dates**

The OECD left the dates for the amendments to the CRS to take effect unspecified. For New Zealand, the first year the changes come into operation is the 2026–27 tax year, with the first reports being made in 2027. This is in line with the OECD's expected timeline for jurisdictions to incorporate the changes in 2026 and to commence exchange under the amended CRS in 2027. Changes to schedule 2 specify the relevant dates for implementation of the amended CRS.

When appropriate, the provisions in section 185N and schedule 2 of the TAA that refer to initial implementation date of the CRS have also been amended to incorporate the implementation of the amendments to the CRS.

# Taxation of transfers from overseas pension schemes

2025/09-006

## Taxation of transfers from overseas pension schemes

*Sections CF 3(7), LA 5(2), LB 6BA, RA 6BB, RA 10(1)(a), RA 15(1)(cb) and (3)(b), RI 1–RI 5, RM 8B, YA 1, and schedule 1, part A, clause 17 of the Income Tax Act 2007*

*Sections 22D(3)(a)(vi), (3)(c)(iii) and (3B), 25B(5), 25C(d), 25E(1)(hb), 25LB, 31D, 57C, 98C, 108(1C)(a)(iib), and 143A(5)(gb) of the Tax Administration Act 1994*

*Sections 4(1), 220C, 220D, and schedule 1, clause 16B of the KiwiSaver Act 2006*



### Summary of amendments

The amendments address two issues that affect the transfer of overseas pension funds to New Zealand.

The amendments to the Income Tax Act 2007 (ITA) and the Tax Administration Act 1994 (TAA) provide for a "scheme pays" option, which allows a person transferring their overseas pension fund to certain New Zealand superannuation schemes to elect to have the New Zealand scheme pay the tax due on the transfer on the person's behalf.

The amendments to the KiwiSaver Act 2006 allow certain currently "locked-in" funds that a person transferred from the United Kingdom (UK) to a New Zealand KiwiSaver scheme to be transferred to a New Zealand qualifying recognised overseas pension scheme (QROPS), so that the balance of the person's funds in the KiwiSaver scheme can be transferred to another provider without UK tax implications.

### Effective date

The amendments to introduce "scheme pays" take effect on 1 April 2026.

The amendments to allow the transfer of locked-in UK funds from KiwiSaver schemes to QROPS took effect on 1 April 2025.

### Background

#### New Zealand's system for taxing retirement savings

New Zealand has a "taxed, taxed, exempt" (TTE) system for taxing retirement savings – scheme contributions from employment income and investment returns are taxed, but withdrawals are exempt.

Under this system, foreign pension transfers to New Zealand, when made outside the four-year transitional residence period,[9] result in New Zealand tax payable at an individual's marginal rate on some of the lump sum transferred. Broadly, the tax applies only to the amount of income accrued in the pension fund (fund growth) after the person became New Zealand tax resident or after their transitional period ended (when applicable). The tax on transfer is a catch-up of the tax that would have been paid on the fund if it had been invested in New Zealand from the time the person became fully resident here. In some cases, the amount of tax payable can be substantial, such as when a person transfers a large pension fund many years after becoming New Zealand resident.

#### United Kingdom's system for taxing retirement savings

In contrast to New Zealand, the UK has an "exempt, exempt, taxed" (EET) system for taxing retirement savings. Contributions and investment returns are exempt, but withdrawals are taxed.

Because contributions and investment returns are not taxed, the UK has strict rules governing transfers of UK pension funds to overseas schemes and subsequent payments from those schemes. Transfers to overseas schemes are only permitted free of tax if the receiving scheme is a QROPS. Broadly, QROPS are schemes that must comply with the UK rules for pension schemes. These include a rule that generally disallows withdrawals from the fund before the UK's minimum retirement age (currently 55).

Transfers to overseas schemes that are not QROPS are subject to unauthorised payment charges of up to 55%. In effect, the charges claw back the tax relief given to the pension funds accumulated in the UK.

Similar tax charges apply to withdrawals or transfers from QROPS made before age 55.

Although time limits apply to these UK charges, ongoing issues for migrants arise.

9 During the transitional residence period, a migrant's passive foreign-sourced income is exempt from New Zealand tax. Transitional residence is a concession to reduce compliance costs for migrants who are new to New Zealand.

### Problem 1: Payment of tax on transfer

New Zealand's TTE system means some migrants who transfer their pension fund to a QROPS after many years in New Zealand are met with a substantial tax liability, which they struggle to pay without making a withdrawal from the fund itself. However, doing so triggers UK tax charges. This creates a barrier to QROPS transfers.

### Problem 2: Locked-in KiwiSaver schemes

KiwiSaver schemes ceased to be recognised by HMRC, the UK tax authority, as QROPS from 6 April 2015[10] because they allow withdrawal before age 55 in various circumstances, such as the purchase of a first home. Consequently, UK pension funds transferred to KiwiSaver schemes before this change are in some cases unable to be transferred to another KiwiSaver scheme or managed without UK tax charges applying (ie, they are locked in). This causes issues for migrants and KiwiSaver providers wanting to transfer funds between schemes.

## Key features

### Payment of tax on transfer – "scheme pays"

New subpart RI of the ITA allows a person who is transferring their UK pension fund to a New Zealand QROPS or non-UK pension fund to a participating KiwiSaver scheme[11] to elect to have the New Zealand scheme pay the New Zealand tax due on transfer on the person's behalf, out of the transferred funds. This election, referred to in this commentary as "scheme pays", has the following features:

- The tax – "transfer scheme withholding tax" (TSWT) – is imposed at a flat rate of 28% of the "assessable withdrawal amount",[12] and is intended to be a final tax.
- "Scheme pays" is only available for transfers, not withdrawals; tax on withdrawals from overseas pension schemes remains payable by the individual, at marginal rates.
- "Scheme pays" is only available for transfers to QROPS and KiwiSaver schemes. All QROPS are required to offer "scheme pays". KiwiSaver providers may choose whether to offer it.
- The person can still choose to pay the tax themselves under current rules; "scheme pays" is optional for the person.
- Within 10 working days of the day the person derives the foreign superannuation withdrawal,13 the person must notify the scheme of:
  - the assessable withdrawal amount
  - the information the transfer scheme requires to enable it to provide the investment income information under section 25LB of the TAA (see **Detailed analysis**), and
  - whether they are electing "scheme pays".
- Changes to Subpart 3E of the TAA ensure that the investment income rules apply to "foreign superannuation withdrawals" received by all scheme providers that offer "scheme pays". These providers must submit investment income information reports, due by the 20th of the month following the relevant transfer. They must do this regardless of whether the person has elected "scheme pays".
- An assessable withdrawal amount for which the person has not elected "scheme pays" is "reportable income", under section 22D of the TAA, enabling the person's tax account to be pre-populated with the assessable income.
- If the person elects "scheme pays", the scheme is required to withhold and pay the tax due (TSWT) to the Commissioner by the 20th day of the following month. The transfer scheme must file a return in the prescribed form, under new section 57C of the TAA (see Detailed analysis).
- The person is liable for providing the correct assessable withdrawal amount and personal information to the scheme.
- A "scheme pays" election by the person is irrevocable.

10 KiwiSaver schemes continued to be able to receive transfers until 17 June 2015, due to a short transitional concession.

11 As explained further in **Detailed analysis**, the availability of "scheme pays" for transfers of non-UK pension funds to KiwiSaver schemes is motivated by equity considerations that arise as a consequence of creating the "scheme pays" mechanism for UK pension transfers.

12 This is the taxable portion of the transferred amount, calculated using either the schedule method or the formula method provided in section CF 3 of the ITA.

13 The day the person derives the foreign superannuation withdrawal will be the day the scheme receives the transfer of the foreign pension funds.

- Under new section 98C of the TAA, the Commissioner can make an assessment of TSWT.
- If the assessable withdrawal amount is incorrect, the Commissioner may assess the person for any shortfall under existing provisions in the TAA.
- Refunds of overpaid amounts will only be made to the scheme under new section RM 8B of the ITA.
- Several minor consequential amendments have also been made to ensure "scheme pays" works as intended. These include amendments relating to: tax credits (sections LA 5(2) and LB 6BA of the ITA); exceptions to knowledge offences (section 143A(5)(gb) of the TAA); and the time bar (section 108(1C)(a)(iib) of the TAA).



### Locked-in KiwiSaver schemes – election to transfer UK funds to QROPS

New sections 220C and 220D and clause 16B of schedule 1 of the KiwiSaver Act 2006 allow a KiwiSaver provider or individual member to elect for the member's locked-in UK retirement funds to be transferred from the KiwiSaver scheme into a New Zealand QROPS. After the UK funds have been transferred to the QROPS, the remaining balance of the KiwiSaver account can then be transferred to another KiwiSaver scheme without UK tax implications.

The election comes with the following features:

- If the individual member makes the election, they must notify the KiwiSaver provider and obtain the written consent of the QROPS to receive the transfer.
- If the KiwiSaver provider makes the election, it must obtain the written consent of the member and the designated QROPS.
- The provider or individual can designate any QROPS to receive the transfer. However, there is no legislative requirement for a QROPS to accept the transfer; it is up to KiwiSaver providers and members to get written consent from a QROPS to receive locked-in UK funds.
- The amount of locked-in funds is the "QROPS accumulation". It is defined in section 4 of the KiwiSaver Act as the "net value"[14] of the original amount transferred from the UK scheme to the KiwiSaver scheme (prior to 17 June 2015), whether directly or through one or more other KiwiSaver schemes, New Zealand QROPS, or foreign QROPS. The provider or investor should have records to support the calculation of the locked-in amount. Only that amount can be transferred into a QROPS, with the balance remaining subject to the KiwiSaver rules.
- The entire amount of locked-in UK funds must be transferred to the QROPS in one transaction.

## Detailed analysis

As briefly noted in **Background** above, transfers of UK pension funds to overseas schemes that are not QROPS are subject to UK tax charges of up to 55%. Transfers and withdrawals made from QROPS before age 55 are also subject to such charges, but certain time limits apply to these. These limits are a "10-year non-residence rule" and an additional "five years from transfer rule".[15]

This UK tax treatment creates two issues for migrants, discussed below.

### Payment of tax on transfer – "scheme pays"

Currently, migrants wanting to transfer their UK pension funds to a QROPS outside the transitional residence period must generally pay the transfer tax out of personal funds. They cannot withdraw from the transferred funds to pay the tax without incurring UK tax charges of up to 55%, since the withdrawal for that purpose would always be within the time limit. However, for many migrants, paying the tax themselves is difficult – particularly when the tax due is substantial.

The "scheme pays" option resolves this issue. The QROPS will withhold the tax from the transferred funds and pay it to Inland Revenue directly, and the UK will not impose any tax charges because no funds will flow to the migrant personally.[16] In effect, "scheme pays" eliminates the cashflow barrier to QROPS transfers and thereby enables more migrants to move their pension funds to New Zealand.

There are a number of design considerations for "scheme pays". Below is an analysis of each of the key features outlined in the previous section.

14 See **Detailed analysis** for more information about "net value" and the calculation of the QROPS accumulation.

15 **PTM 113210 – International: UK tax charges on non-UK schemes: the member payment charges and taxable property charges: the member payment charges: basic principles – HMRC internal manual**

16 Inland Revenue consulted HMRC when developing these proposals.

#### Tax due under "scheme pays"

The tax payable by the scheme under "scheme pays" (TSWT) is imposed at a flat 28% of the "assessable withdrawal amount" (as defined in section CF 3(7) of the ITA) notified to the scheme by the person. If correctly accounted for, this is a final tax on the assessable withdrawal amount for the person; the amount is treated as schedular income under section YA 1 and subject to tax at 28% under new clause 17 of schedule 1 of the ITA, regardless of the person's marginal tax rate.

The flat rate is simple for Inland Revenue's systems and reduces the risk of miscalculations that might result in tax flowing back to the individual, in breach of the UK's rules.

#### "Scheme pays" available only for transfers, not withdrawals

"Scheme pays" is not available for withdrawals. Tax on a withdrawal must still be paid by the individual, at their marginal rate. There is no cashflow issue with tax on withdrawals, because the individual has the cash out of which to pay the tax.

#### "Scheme pays" available only for transfers to QROPS and KiwiSaver schemes

"Scheme pays" is only available for transfers to a "transfer scheme", defined in section YA 1 of the ITA as:

- a QROPS, or
- a KiwiSaver scheme that chooses to withhold and pay TSWT under subpart RI (ie, that chooses to offer "scheme pays").

A definition of "QROPS" is provided in section YA 1 – a superannuation scheme in New Zealand that is a QROPS for the purposes of the Finance Act 2004 (UK).

All QROPS are required to offer "scheme pays". This is primarily to ensure the cashflow issue with payment of tax on transfers from the UK is addressed. It will also help Inland Revenue to identify taxable transfers and ensure the correct amount of tax is paid on them.

However, KiwiSaver providers can choose whether to offer the service. The main reason for allowing KiwiSaver providers to offer "scheme pays" is to create equity between migrants transferring funds from the UK and migrants transferring funds from other countries – not to resolve a cashflow issue. The KiwiSaver rules permit a withdrawal to pay tax, so there will often be no cashflow issue with payment of tax on transfers to KiwiSaver schemes from foreign schemes outside of the UK. Accordingly, it is appropriate that it be optional for them to offer "scheme pays". Only schemes that offer "scheme pays" are subject to reporting and other obligations for TSWT.

#### "Scheme pays" election optional for person

"Scheme pays" is optional for the person. This means that migrants with a marginal rate lower than 28% can still pay the tax themselves if they want and are able to. Migrants with a higher marginal rate can also pay the tax themselves if they prefer to do so.

#### Notification and reporting requirements for transfers

Under new section 31D of the TAA, within 10 working days of the day the person derives the foreign superannuation withdrawal, the person must notify the scheme of:

- the assessable withdrawal amount[17]
- the information the transfer scheme requires to enable it to provide the investment income information under section 25LB of the TAA, and
- whether they are electing "scheme pays".

The information specified in section 25LB of the TAA corresponds to rows 1, 2, 5, 8, 9 and 22 of schedule 6, table 1 of the TAA and includes the name of the payer (scheme) and the tax file number of the payer and investor as well as any further information required by the Commissioner. The intention is that both the foreign superannuation withdrawal and the assessable withdrawal amount are reported to Inland Revenue as appropriate.[18]

17 As calculated by the person using one of the methods in section CF 3 of the ITA.

18 The assessable withdrawal amount needs to be reported for two reasons: (1) so that the person's tax account can be pre-populated with the amount if the person has *not* elected "scheme pays"; and (2) so that the Commissioner can check whether TSWT has been correctly withheld at 28% if the person *has* elected "scheme pays".

The transfer scheme is required to provide this information to the Commissioner via monthly digital reports.

Transfers of overseas pension funds have been brought into the income investment reporting provisions in the TAA as follows:

- under new section 25C(d) of the TAA, foreign superannuation withdrawals that are income under section CF 3(2)(b) of the ITA (ie, that are withdrawals for reinvestment in a superannuation scheme in New Zealand) are investment income if that superannuation scheme is a transfer scheme
- under new section 25B(5) of the TAA, a transfer scheme is treated as the "payer" of a foreign superannuation withdrawal
- under new section 25E(1)(hb) of the TAA, a transfer scheme is a person who must provide investment income information to the Commissioner.

The due date for the investment income information report is the 20th of the month following the month of the relevant transfer.

This information will flow into the individual's myIR account.

**Assessable withdrawal amount treated as "reportable income" if "scheme pays" election not made**

If the person does not elect "scheme pays" and instead chooses to pay the tax themselves, the assessable withdrawal amount is "reportable income" as provided by amendments to section 22D of the TAA. The amount will be extracted from the information report provided by the scheme to the Commissioner and included in the person's pre-populated account with Inland Revenue, for the purposes of determining their income tax liability for the year.

An assessable withdrawal amount will never be "reportable income" if the scheme that received the relevant transfer (foreign superannuation withdrawal) does not offer "scheme pays", because that scheme is not subject to investment income reporting requirements in relation to the transfer.

**Scheme must pay tax and file return if "scheme pays" elected**

If the person elects "scheme pays", the scheme must pay the tax on transfer. The scheme cannot decline to pay the tax from the person's transferred funds.

The due date for the tax is the 20th of the month following the transfer. This is in line with payment deadlines for tax on other investment income paid for a particular month. The scheme must file a return in the prescribed form under new section 57C of the TAA, showing:

- the total amount of TSWT withheld for the period
- the total amount of assessable withdrawal amount from which TSWT has been withheld for the period
- further information the Commissioner considers relevant.

This requirement for the scheme to file a return for the investment income is in line with filing requirements for other payers of investment income, such as multi-rate portfolio investment entities.

In contrast to the information report under section 25LB, which should show the details of each transfer for the month (when there are multiple), the return under section 57C is aggregated and should show the total amount of assessable withdrawal amounts and TSWT withheld from them.

**Liability for correct information**

The person is responsible for providing to the scheme the correct personal information (such as name and IRD number) and the amount of their assessable withdrawal amount.

The scheme is only liable for tax on the notified amount (when the person elects "scheme pays"). If the amount notified by the person to the scheme turns out to be less than the correct taxable amount, then the person is liable for, and needs to pay to Inland Revenue, the shortfall together with any applicable interest and penalties. However, the tax will still be payable at 28% rather than the person's marginal rate.

The reason for making the person liable for calculating the correct assessable withdrawal amount is that the person – not the scheme – has the information required to do so. The scheme is unlikely to know details such as the person's period of New Zealand tax residence, which is required for the assessable withdrawal amount to be calculated. The scheme may need to advise the person of the exact amount of the transfer from the overseas superannuation scheme, of which the assessable withdrawal amount is a portion.

#### "Scheme pays" election irrevocable

"Scheme pays" elections are irrevocable, under section RI 2(3). Allowing a person to change their mind and pay the tax themselves after the scheme had already paid the tax would create additional, unwarranted complexity.

#### Commissioner may make assessment of TSWT

Under new section 98C of the TAA, the Commissioner may make an assessment of the amount of TSWT payable by a scheme.

The Commissioner can use this assessment power if he has reason to believe that the amount of TSWT paid was incorrect. The Commissioner will issue an assessment either requiring the scheme to pay an assessed shortfall or refunding an assessed overpayment to the scheme.

It should be noted that this assessment power is not applicable when the mistake is with the assessable withdrawal amount. As previously indicated,[19] in this case, the Commissioner will assess the person for any shortfall of TSWT, under existing provisions in the TAA. This is because it is the person, not the scheme, who is liable for the correct calculation of the assessable withdrawal amount (on which the TSWT is calculated). However, an overpayment of TSWT resulting from an overstatement of the assessable withdrawal amount by the person will still be refunded to the scheme, not the person, under new section RM 8B of the TAA.



**Example 17: "Scheme pays" election**

In 2017, Emma migrated from the UK to New Zealand. Emma has a UK pension fund, which she decided to leave in the UK in case she planned to return one day. However, over time she becomes settled in New Zealand and, in January 2027, Emma transfers her UK pension fund to a New Zealand QROPS (which is a portfolio investment entity (PIE)).

Using the formula method, Emma works out that the assessable withdrawal amount portion of her transferred funds is NZ$300,000. Her marginal tax rate is 39%. Emma does not have sufficient liquid funds to pay the $117,000 of tax due. She also does not want to make a withdrawal from the QROPS to pay the tax because the UK would impose charges of up to 55% of the transferred amount.

Instead, Emma decides to elect "scheme pays". Within 10 working days of the transfer, she notifies the QROPS of her election, and provides her personal information and the assessable withdrawal amount. The QROPS withholds $84,000 (being 28% of $300,000) from the total amount transferred and pays it directly to Inland Revenue by 20 February (the following month). At the same time, the scheme files a return showing the total amount of TSWT withheld, and total amount of assessable withdrawal amount from which that TSWT was withheld, for the month of January 2027. The scheme also provides an electronic information report showing the required details of each transfer received in January.

There is no further tax to pay on the transferred amount. Going forward, the investment returns Emma earns through the QROPS will be taxed under the PIE regime.

### Locked-in KiwiSaver schemes – election to transfer UK funds to QROPS

KiwiSaver schemes ceased to be included in the UK's QROPS regime on 6 April 2015 (although transfers already in progress could be completed by 17 June 2015 without incurring UK tax charges).

There has been uncertainty among some KiwiSaver providers and members as to the status of funds transferred prior to 17 June 2015. In particular, there has been uncertainty as to whether such funds can be transferred to another KiwiSaver scheme without triggering UK tax charges. Several UK tax rules contribute to this uncertainty.

First, as previously noted, UK pension funds can only be transferred to an overseas scheme free of UK tax charges if the funds are transferred to a QROPS. If UK funds are transferred to a non-QROPS, charges of up to 55% apply.

However, under the five-year non-residence rule in force at the time KiwiSaver schemes ceased to be recognised as QROPS, UK tax charges do not apply to payments made in relation to a member's transferred funds if the member is not UK resident at the time of the payment and was not UK resident earlier in the tax year or in any of the five previous tax years.

The application of these rules to historic KiwiSaver scheme transfers is as follows.

19 See above **Liability for correct information**.

Since KiwiSaver schemes had self-identified as QROPS prior to 6 April 2015, many migrants from the UK transferred their UK pension funds to a KiwiSaver scheme and were then free to transfer between KiwiSaver schemes if they or the providers wished. However, after 17 June 2015, a transfer to a different KiwiSaver scheme became subject to unauthorised payment charges. Therefore, in effect, migrants were "locked in" to the KiwiSaver provider they were with on that date.

Nevertheless, this was time limited. If a locked-in migrant was not UK resident earlier in the tax year, or in any of the five previous UK tax years, they would be able to transfer KiwiSaver schemes without incurring unauthorised payment charges, and in that sense, they would no longer be locked in. The UK tax year runs from 6 April to the following 5 April, so migrants could have ceased to be locked in from 6 April 2021.

However, KiwiSaver providers have had continuing obligations for locked-in members. These will include individuals who have had a period of UK residence since 17 June 2015, causing the five-year non-residence rule to reset for them. KiwiSaver providers have therefore continued to advocate for a solution to the locked-in issue.

The new amendments to the KiwiSaver Act allow a KiwiSaver provider or an individual member to elect for the member's locked-in UK retirement funds to be transferred from the KiwiSaver scheme into a New Zealand QROPS. After the UK funds have been transferred to a QROPS, the remaining balance of the KiwiSaver account can then be transferred without UK tax implications. This is because the KiwiSaver account will no longer contain the funds to which UK tax rules had applied.

Below is an analysis of each of the key features outlined previously.

**Consent requirements for election**

The consent requirements recognise that the choice of retirement savings provider is an investment decision that should be left to members, when practicable. The requirements also recognise that a QROPS should not be legally obliged to receive transfers of locked-in funds, as this would be an overreach for a very confined issue.

New sections 220C and 220D of the KiwiSaver Act provide the consent requirements for individuals and KiwiSaver providers respectively:

- If the individual member makes the election, they must:
  - notify the KiwiSaver provider of their intention to transfer the locked in funds to a designated QROPS, and
  - obtain the written consent of the QROPS to receive the transfer.
- If the KiwiSaver provider makes the election, it must obtain the written consent of:
  - the member, for the provider to transfer the locked-in UK funds to a designated QROPS, and
  - the designated QROPS, to receive the transfer.

It is up to providers, members and QROPS to agree between themselves how to manage the transfers of locked-in funds.

## Any QROPS may receive transfer

The provider or individual can designate any QROPS to receive the transfer. There is no "default" QROPS. However, as noted, there is no legislative requirement for a QROPS to accept such transfers; it is up to KiwiSaver providers and members to get written consent from the QROPS to receive locked-in UK funds.

**Locked-in amount for purposes of transfer ("QROPS accumulation")**

"QROPS accumulation" is defined in section 4 of the KiwiSaver Act as the net value of the original amount transferred from the UK scheme to the KiwiSaver scheme (prior to 17 June 2015), whether directly or through one or more other KiwiSaver schemes, New Zealand QROPS, or foreign QROPS. This is the amount that represents the locked-in funds.

"Net value" is an existing definition in section 4 of the KiwiSaver Act. In relation to a member's accumulation, it means the value of the accumulation once any appropriate debits and credits have been made to account for things like fees, permitted withdrawals, and positive and negative investment returns.

The definition of "QROPS accumulation" includes direct and indirect transfers. This recognises that funds may have been transferred in a variety of legitimate ways, and should still be permitted to be transferred to a QROPS, provided adequate records have been kept (explained further below).

Strictly speaking, the "locked-in" amount is the original amount transferred from the UK scheme to the KiwiSaver scheme (directly or indirectly), since it is only this amount that could be subject to UK charges. However, in some cases the original amount of UK funds transferred may not be easily identifiable – only the amount held currently, which includes investment returns (and possibly other debits and credits).

Including investment returns on the original locked-in amount is a practical response to this issue. Further, using the "net value" also broadly puts the migrant in the financial position they would have been in if their UK funds had been transferred to the QROPS in the first place.

When the KiwiSaver provider has incomplete information about the "net value" of the UK funds, then it can transfer the UK-related amount it is able to ascertain. This amount may be the original amount of UK funds transferred plus any investment returns the provider is aware of.

An example of this situation could be when complete information was not provided to the provider of the current KiwiSaver scheme. For instance, the previous provider may have reported to the current provider only the original amount of UK funds transferred, and omitted investment returns (or reported only aggregate investment returns across all funds in the KiwiSaver scheme). In such a case, the current provider does not need to approach the previous provider to ask for the additional information. It can simply transfer the original amount of UK funds to the designated QROPS.

The current provider should have, or obtain from the individual, records to support its calculation of the "QROPS accumulation". This is because it is important to distinguish between locked-in funds and other funds. The remaining balance will continue to be subject to the KiwiSaver rules.

**UK funds transferred to QROPS in single transaction**

The entire QROPS accumulation must be transferred to the QROPS in a single transaction. A one-time, "all or nothing" approach is simpler than allowing multiple partial transfers. It also mitigates the potential risk to the integrity of the KiwiSaver rules outlined above, because the complexity of multiple transfers could more easily result in more than the net value of locked-in UK funds being transferred to a QROPS.

**Example 18: Election to transfer locked-in UK funds from KiwiSaver scheme to QROPS**

On 30 September 2014, soon after migrating from the UK to New Zealand, Richard transferred his UK pension fund of NZ$400,000 to a KiwiSaver scheme. The KiwiSaver scheme was understood to be a QROPS, so no UK tax charges applied to the transfer.

However, on 6 April 2015, Richard's KiwiSaver scheme (and all KiwiSaver schemes) ceased to be recognised by the UK as a QROPS. The UK funds transferred to his KiwiSaver continued to be treated as QROPS funds, but now Richard could not transfer to another KiwiSaver scheme without incurring UK tax charges; he was locked into his current KiwiSaver scheme.

On 3 July 2025, Richard is notified by his KiwiSaver provider that the scheme is winding up, and all its members will be transferred to another better-performing KiwiSaver scheme. This will be a transfer under the KiwiSaver Act.

The KiwiSaver provider decides to transfer Richard's locked-in UK funds to a designated QROPS. The provider obtains the written consent of:

- Richard, for the provider to transfer the locked-in UK funds to a designated QROPS, and
- the designated QROPS, to receive the transfer.

The provider then transfers the portion of Richard's KiwiSaver accumulation attributable to UK funds to the QROPS. The amount transferred is $450,000, comprising the original $400,000 of UK funds and $50,000 of investment growth on that $400,000. The KiwiSaver provider has records that show the UK funds were ring-fenced so they could be separately identified.

There are no adverse UK consequences because it is a transfer to a QROPS, and Richard never had access to the funds.

Now that the UK funds have been transferred out of Richard's KiwiSaver scheme, the provider initiates the transfer of the KiwiSaver. The remaining balance in Richard's KiwiSaver account is transferred to the new KiwiSaver scheme with no UK tax implications.

# Other policy items

2025/09-007

# Approved issuer levy retrospective registration

*Section 86H(3), (4), and (5) of the Stamp and Cheque Duties Act 1971*
*Sections 32M(2C) and 138E(1)(e)(iib) of the Tax Administration Act 1994*
*Section RP17B(14)(aa) of the Income Tax Act 2007*



## Summary of amendments

The amendments to the Stamp and Cheque Duties Act 1971 (SCDA), the Tax Administration Act 1994 (TAA) and the Income Tax Act 2007 (ITA) allow a New Zealand borrower paying interest to a non-associated non-resident lender to register a security for approved issuer levy (AIL) retrospectively if the borrower did not register it on time, in certain circumstances. This allows AIL to be paid on interest paid prior to registration, rather than non-resident withholding tax (NRWT).

## Effective date

The amendments took effect on 1 April 2025. Retrospective registration is available from 1 April 2025 and the backdated date of registration cannot be before that date.

## Background

### NRWT versus AIL

The default position is that a New Zealand borrower paying interest to a non-resident lender is required to withhold non-resident withholding tax (NRWT) from the payments at 10% or 15%.[20] However, if the borrower is not associated with the lender, they can instead opt to pay AIL on the interest payments at 2% (or in certain cases 0%[21]), which reduces the NRWT liability to zero.

The AIL regime was introduced in 1991 to reduce the cost of third-party debt provided by non-residents to New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender can easily claim a full credit for New Zealand NRWT in its home jurisdiction, it will typically require the borrower to gross up their interest payments to cover the NRWT, which increases the cost of capital for the borrower. The AIL regime significantly reduces the tax cost to the borrower in situations when the lender is passing that cost onto them.

### Requirements for paying AIL

To pay AIL rather than NRWT on a particular security, the borrower is required to:

- either be an approved issuer or become an approved issuer
- apply to register the security, and
- pay the amount of AIL for the security.

Previously, a security always had to be registered before an interest payment was made for NRWT to be zero-rated on that interest payment.

### No historical scope for retrospective registration of securities

If a borrower did not register a security for AIL at the outset and sometime later the Commissioner of Inland Revenue became aware of the mistake, the borrower could register the security at that later time, but only on a prospective basis. This meant they continued to have an NRWT liability on any interest payments already made. The Commissioner did not have the administrative flexibility to allow retrospective registration for AIL.

While not common, Inland Revenue dealt with several cases of borrowers mistakenly not registering securities for AIL on time. In some cases, the borrower realised the mistake and disclosed it to Inland Revenue; in other cases, the mistake was discovered on review. Regardless, Inland Revenue's practice was to enforce the existing NRWT obligation on the interest payments made prior to registration, in accordance with the AIL/NRWT legislation.

20 Depending on whether New Zealand has a double tax treaty with the country in which the lender is resident.

21 The 0% rate is only applicable to certain widely held retail bonds.

### Key features

New section 86H(3) of the SCDA allows a New Zealand borrower paying interest to a non-associated non-resident lender to apply to register the security for AIL retrospectively if the borrower did not register it on time. Retrospective registration will only be approved if the Commissioner is satisfied that the delay in making the application:

- was caused by an oversight, or
- occurred despite reasonable efforts by the borrower to make the application before the date of the first interest payment.

There is no deadline for the Commissioner to consider applications for retrospective registration.

New section 86H(4) provides that, in evaluating whether the delay in registration was caused by an oversight or occurred despite the person's reasonable efforts, the Commissioner may consider the following factors, which are neither exhaustive nor individually determinative:

- the explanation and evidence that the borrower has provided as to the cause of the error
- the borrower's history of compliance with their tax obligations
- whether the documentation recording the money lent includes a clause dealing with AIL
- whether the borrower has already paid an amount that would have been AIL if the security had been registered and the person had been an approved issuer
- the tax residence of the borrower over the term of the security
- the duration of the delay in applying for the registration, and
- whether the borrower has made a voluntary disclosure of the error.

Additional features to note:

- Retrospective registration is available both for securities on which AIL is payable at 2% and securities qualifying for 0% AIL.
- Under new section 32M(2C) of the TAA, if the Commissioner backdates a person's date of registration, the person is also treated as being an approved issuer from the date of registration (if the person was not already an approved issuer).
- Under new section 138E(1)(e)(iib) of the TAA, a decision by the Commissioner in relation to retrospective registration is not challengeable.
- At the Commissioner's discretion, a borrower may use funds in a tax pooling account to satisfy an AIL liability resulting from a successful application for retrospective registration, by virtue of new section RP 17B(14)(aa) of the ITA.

## Detailed analysis

### Application for retrospective registration

The borrower must apply for retrospective registration of a security in writing and in a form approved by the Commissioner, per the requirements of existing section 86G of the SCDA. The application should consist of:

- the completed standard form for registration of a security
- a letter outlining the request for retrospective registration
- a copy of the security agreement
- any supporting evidence.

The letter should include a detailed explanation of the reason for the delay in registration. It should also indicate the date from which the borrower wishes for the security to be treated as registered. This can be any date between (and including) the date the loan agreement was signed and the date the application for registration is submitted to the Commissioner, provided it is no earlier than 1 April 2025.

The Commissioner has no legislative deadline to approve or decline applications. However, the Commissioner will process applications as soon as practicable, so that there is certainty as to whether AIL or NRWT is payable.

### Delay must be caused by oversight or occur despite effort to register on time

Retrospective registration is restricted to cases when the delay in registration:

- was caused by an oversight, or
- occurred despite reasonable efforts by the borrower to make the application before the date of the first interest payment.

The first category – "oversight" – covers cases when a borrower unintentionally failed to make any attempt to register the security on time (before the first interest payment).

The second category covers cases when the borrower was aware of their AIL obligations and attempted to register the security on time but was unable to do so due to extenuating circumstances.

The purpose of limiting the concession to unintentional delays is to support voluntary compliance with the AIL regime. If retrospective registration were permitted in all circumstances, taxpayers could deliberately not comply with the regime in the knowledge that, if they were audited, they would get the same basic outcome as if they had registered for and paid AIL on time (although interest and penalties could also be payable in the former case).

### Factors considered by Commissioner in evaluating cause of delay

The amendments include some factors the Commissioner may consider in evaluating whether the borrower is applying for retrospective registration of a security for AIL because of an oversight, or after making a reasonable effort to register the security before the first interest payment. These factors are included to guide operational staff in assessing applications and give borrowers some idea of whether their application is likely to be successful. These factors are not exhaustive because the Commissioner might want to consider other factors not initially contemplated. Similarly, no factor is individually determinative; building an accurate picture of the nature of an error will involve consideration of multiple factors.

### Explanation and evidence

In the letter requesting retrospective registration, the borrower should explain what caused their delay in applying for registration. If possible, the borrower should also attach evidence to support the explanation given in the letter. The Commissioner will be more likely to approve an application that includes a fulsome explanation and evidence, because it will be easier to assess whether the delay in registration was unintentional.

### Borrower's compliance history

If the borrower has a poor compliance history with AIL and NRWT, or with tax obligations generally, the Commissioner will be less inclined to regard the cause of the delay leading to retrospective registration as an oversight. This is because a pattern of non-compliance is indicative of a general disregard for tax obligations.

#### Whether loan agreement includes AIL clause

An AIL clause is a clause in a loan agreement that generally stipulates the borrower will register as an approved issuer, register the security for AIL, and pay AIL on the interest payments. Such a clause is generally evidence that the borrower intended to register the security and pay AIL. From the Commissioner's perspective, this increases the likelihood that the failure to register the security on time was an oversight.

By contrast, the mere presence of a gross-up clause in the agreement will not be seen as evidence that the borrower intended to register the security for and pay AIL. While a gross-up clause indicates that the borrower should have registered for AIL (since they will otherwise bear the cost of NRWT), it does not indicate that they actually contemplated AIL and intended to pay it.

### Whether borrower already paid AIL on security

If the borrower has already paid an amount equivalent to AIL[22] on the security they are seeking to retrospectively register, and therefore has been at least partly compliant with the AIL regime, the Commissioner is more likely to consider that the borrower's failure to register the security on time was an oversight. This will normally be a strong indicator of intent to comply.

22 Technically, under legislation, a borrower is not treated as paying "AIL" unless they are an approved issuer and the security is registered. However, if a borrower already has an AIL account open because they are an approved issuer, they can pay an amount equivalent to AIL on a security despite having failed to register the security. If the borrower does not already have an AIL account open, this is not possible.

### Tax residence of borrower during term of security

If the borrower was non-resident at the time the loan agreement was signed, there will logically be no AIL clause, since the borrower was not in New Zealand's tax net. This makes it more likely that the borrower's failure to register the security for AIL was an oversight. When they moved to New Zealand sometime during the term of the security, they may not have appreciated their new withholding tax obligations in relation to their interest payments to the non-resident lender.

### Duration of delay in applying for registration

The longer the delay in registration,[23] the less likely the Commissioner will regard it as an oversight. This is because the borrower has had longer to become aware of their mistake and disclose it. However, there is no deadline after which the Commissioner will decline applications for retrospective registration in all cases.

### Whether borrower made voluntary disclosure of error

If the borrower makes a voluntary disclosure of the error, it is less likely that they deliberately did not comply with the AIL regime, since they have chosen to draw the Commissioner's attention to the error. Therefore, the Commissioner will regard it as more likely that the error was an oversight.

## Other features

### Retrospective registration available for AIL at 2% or 0%

Retrospective registration will be available for securities subject to either 2% or 0% AIL. Only certain widely held securities qualify for 0% AIL, but there is no policy reason not to allow such securities to be registered retrospectively, just as securities subject to 2% AIL can be, if the conditions are met.

### Commissioner will also backdate approved issuer status if necessary

In some cases, a borrower who failed to register a security for AIL on time and applies to register it retrospectively may also be new to AIL and may not be an approved issuer either. In such cases, if the Commissioner approves the application for retrospective registration (which will include the borrower's election to become an approved issuer), the Commissioner will backdate the borrower's new approved issuer status to the same date as the registration. This is necessary because being an approved issuer is a precondition for paying AIL.

If the borrower was already an approved issuer prior to applying for retrospective registration, the above does not apply.

### Commissioner's decision in relation to retrospective registration not challengeable

A decision by the Commissioner to decline an application for retrospective registration is not challengeable.

It is customary for matters left to the discretion of the Commissioner not to be challengeable because the challenge procedures were designed to deal with interpretative disagreements relating to a person's tax assessment and not the application of administrative discretions. This is reflected in section 138E(1)(e) of the Tax Administration Act 1994, which lists a large number of other discretions for which no right of challenge is conferred.

Inland Revenue will assess applications for retrospective registration in good faith and may request or accept additional information from the borrower in support of their case if important information is missing from the initial application. Inland Revenue can still reconsider a decision if further information shows that the decision was made on incorrect facts.

If the borrower is not satisfied with the way their application has been handled, they may engage Inland Revenue's internal complaints process. If the borrower is still unsatisfied following the complaints process, they will have recourse to other processes that exist to resolve disagreements about how statutory discretions have been exercised, such as the Ombudsman and judicial review.

23 The period between the date of the first interest payment on the security on which there was an NRWT liability and the date on which the borrower applies for retrospective registration.

### Use of tax pooling funds to satisfy new AIL liability

AIL has been added to the categories of tax for which, on application by a person, the Commissioner has the discretion to allow the person to use funds in a tax pooling account to meet a new liability.[24]

If a borrower wishes to use pooling funds to pay an AIL liability resulting from a successful application for retrospective registration of a security, they should include this request in the letter submitted with the application. In accordance with section RP 17B(13) of the ITA, the Commissioner may allow the use of pooling funds if satisfied that the borrower did not choose not to comply with their tax obligations, and did not fail to take reasonable care to comply with those obligations.

## Effective date

Under new section 86H(5) of the SCDA, retrospective registration is available from 1 April 2025 and the backdated date of registration cannot be before that date. This means it will not be possible for borrowers to come forward and claim refunds of NRWT paid because of failures to register securities for AIL on time that occurred before 1 April 2025.

**Example 19: Most factors in favour – retrospective registration likely to be approved**

On 13 May 2025, the New Zealand-headquartered Dolphin Bank signs a loan agreement with the US-headquartered Jellyfish Bank to borrow NZ$60 million at 5% interest per annum. The term of the security is five years, and the interest payments are monthly. Dolphin is not associated with Jellyfish.

When negotiating the terms of the loan agreement, Jellyfish makes it clear that Dolphin will have to bear the cost of any New Zealand taxes due on the interest payments. To avoid having to gross up the interest payments to cover NRWT at 10%, Dolphin decides it will pay AIL (2%), and includes an AIL clause in the loan agreement. Dolphin is already an approved issuer; it has issued many other securities to foreign lenders, which it has registered on time and paid AIL on time for.

Dolphin makes its first interest payment to Jellyfish on the new security on 1 June 2025. However, there has recently been a change of staff on Dolphin's tax team, and during the handover the new tax manager forgot to register the security for AIL. He also fails to pay AIL after interest payments are made.

In March 2026, while preparing Dolphin's annual tax return, the tax team realises that the security with Jellyfish was not registered and no AIL has been paid on it. Dolphin promptly applies to the Commissioner to register the security retrospectively from the date of the loan agreement. In its letter, Dolphin explains the cause of the error and provides documentation showing that new staff were recruited shortly before the first interest payment on the security was due. Dolphin also attaches a copy of the loan agreement.

The Commissioner is likely to approve Dolphin's application for retrospective registration because Dolphin:

- provided an explanation and evidence for the cause of the delay in registering the security, showing that it was an oversight
- had a perfect compliance record with AIL previously
- included an AIL clause in the loan agreement (which it provided to the Commissioner)
- voluntarily disclosed the error, and
- made the application after a relatively short delay (nine months).

If the Commissioner backdates the date of registration of the security, Dolphin will owe AIL rather than NRWT on the ten interest payments already made. The interest payments totalled $2.5 million, so the AIL due will be $50,000. NRWT at 10% would be approximately $250,000, so Dolphin will save approximately $200,000 in tax. Dolphin will then continue to pay AIL on the interest payments going forward

24 The categories are provided in section RP 17B(14) of the ITA.

**Example 20: Most factors unfavourable – retrospective registration unlikely to be approved**

On 1 July 2025, the New Zealand-headquartered Anion Energy Ltd signs a loan agreement with the UK-headquartered Eternity Bank to borrow NZ$40 million at 6% interest per annum. The term of the security is three years, and the interest payments are quarterly. Anion is not associated with Eternity.

In the loan agreement, there is a clause stipulating that Eternity will not bear the cost of any New Zealand taxes due on the interest payments. However, there is no detail as to whether Anion will pay AIL or NRWT.

Anion is not an approved issuer. It does not notify the Commissioner that it wishes to become one or register the security for AIL. Anion also has a variable record with tax compliance generally; it has been late on a number of end-of-year return filings.

Anion makes seven interest payments to Eternity between 1 September 2025 and 1 March 2027, on which it pays neither AIL nor NRWT.

In April 2027, Inland Revenue audits Anion and discovers that it has not been meeting its New Zealand tax obligations in relation to its interest payments to Eternity. On 20 April 2027, Anion applies to register the security for AIL retrospectively from the day before the first interest payment. In its letter, Anion states that it intended to register the security for AIL but forgot to do so. It provides no further explanation of the mistake and does not provide a copy of the loan agreement.

The Commissioner is unlikely to approve Anion's application for retrospective registration, because Anion:

- provided only a very brief and unsubstantial explanation of the cause of the error
- did not provide a copy of the loan agreement to the Commissioner, meaning the Commissioner could not see whether it contained an AIL clause (which it did not)
- did not voluntarily disclose the error, and
- has a variable record with tax compliance generally.

If the Commissioner declines the application for retrospective registration, Anion will owe NRWT rather than AIL on the seven interest payments already made. The interest payments totalled $4.2 million, so the NRWT due will be approximately $420,000.[25] Anion can still potentially become an approved issuer and pay AIL going forward.



25 See previous footnote.

**Example 21: Borrower already paid AIL – retrospective registration likely to be approved**

On 3 February 2026, Bicentennial Tech, a New Zealand company, borrows NZ$30 million from Okane Plus – a Japanese investment bank. The parties are not associated. The term of the security is four years, and interest at 7% per annum is payable monthly.

There is an AIL clause in the loan agreement. Bicentennial is already an approved issuer, and has other securities that it has registered and is paying AIL on.

Bicentennial does not register the security for AIL before making its first interest payment to Okane Plus on 3 March 2026. The employee who is normally responsible for registering securities is away on leave for several weeks in February and neglects to delegate the task to a colleague. However, when the employee returns in March, he arranges for Bicentennial to pay AIL on the first interest payment via myIR. Bicentennial then continues to pay the equivalent of AIL on the unregistered security each month.

In July 2027, Inland Revenue initiates a risk review of Bicentennial and discovers that it has neglected to register the loan from Okane Plus. Now realising the mistake, Bicentennial makes a voluntary disclosure and applies to register the security retrospectively.

The Commissioner is likely to approve Bicentennial's application for retrospective registration. Although the company only disclosed the mistake on a risk review, it has consistently paid the equivalent of AIL by the due date, and there is nothing in the disclosure or Bicentennial's compliance history to suggest that it deliberately disregarded the registration requirement. Moreover, the loan agreement that Bicentennial included in its application contains an AIL clause.

If the Commissioner approves Bicentennial's application, the company will owe AIL rather than NRWT on the 17 interest payments already made. The interest payments totalled $2,975,000, so the AIL due will be $59,500, which has already been paid by Bicentennial so there will be no further liability. NRWT at 10% would be approximately $297,500, so Bicentennial will have saved approximately $238,000 in tax.

**Example 22: Borrower not New Zealand resident when security entered into – retrospective registration likely to be approved**

On 15 December 2025, Katie, a resident of the United Kingdom, takes out a £500,000 interest-only mortgage from the UK-headquartered Eternity Bank (her bank) on a rental property in London. The mortgage has a fixed interest rate of 4% per annum, and interest payments are monthly. The mortgage agreement includes a standard gross-up clause. However, this is not relevant to Katie at the time she signs the agreement since she is paying interest domestically. She makes her first interest payment on 1 January 2026.

On 30 September 2026, Katie moves to New Zealand. She holds onto her UK rental property and continues making interest payments to Eternity Bank (from her account with that bank).

Katie automatically qualifies for New Zealand's transitional residence exemption, so for the first four years of her New Zealand tax residence she has no tax obligations in relation to her interest payments to Eternity Bank. On 1 October 2030, Katie ceases to be a transitional resident. However, she does not realise this means she now has an NRWT liability on her monthly interest payments to Eternity Bank.

In January 2032 Katie gets a tax agent, who notices that Katie has not been withholding NRWT from her interest payments to Eternity Bank. Katie makes a voluntary disclosure of the error on 15 January and applies to register the security for AIL retrospectively from 30 September 2030 – a day before the first interest payment on the mortgage on which there was a New Zealand NRWT liability.

The Commissioner is likely to approve Katie's application for retrospective registration. Because Katie was not a New Zealand tax resident at the beginning of the term of the security, it is clear why Katie did not consider AIL, and why there is no AIL clause in the mortgage agreement. In addition, the duration of the delay in applying for registration was relatively short (16 months), and Katie made a voluntary disclosure.

If the Commissioner approves the application, Katie will owe AIL rather than NRWT on the 16 interest payments made to Eternity Bank since she became New Zealand tax resident. Converted from UK pounds to NZ dollars at the prevailing exchange rate, those interest payments totalled $59,200, so the AIL due will be $1,184. NRWT at 10% would be approximately $5,920, so Katie will save approximately $4,736 in tax. She will then continue to pay AIL on future interest payments.

**Example 23: Delay despite borrower's reasonable effort to register on time – retrospective registration likely to be approved**

Entomoth is a newly incorporated New Zealand food company. On 9 April 2025, it borrows NZ$50 million from Talon – an Estonian investment bank – at 8% interest per annum, to help fund some of its setup costs. Interest payments are monthly, beginning on 1 May 2025. Entomoth includes an AIL clause in the loan agreement.

The designated tax manager is aware that Entomoth needs to apply to register the security for AIL before 1 May. However, Entomoth is still in the process of applying for an IRD number, and cannot register the security until the number has been issued.

The IRD number is issued on 8 June 2025. Entomoth now applies to register the security for AIL retrospectively from 30 April – the day before the first interest payment. In its letter, Entomoth explains that it is a new company and would have registered the security before the first interest payment if it had had an IRD number.

The Commissioner is likely to approve Entomoth's application. Entomoth made reasonable efforts to register the security by the date of the first interest payment by making the application as soon as it had obtained all the information necessary to do so. The delay in registration occurred due to the duration of an Inland Revenue process. Entomoth could have contacted Inland Revenue in April to alert the Commissioner to the expected delay, but it is still clear from the circumstances that the delay was not intentional.

If the Commissioner approves the application, Entomoth will owe AIL rather than NRWT on the two interest payments already made to Talon. The interest payments totalled $666,667, so the AIL due will be $13,333. NRWT at 15%[26] would be approximately $100,000, so Entomoth will save approximately $86,667 in tax.

26 At the time of publication, New Zealand does not have a double tax agreement with Estonia, so the standard interest NRWT rate of 15% would apply.

2025/09-008

# Exempt employee share scheme threshold increase

*Section CW 26C(2) of the Income Tax Act 2007*

## Summary of amendment

The amendment increases the thresholds used for exempt employee share schemes to recognise past inflation and provide a buffer against future inflation. The maximum value of the shares that can be offered increases from $5,000 to $7,500, and the maximum benefit provided increases from $2,000 to $3,000.

## Effective date

The amendment is effective for offers of shares made under exempt employee share schemes on and after 1 April 2025.

## Background

Employee share schemes are arrangements whereby shares in an employer company are provided in whole or in part in return for services. These are an important way of remunerating employees in New Zealand and internationally. A "benefit" received under an employee share scheme is generally taxable income.

Employers can provide exempt benefits to employees under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes that are offered to all, or almost all, a business's employees, and when both the benefit of the scheme and the amount required to be invested by an employee to get that benefit are limited.

As prescribed by section CW 26C of the Income Tax Act 2007, the eligibility criteria included, among other things, the following conditions:

- the maximum market value of the shares provided to an employee is $5,000 a year
- the maximum discount an employer can provide on the market value of the shares to an employee is $2,000 a year
- 90% or more of full-time permanent employees who are not subject to the securities law of other jurisdictions must be eligible to take part in the scheme, and
- any minimum period of service that may be required before an employee becomes eligible to take part must not exceed three years.

The two thresholds above (namely, those that govern the maximum market value of shares that may be provided to an employee and the maximum permissible discount on the shares' market value) were last set in 2018.

## Key features

In recognition of the impact of inflation since the thresholds were last set and to provide a buffer against future inflation, the amendments increase:

- the maximum market value of the shares provided from $5,000 to $7,500 a year, and
- the maximum benefit that can be provided from $2,000 to $3,000 a year.

This is to make it easier for companies in the start-up and tech sectors to attract and retain talent through the use of employee share schemes.

**Example 24: Exempt employee share scheme**

A Co offers an employee share scheme to its employees. This is offered to all its employees provided they have worked at A Co for a period of three years.

A Co provides these shares at a market value of $7,500 with a discount rate of $3,000. This means that employees are required to spend $4,500 to receive the shares.

***If offers of shares occur before 1 April 2025***

A Co has exceeded the thresholds for use of an exempt employee share scheme prescribed by the current section CW 26C.

The discount provided by A Co is considered employment income, and it is therefore a taxable benefit under the general regime. A Co is allowed a deduction for the benefit provided to the employee and any money spent establishing or managing the exempt scheme.

***If offers of shares occur on or after 1 April 2025***

A Co is within the new thresholds for an exempt employee share scheme prescribed by the changes to section CW 26C. It also meets all the eligibility criteria for operating an exempt employee share scheme, which include but are not limited to:

- offering the shares to all (or almost all) of its employees, and
- having a minimum period of service to receive the shares that does not exceed three years.

A Co is operating an exempt scheme and is required to notify Inland Revenue that the scheme exists.

The discount provided by A Co is exempt income for the employee. A Co will be denied a deduction for the benefit provided to the employee. However, it will be allowed a deduction for establishing or managing the exempt scheme.

2025/09-009

## New Zealand Business Number information sharing

*Schedule 7, part C, subpart 1, clause 25(1)(b) and (3B) of the Tax Administration Act 1994*

### Summary of amendment

The amendment authorises Inland Revenue to share the contact address and tax file numbers of unincorporated entities with the Ministry of Business, Innovation and Employment (MBIE). This will be carried out in a one-off exercise.

### Effective date

The amendment took effect on 30 March 2025.

### Background

Unincorporated entities can voluntarily register for a New Zealand Business Number (NZBN), whereas companies are automatically assigned an NZBN. The voluntary aspect of registering is meant to reduce compliance costs for unincorporated entities that may not require an NZBN. However, there has been a relatively slow uptake in unincorporated entities registering for an NZBN.

Without widespread uptake, the effectiveness of NZBNs in supporting business confidence and certainty and creating smoother business interactions is reduced since the data held in the register is incomplete.

MBIE would like to address this issue through an email campaign aimed at unincorporated entities without an NZBN that would communicate the benefits of NZBNs and the process of registering. This would utilise the contact details and IRD numbers for unincorporated entities that Inland Revenue holds.

To authorise the sharing of this information, the provision in the Tax Administration Act 1994 (schedule 7, part C, subpart 1, clause 25) needs to be amended to enable information to be shared for the purpose of undertaking the email campaign.

At the select committee stage, in response to the Office of the Privacy Commissioner's submission, officials recommended amending the provision to clarify that the information sharing, and the use of this information is limited to the specific duties and functions relating to the New Zealand Business Number Act 2016, rather than the broader functions of MBIE.

The provision was also amended to reference the information sharing being carried out by way of a single transfer of data, and will be repealed through section 201(5) of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 on 1 April 2026. This reflects the policy intent of the information share being carried out on a one-off basis and provides transparency around the limitations of the authorisation of the information sharing.

2025/09-010

## Enrolling persons aged under 16 in KiwiSaver

*Section 35 of the KiwiSaver Act 2006*

### Summary of amendment

The amendment allows young persons under the age of 16 to enrol in KiwiSaver if one of their guardians contracts directly with a provider in the name of the young person.

### Effective date

The amendment takes effect on 1 July 2025.

### Background

The ability of prospective KiwiSaver members to enrol in KiwiSaver varies with age. For example, provided they meet the eligibility criteria:

- Persons aged 18 or over can join KiwiSaver by either contracting directly with a KiwiSaver provider or enrolling through their employer.
- Persons aged 16 to 17 who have a guardian can enrol in KiwiSaver if the person and one of their guardians jointly contracts directly with a provider in the name of the person.
- Persons aged under 16 and who are not in the care of Oranga Tamariki can join KiwiSaver provided all their guardians contract directly with a provider in the name of the young person.

These settings seek to balance access to KiwiSaver against the rights of parents and guardians to make decisions about the welfare of the young people they are responsible for.

However, the current enrolment rules can pose a challenge for solo parents in situations when it is difficult to secure the agreement of a former partner who is a guardian of the young person.

Under the amendment, young people under the age of 16 can enrol in KiwiSaver provided one of their guardians contracts directly with a provider in the name of the young person. This encourages young people to begin saving for their retirement and reduces the barriers to enrolling in KiwiSaver.

2025/09-011

# Overseas donee status

*Schedule 32 of the Income Tax Act 2007*

## Summary of amendments

The amendments:

- add seven charities to the list of donee organisations in schedule 32 of the Income Tax Act 2007 (donors to these charities are eligible for tax benefits on their donations)
- remove six organisations that have ceased operating from schedule 32, and
- update references to three organisations to align with name changes.

## Effective date

The effective dates are:

- additions to schedule 32 took effect on 1 April 2024
- the addition of the New Zealand Memorial Museum Trust – Le Quesnoy took effect on 1 April 2025
- removals from schedule 32 took effect on 30 March 2025
- name changes took effect as listed below under "Updated references".

## Background

Donors to organisations listed in schedule 32 are entitled, as individual taxpayers, to a tax credit of 33⅓% of the monetary amount donated up to the amount of their taxable income. Companies and Māori authorities may claim a deduction for donations up to the level of their net income. Charities that apply funds towards purposes that are mostly outside New Zealand must be listed in schedule 32 before donors become eligible for these tax benefits.

## Detailed analysis

### Additions to schedule 32

- Altus Resource Trust
- Kapuna Education Charitable Trust
- Kiwi Trust for Palestinian Children Relief
- New Zealand Memorial Museum Trust – Le Quesnoy
- ReliefAid
- Rescue and Prevent Trust
- Support Services for Humanity (donee status is for a limited time, ending on 31 March 2029).

### Removals from schedule 32

- Help a Child Foundation
- Operation Vanuatu Charitable Trust
- Sampoerna Foundation Limited
- SpinningTop Trust
- The Food Bank of New Zealand
- Together for Uganda.

### Updated references

References to the following organisations are updated to align with name changes:

- "Community Action Overseas (Oxfam NZ)" to "Oxfam Aotearoa", with effect from 25 May 2021
- "Cotton On Foundation Limited" to "Cotton On Foundation New Zealand Limited", with effect from 1 April 2022
- "Altus Resource Trust" to "Altus Pacific Aid", with effect from 8 May 2024.

2025/09-012

# Artist resale royalty tax implications

*Sections 2(1), 3(4)(c), 5(29), 20(3)(ib), 26B, and schedule "Non-taxable legislative charges", clause 2 of the Goods and Services Tax Act 1985*
*Sections CC 9B, CC 9C, DB 69A, and YA 1 of the Income Tax Act 2007*
*Regulations 6 and 10 of the Resale Right for Visual Artists Regulations 2024*

## Summary of amendments

The amendments ensure the appropriate income tax and goods and services tax (GST) treatment for the artist resale royalty scheme set out in the Resale Right for Visual Artists Act 2023.

## Effective date

The amendments took effect on 1 December 2024, the same date the artist resale royalty scheme came into force.

## Background

The Resale Right for Visual Artists Act 2023 established a scheme to ensure that creators of visual art are recognised and rewarded when their work is sold on the secondary market. The scheme came into force on 1 December 2024.

Under the scheme, eligible artists and other right holders (such as the estates of deceased artists) are entitled to a payment that is 5% of the resale value of any "qualifying resales" of their "original visual artwork", referred to as a "resale royalty", when sold on the secondary market. For the resale royalty to apply, among other criteria, "qualifying resales" must have a resale value of at least $2,000 excluding any applicable GST. The resale royalty must generally be paid by the seller (the art vendor) or the art market professional (such as the auction house that managed the sale of the art) to a collection agency. The collection agency is responsible for collecting and distributing the resale royalty to eligible artists and other right holders, among other things. In recognition of the collection agency's costs, it is entitled to retain 20% of the resale royalty it collects.

No specific tax law changes were made when the scheme was introduced. Inland Revenue considered the tax implications of the scheme in further detail after it came into force. This highlighted several issues with the law, including:

- The GST treatment of resale royalties and the services provided by the collection agency.
- The treatment of the amounts retained by the collection agency from resale royalties for income tax and GST purposes.

The amendments made by the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 address these issues.

## Key features

The amendments:

- Require sellers (art vendors) and art market professionals to provide information to the collection agency about whether the qualifying resale of original visual artwork was or was not a taxable supply for GST purposes.
- Include, if the qualifying resale of original visual artwork that gives rise to the resale royalty is not a taxable supply for GST purposes, a requirement for GST-registered artists and right holders who receive the resale royalty in respect of or in relation to their taxable activities to account for GST on the resale royalty.
- Clarify the amount retained by the collection agency is a fee for administrative services it provides artists and right holders in administering the scheme and is therefore liable for GST registration.
- Clarify the deductibility of the collection agency's fees for eligible artists and right holders who are liable for income tax, and GST, as applicable.

## Detailed analysis

### Artists and right holders

#### Goods and services tax implications

*Sections 20(3)(ib) and 26B of the GST Act*

Artists and right holders who receive resale royalties will only need to account for GST on them in certain circumstances.

There are no GST implications for artists and right holders who are not registered for GST.

Artists and right holders who are registered for GST may in some circumstances need to account for GST on resale royalties they receive by including them in their GST returns. This is because, even though artists and right holders are not making a supply of any goods or services, the resale royalties are treated for GST purposes like they are further consideration for the supply of the original artwork when certain conditions are met. This means that GST-registered artists and right holders who receive resale royalties may need to account for GST on them, ensuring they are treated similarly to other artists and right holders who are not registered for GST (who also are unable to deduct GST on costs they incur).

*Accounting for GST on resale royalties (section 26B of the GST Act)*

If an artist or right holder who is registered for GST is paid a resale royalty, whether they need to account for GST on the resale royalty depends on whether:

- the resale royalty is paid in respect of or in relation to their taxable activity, and
- the qualifying resale of the original visual artwork that gave rise to the resale royalty was itself a taxable supply.

If the resale royalty is paid to a GST-registered artist or right holder and it is not in relation to, or in respect of, the artist or right holder's taxable activity, they do not need to account for GST on the resale royalty. This means they will not include it in their GST return.

**Example 25: Resale royalty is not in respect of, or in relation to, person's taxable activity**

Kelvin is a GST-registered plumber. He is also a successor entitled to a resale royalty on the subsequent sale of original artwork produced by a distant relative of his, Martha.

Kelvin does not need to account for GST on the resale royalty he receives, because it is not in respect of, or in relation to, his taxable activity as a plumber.

If a resale royalty is paid to a GST-registered artist or right holder and **it does** relate to, or is in respect of, their taxable activity, they will not need to account for GST on the resale royalty if the collection agency has notified the artist or right holder that the sale of the qualifying artwork that gave rise to the resale royalty **was itself a taxable supply** for GST purposes.

If it was a taxable supply that was subject to GST at the rate of 15%, then the artist or right holder does not need to account for GST on the resale royalty. This is because if the resale royalty was included in their GST return, the resale royalty would, in effect, be double-taxed.

**Example 26: Qualifying resale of original artwork notified as taxable supply at 15%**

An auction house manages the resale of qualifying artwork that sells for $2,300. The sale price includes GST. The auction house pays a resale royalty of $100 to the collection agency and notifies the collection agency at the time of payment that the sale of the artwork was a taxable supply subject to GST of 15%.

The collection agency pays the resale royalty to Harriett. It also notifies Harriett that the sale of the artwork was a taxable supply subject to GST of 15%.

Harriett is a GST-registered artist. However, because the sale of the artwork that gave rise to the resale royalty was a taxable supply, she does not need to account for GST on the resale royalty in her own GST return.

In some circumstances, the sale of qualifying artwork may be an export that is subject to GST at the rate of 0%. If this applies, the artist or right holder must include the resale royalty in their GST return, but in the box for "Zero-rated supplies". No GST will be payable on the resale royalty.

**Example 27: Qualifying resale of original artwork notified as a taxable supply at 0%**

An auction house manages the sale of qualifying artwork that sells for $11,500. The sale of the artwork is subject to GST.

However, the artwork is exported, and GST therefore applies at the rate of 0%.

The auction house pays a resale royalty of $575 to the collection agency. It also notifies the collection agency that the rate of tax that applied to the artwork was 0%.

The collection agency informs the artist, Kaitlyn, that the sale of the artwork that gave rise to the resale royalty was subject to GST at the rate of 0%.

Kaitlyn is a GST-registered artist. She must include the resale royalty of $575 in her GST return in the box for "Zero-rated supplies".



If the sale of the qualifying artwork **was not** itself a taxable supply where GST applied at the rate of 15% or 0%, the artist or right holder receiving the resale royalty will need to account for GST on the full resale royalty (including the amount retained by the collection agency) by including it in their GST return in the box for "Total sales and income". The effect of this is they will be liable to account for GST equal to the tax fraction of the full amount of the resale royalty.

A person who needs to account for GST on a resale royalty must do so in the GST return for the taxable period in which the resale royalty is paid to them by the collection agency. This applies regardless of the person's accounting basis.

**Example 28: Qualifying resale of original artwork not notified as a taxable supply**

Judd sells an original artwork privately and does not involve an art market professional. There is an agreement between the parties (Judd and the purchaser) to voluntarily treat the resale of the artwork as subject to a resale royalty of 5% under the Resale Right for Visual Artists Act (a "voluntary qualifying resale").

The sold artwork is an original visual artwork produced by Laura, an artist. Judd is therefore required to pay a resale royalty to the collection agency. The art sells for $4,600, but GST does not apply to the sale.

Judd pays the resale royalty of $230 to the collection agency. He notifies the collection agency that the sale of the qualifying artwork was not subject to GST.

The collection agency pays the resale royalty to Laura and notifies her the sale of the artwork was not subject to GST. Laura is a GST-registered artist, and because the resale royalty relates to her taxable activity, she must account for GST on the resale royalty.

Laura includes the resale royalty of $230 in the "Total sales and income" box of her GST return. Laura does this in her GST return that covers the taxable period in which she is paid the resale royalty.

*Deducting GST for the collection agency's services (section 20(3)(ib) of the GST Act)*

A GST-registered artist or right holder who receives a resale royalty is generally able to deduct input tax equal to the tax fraction of the amount of the resale royalty that is retained by the collection agency. This is the amount of GST that should be shown on any taxable supply information (that is, invoice) provided by the collection agency. This deduction should be taken in the GST return for the same taxable period in which the resale royalty was paid, despite the person's accounting basis for GST.

**Example 29: Timing of GST input tax deduction**

Following on from the facts in Example 28 Laura should deduct GST input tax on the collection agency's services by including its fee of $46 in her GST return. She includes this in the "Total purchases and expenses" box in the GST return that covers the taxable period in which she is paid the resale royalty.

*No requirement for taxable supply information*

If an artist or right holder must account for GST on a resale royalty they receive, they are not treated as making a supply of any goods or services to another person. This means they will not need to provide taxable supply information.

## Sellers (art vendors) and art market professionals

### Goods and services tax implications

*Section 26B of the GST Act; regulations 6 and 10 of the Resale Right for Visual Artists Regulations 2024*

To enable an artist or right holder who receives a resale royalty to determine the correct GST treatment, art vendors and art market professionals who are liable to pay resale royalties to the collection agency must provide information about the qualifying resale of original visual artwork to the collection agency. This information includes:

- whether the qualifying resale of the original visual artwork was a taxable supply, and
- the rate of tax (either 15% or 0%) of the supply, if applicable.

This information must be provided in the same way as all other information required to be provided by art vendors and art market professionals to the collection agency.

When an art vendor or art market professional pays a resale royalty to the collection agency, this is not consideration for a supply of any goods or services for GST purposes. This means that GST will not be collected on the resale royalty and input tax deductions will not be available to art vendors or art market professionals.

*Transitional implications of retrospective amendments*

Before the amendments were made, the resale royalty was treated as consideration for a supply of goods or services by the collection agency to the payer of the resale royalty. This meant that GST applied, and the payer (the art vendor or art market professional) may have been entitled to an input tax deduction when the resale royalty was invoiced or paid. However, these new rules will apply retrospectively, with effect from 1 December 2024. This means GST should not have applied. This also means any taxable supply information provided by the collection agency that showed GST as being applicable to resale royalties should be corrected, and any GST that applied to the resale royalty should also be corrected.

**Example 30: GST previously paid on resale royalty by art market professional or art vendor**

A sale of qualifying artwork occurs in December 2024. This gives rise to a requirement for the art vendor (or art market professional) to pay a resale royalty to the collection agency.

In accordance with the law applying at that time, the collection agency issued an invoice for the resale royalty and the invoice showed the resale royalty was subject to GST of 15%. The art vendor (or art market professional) pays the resale royalty (inclusive of GST) to the collection agency. If the art vendor or art market professional was registered for GST, it may have deducted input tax in relation to the resale royalty.

Following the law change, the collection agency issues supply correction information to the art vendor (or the art market professional). The supply correction information shows that the resale royalty was not subject to GST. This means:

- Any input tax deduction taken by a GST-registered art vendor or art market professional would need to be accounted for as an adjustment of GST (as no GST input tax was deductible).
- Any output tax paid by the collection agency on the resale royalty would need to be accounted for as an adjustment of GST (as no GST was payable).

These adjustments would occur in the GST return for the taxable period in which the supply correction information was provided.

### Income tax implications

*Sections CC 9B and DB 69A of the ITA*

If a person receives a resale royalty that is business income of the person, new section CC 9B of the Income Tax Act 2007 (ITA) sets out that the income of the person is the full amount of the resale royalty, and not the net amount received from the collection agency.

**Example 31: Income is equal to full amount of resale royalty**

Qualifying artwork is sold at auction with a value of $23,000. This includes GST of $3,000.

The auction house that managed the resale of the artwork pays a resale royalty equal to $1,000 to the collection agency. The collection agency is entitled to retain $200 as a fee for its services, being 20% of the resale royalty. It pays Harry, an artist, the balance of $800.

Harry is liable for income tax on the resale royalty because it relates Harry's business of producing artworks. He is treated as deriving income equal to $1,000.

When a person receives a resale royalty that is subject to income tax,[27] they are also entitled to a deduction for the part of the resale royalty retained by the collection agency as a fee for its services. New section DB 69A of the ITA permits this deduction.

**Example 32: Deduction available for amount kept by collection agency**

Following on from the facts in Example 31, Harry is entitled to a deduction for the amount retained by the collection agency for its services. The usual rules apply to determine whether the amount of the deduction is GST-inclusive or GST-exclusive (that is, if Harry is a GST-registered person, the deduction for income tax purposes will be GST-exclusive, but if he is not a GST-registered person, the deduction will be GST-inclusive).

## Collection agency

The collection agency is responsible for collecting resale royalties from art vendors and art market professionals, for distribution to eligible artists and right holders. The Resale Right for Visual Artists Act and associated regulations allow the collection agency to keep a percentage of resale royalties collected in recognition of the collection agency's services to artists and right holders.

### Goods and services tax implications

*Sections 3(4)(c) and 5(29) of the GST Act*

The collection agency provides administrative services associated with collecting and distributing resale royalties to artists and right holders. New section 3(4)(c) clarifies that the services provided by the collection agency are not financial services for the purposes of the GST Act.

New section 5(29) sets out that the amount retained by the collection agency is treated as a fee paid by artists and right holders for its services.

New section 3(4)(c) of the GST Act sets out that the services provided by the collection agency are not financial services.

### Income tax implications

*Section CC 9C of the ITA*

New section CC 9C of the ITA sets out that the collection agency has income equal to the part of the resale royalties it is entitled to retain. It is not liable for income tax on the full amount of the resale royalties it collects.

## Consequential amendments

*Section 2(1) and clause 2 in the schedule "Non-taxable legislative charges" of the GST Act; section YA 1 of the ITA*

### Definitions

The GST Act and the ITA have been amended to include references to relevant terms from the Resale Right for Visual Artists Act.

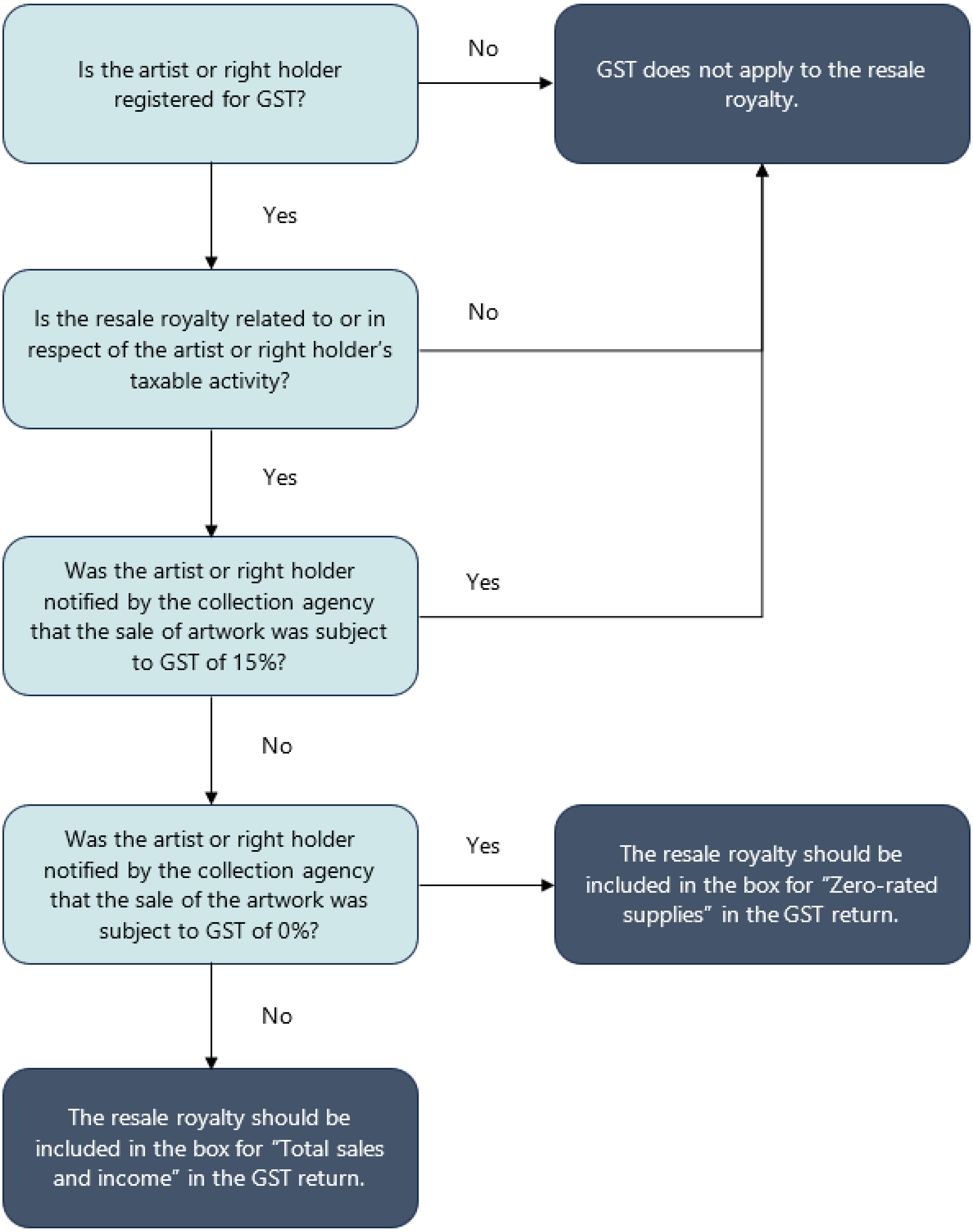
### Inclusion of amounts on the schedule of non-taxable legislative charges

Because specific rules apply to determine the GST treatment of resale royalties, the schedule of non-taxable legislative charges has been amended to include a reference to amounts payable under the Resale Right for Visual Artists Act. This ensures the general rules for legislative charges, which treat charges, including fees and levies, payable under legislation as consideration for a supply of goods or services (subject to several exceptions) do not apply to resale royalties.

27 A resale royalty paid to an artist who was in business when they created the artwork will be liable for income tax on the resale royalty they receive (whether it comes from a resale made in New Zealand or overseas). The changes made by the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 did not change this outcome.

**How to determine whether to include resale royalty in GST return**

This flowchart can be used to determine whether an artist or right holder who receives a resale royalty must include it in their GST return.



2025/09-013

## Auckland Future Fund income tax exemption

*Sections CW 39B and YA 1 of the Income Tax Act 2007*
*Section 2(1) of the Goods and Services Tax Act 1985*

### Summary of amendments

The amendments provide that the Auckland Future Fund (AFF) is exempt from income tax but subject to GST.

### Effective date

The amendments apply from 30 March 2025.

### Background

Auckland Council has established the AFF as a long-term investment fund for the benefit of the current and future communities of the Auckland region. The Council is promoting the Auckland Council (Auckland Future Fund) Bill. This is a local Bill, with the purpose of fostering public confidence in the administration of the AFF, while enabling the Council to retain the flexibility to make decisions about the entity or body that holds and manages the AFF.

As a local authority, Auckland Council is exempt from income tax. Under current law, the AFF will be taxable, yet will be undertaking activities that could be directly undertaken by the Council.

### Key features

The amendments provide that the AFF is exempt from income tax and deemed to have a taxable activity for GST purposes (similar to local authorities).

2025/09-014

## Final-year fees-free

*Sections 3(1), 7AAAA, 120C(1)(a)(iv), 120C(2)(c), and schedule 7, clause 39D of the Tax Administration Act 1994*
*Sections 4(1), 119(2)(e), 194(2)(c), and 195B of the Student Loan Scheme Act 2011*

### Summary of amendments

The first-year fees-free scheme has been replaced with a final-year fees-free scheme from 1 January 2025. Payments of an eligible learner's fees will be made following completion of their study programme.

### Effective date

The final-year fees-free scheme began on 1 January 2025. The design is being implemented over the course of 2025 with systems ready for first payments to learners to be made from January 2026.

### Background

The objectives of the final-year fees-free policy are:

- to incentivise learners, particularly disadvantaged learners, to progress through and finish their programme of study
- to reward learners who complete their programme of study, and
- to reduce the overall cost of study.

### Key features

The amendments to the Tax Administration Act 1994:

- allow Inland Revenue to administer final-year fees-free
- amend the definition of "tax" to include an amount payable in relation to an entitlement made under the scheme for the purposes of various provisions
- allow for the fees-free entitlement to be credited against a student loan and/or paid to the learner
- require Inland Revenue to publish on an internet site the eligibility requirements, which would include:
  - the eligibility and entitlement parameters, and
  - requiring the learner to apply for their final-year fees-free entitlement within 12 months of their completion date (with a transitional rule for those who complete before 31 December 2025 who will have until 31 December 2026 to apply)
- authorise Inland Revenue to share information with the Tertiary Education Commission and vice versa, and
- allow for the imposition of use of money interest when a learner does not have a student loan, and an amount is paid to them in error.

The amendments to the Student Loan Scheme Act 2011:

- credit the final-year fees-free entitlement effective as at the completion date
- ensure the credit of the final-year fees-free entitlement does not satisfy the learner's repayment obligation
- ensure the credit of the final-year fees-free entitlement cannot be offset against assessments or late payment interest
- ensure the credit of the final-year fees-free entitlement is not treated as an excess repayment, and
- allow the amount that determines an overseas-based borrower's repayment obligation to be reduced by any fees-free entitlement paid to the loan.

# GST remedials

2025/09-015

## Zero-rating rules for international vessels exempt from import entries

*Section 11A(1)(iba) of the Goods and Services Tax Act 1985*

### Summary of amendment

The amendment ensures that services provided directly in connection with temporarily imported commercial vessels are zero-rated for GST purposes.

### Effective date

The amendment took effect on 30 March 2025.

### Background

Services that are provided directly in connection with temporarily imported goods are zero-rated for GST purposes. The policy rationale for zero-rating these services is that they ultimately relate to consumption that will occur outside New Zealand when the goods are re-exported. This accords with the destination principle, which is a widely adopted international taxation principle that assigns the right to tax consumption of goods and services to the country in which those goods and services are destined to be consumed.

There is a disparity in the GST treatment that applies to services provided directly in connection with temporarily imported non-commercial vessels and commercial vessels that are passing through New Zealand. The issue is that services provided in relation to temporarily imported non-commercial vessels are zero-rated for GST purposes, but services provided in relation to commercial vessels that are passing through New Zealand are subject to GST. By way of example, cleaning or repair services provided in relation to a non-commercial temporarily imported yacht are zero-rated, but the same services provided in relation to a commercial ship that is temporarily in New Zealand are currently standard rated.

It is contrary to the policy intent for GST to apply to these services. This is because the services are provided in relation to vessels that are merely passing through New Zealand and thus ultimately reflect consumption that will occur outside New Zealand.

This treatment of these services also creates inefficiencies in the GST system because it means that foreign entities that operate commercial vessels need to register for GST in New Zealand to claim back the GST charged on these services. By contrast, if services provided in relation to commercial vessels were zero-rated for GST purposes, the foreign entities that operate these vessels would not be required to register for GST.

### Detailed analysis

Prior to this amendment, section 11A(1)(i) of the Goods and Services Tax Act 1985 (GST Act) provided that services supplied directly in connection with goods referred to in sections 136 and 137 of the Customs and Excise Act 2018 are zero-rated for GST purposes. These sections in the Customs and Excise Act refer to temporarily imported goods, but exclude vessels that are used commercially from the scope of the zero-rating rule.

The Act amends the scope of section 11A(1)(i) of the GST Act to also include services provided directly in connection with specific vessels that are exempt from import entry under regulation 25 of the Customs and Excise Regulations 1996. The scope of the zero-rating rule is expanded to also include services provided directly in connection with commercial vessels that are not used for cargo or passengers (see regulation 25(1)(b)), commercial vessels that engage in the movement of cargo or passengers (see regulation 25(1)(ba)), and any craft that arrives solely for repair during the course of an international voyage (see regulation 25(1)(c)). The amendment also applies to aircraft that are temporarily in New Zealand as part of an international voyage, military craft performing duties on behalf of a foreign country, and certain goods associated with export (see regulation 25(1)(a), (bb), (d), (da), (g) and (h)).

NEW LEGISLATION

2025/09-016

# Approved taxable period end dates

*Sections 15(1), (5)(a), 15B(4), (4B), 15C(1), (3), (3B), (3C), 15D(1)(a), 15E(2), (2B), 15EB, 15EC, and 15ED of the Goods and Services Tax Act 1985*

## Summary of amendments

The amendments provide greater flexibility for GST-registered taxpayers to have alternative dates approved by the Commissioner of Inland Revenue (the Commissioner) as their taxable period end dates, provided good commercial reasons exist for those dates.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

## Effective date

The amendments have effect on and after 30 March 2022.

## Background

Under the GST Act, a registered person's taxable period generally ends on the last day of a month. However, since the introduction of GST, there has been provision in the GST Act for a registered person to apply to the Commissioner for approval to have a taxable period ending on a different day, provided the requested end date meets certain requirements.

There are businesses that operate on the "4-4-5" accounting calendar for their finance functions, including income tax reporting and GST returns. The 4-4-5 calendar structure divides the year into four quarters of 13 weeks, with each quarter grouped into two four-week "months" and one five-week "month". Amendments were made in 2022 to better enable registered persons operating on the "4-4-5" accounting calendar to seek the Commissioner's approval to have taxable period end dates that align with their accounting cycle. However, the amendments were not entirely successful in achieving this outcome.

## Key features

Amendments have been made to ensure the law provides the desired level of flexibility for the Commissioner to approve a registered person's requested taxable period end dates. The changes apply equally to monthly, two-monthly and six-monthly filers, as well as non-resident suppliers who are required to file quarterly.

The amendments:

- Provide broad discretion for the Commissioner to approve the taxable period end dates of a registered person if the Commissioner is satisfied that:
  - the person has good commercial reasons for those end dates, and
  - approving the change in the person's end dates is consistent with the purpose of the rules allowing approved taxable period end dates (the purpose of the rules is set out in a new "purpose" provision).

  These changes replace the rules that were formerly in sections 15E(2) and 15EB in their entirety.
- Provide the Commissioner with a power to prescribe methods that some registered persons may use to determine their approved taxable period end dates and the corresponding filing and payment due dates. The prescribed methods apply to registered persons filing monthly or two-monthly who are approved to have taxable period end dates based on a four-weekly accounting cycle.

NEW LEGISLATION

## Detailed analysis

### Wider Commissioner's discretion to approve alternative end dates

Sections 15E(2) and 15EB have been replaced in their entirety.

New section 15E(2) provides that a taxable period may have an end date that is not the last day of a month if the Commissioner approves a change in end date for a registered person under section 15EB.

Section 15EB(1) is a purpose provision for the rules for approved taxable period end dates. Under this subsection, the Commissioner may approve a change in a registered person's taxable period end date under section 15EB(2) to reduce the person's compliance costs.

For example, the person may have an accounting cycle for their finance functions that is not based on calendar months (such as the 4-4-5 accounting cycle mentioned above). In this situation, the person may wish to have taxable period end dates that are aligned with their accounting cycle to reduce their compliance costs. Another example might be when a registered person is applying for an approved taxable period end date as a "one off" because they intend to join or leave a GST group during a taxable period.

New section 15EB(2) sets out that, on application by a registered person, the Commissioner may approve an end date for the person's taxable period that is not the last day of a month. The Commissioner may approve the person's requested end date if the Commissioner is satisfied that:

- the person has good commercial reasons for it, and
- making the change is consistent with the purpose set out in section 15EB(1) for making changes to taxable period end dates (namely, reducing compliance costs that would arise for the person if they were required to have taxable period end dates based on the last day of a month).

The discretion for the Commissioner in new section 15EB(2) is similar to the former rule, which allowed the Commissioner to approve a taxable period end date for a registered person if the Commissioner was satisfied there were good commercial reasons for the person's chosen date. The main difference is the former rule only applied when the person requested an end date that was a specific date in the month (for example, the 20th of the month, regardless of the day of the week on which it falls). For instance, the former rule did not apply when the taxpayer's chosen end date was a specific day of the last week in the relevant period.

The new rule makes no such distinction between an end date that is a specific date in the month and one that is a given day of the week, and is broad enough to accommodate either scenario.

The new rules also enable approvals of taxable period end dates to apply indefinitely, rather than being time-limited to only apply for one year (as has been the Commissioner's past practice with taxpayers using the 4-4-5 accounting cycle). An application to change the end date of a taxable period will still need to be made in writing. This can be done online using myIR.

### Removal of restrictions for end date based on specific day of the week

The new rules also remove restrictions that previously applied when a registered person filing monthly or two-monthly sought approval for an end date that was a specific day of the last week in the period and fell outside seven days before or after the end of the month. This means that:

- The former requirement that the person's accounting systems do not allow the use of an end date within seven days of the end of the month (which was problematic for some businesses using a 4-4-5 accounting cycle and for businesses using a four-weekly cycle) no longer applies.
- The former rules that limited the length of the person's taxable period to just four or eight weeks also no longer apply.

**Example 33: Monthly filer using 4-4-5 accounting cycle**

Company A, a monthly filer for GST, uses the 4-4-5 accounting calendar for its finance and other reporting functions. Each four- or five-week "month" in its accounting cycle usually ends on a Thursday, except the June taxable period, which always ends on 30 June (being Company A's balance date) regardless of the day of the week on which it falls.

Based on Company A's accounting calendar for its 2025–26 financial year, Company A is approved by the Commissioner to have the following taxable period end dates shown in the table below.

| Taxable period | Approved end date |
|---|---|
| July 2025 | 31 July 2025 |
| August 2025 | 28 August 2025 |
| September 2025 | 2 October 2025 |
| October 2025 | 30 October 2025 |
| November 2025 | 27 November 2025 |
| December 2025 | 1 January 2026 |
| January 2026 | 29 January 2026 |
| February 2026 | 26 February 2026 |
| March 2026 | 2 April 2026 |
| April 2026 | 30 April 2026 |
| May 2026 | 28 May 2026 |
| June 2026 | 30 June 2026 (balance date) |

The Commissioner is satisfied that Company A has good commercial reasons for these taxable period end dates and that approving these end dates is consistent with the purpose of the rules allowing approved taxable period end dates (because the dates are based on the normal accounting cycle used by Company A for its finance functions, and it would be expensive for Company A to re-run periods outside of its normal accounting cycle).

The Commissioner's approval also extends to allowing Company A to continue to use taxable period end dates that are aligned with its 4-4-5 accounting calendar on an ongoing basis (that is, for future financial years).

**Example 34: Two-monthly filer using 4-5-4 accounting cycle**

Company B, a two-monthly filer for GST, uses the 4-5-4 accounting calendar for its finance and other reporting functions. Each four- or five-week "month" in its accounting cycle usually ends on a Friday. Company B would like to have taxable period end dates for GST that are aligned with this accounting cycle, except for the February/March taxable period, which would always end on 31 March (being Company B's balance date) regardless of the day of the week on which it falls.

Based on Company B's accounting calendar for its 2025–26 financial year, Company B is approved by the Commissioner to have the following taxable period end dates shown in the table below (as well as to have taxable period end dates based on its 4-5-4 accounting calendar on an ongoing basis).

| Taxable period | Approved end date |
|---|---|
| April/May 2025 | 30 May 2025 |
| June/July 2025 | 25 July 2025 |
| August/September 2025 | 26 September 2025 |
| October/November 2025 | 28 November 2025 |
| December 2025/January 2026 | 23 January 2026 |
| February/March 2026 | 31 March 2026 (balance date) |

The Commissioner is satisfied that Company B has good commercial reasons for these taxable period end dates and that approving these end dates is consistent with the purpose of the rules allowing approved taxable period end dates.

It does not matter that one of Company B's end dates (23 January) is more than seven days before the relevant month end or that future end dates might also be more than seven days before or after the relevant month end.

### Extension of wider discretion to six-monthly and quarterly filers

The widening of the Commissioner's discretion to approve taxable period end dates (if there are good commercial reasons for those dates) does not only apply to monthly and two-monthly filers, but also applies to:

- Six-monthly filers. Previously, six-monthly filers could only apply to have taxable period end dates approved by the Commissioner if those dates were not more than seven days before or after the last day of the month. This restriction does not exist under the new rules, meaning six-monthly filers are now on an equal footing with monthly and two-monthly filers.
- Non-resident suppliers who are required by section 15(6) to have three-month (quarterly) taxable periods. Before the 2022 changes, the rules allowed these non-resident suppliers to apply to the Commissioner for a taxable period end date that is not the last day of a month, but changes made in 2022 meant the rules no longer allowed for this. The new rules restore the pre-2022 position that these registered persons may apply for approved taxable period end dates, but without the previous "seven days before or after" restriction.

### When change in end date would take effect

New section 15EC applies when a registered person has approval under section 15EB(2) to change the end date of their taxable period. The rule provides that the change in taxable period end date takes effect at:

- the end of the taxable period in which the person applies (for example, if a registered person filing monthly applies during March to change the last day of each of their taxable periods to the 28th of the relevant month, the first taxable period that the change in end date will be effective for is the April taxable period, as this is the first taxable period after the end of the March taxable period), or
- the end of a later taxable period nominated by the person and approved by the Commissioner.

It also provides that the Commissioner may approve a change in the end date of the person's taxable period to take effect at the start of the taxable period in which the person applies for the change, but only if the person can show that it was not practicable for them to apply for the change before the start of that taxable period. In this context, "not practicable" means it was not possible in practice for the person to have applied for the change before the start of the relevant period. For example, if a newly GST-registered person wishes to change their taxable period end date effective from the start date of their registration (so that the change in end date applies for their very first taxable period), it clearly would not be practicable for the person to have applied for the change before they had even registered for GST.

Other situations when it might not be practicable for a registered person to apply to change their taxable period end date before the start of the first taxable period they wish the change to be effective for include when:

- A person sells their company to another person and the vendor wishes to align the end date of the last taxable period under their ownership (as a one-off change in the company's taxable period end date) with the date of the shareholding change. In this situation, the date of the shareholding change may not be known until close to the settlement date, so it might not always be possible in practice for the vendor to apply for the change in end date before the start of the relevant taxable period.
- A company joins a GST group part way through a taxable period and, similar to the shareholding change example above, the company wishes to align the end date of that taxable period with the date that it joins the group. As in the shareholding change example, the effective date for a company joining a GST group may not be known until very shortly before the event.

### Length of time change in end date is effective for

An approval of a registered person's change in taxable period end date has effect until:

- the Commissioner withdraws the approval because the Commissioner considers the person does not have good commercial reasons for their end date or the approval is not consistent with the purpose set out in section 15EB(1)
- the person changes to using the "default" taxable period end dates (being the last day of a month), or
- a new approved taxable period end date takes effect, if the person re-applies under section 15EB(2) for a new taxable period end date.

## Changing from approved end dates to default end dates

There may be situations when a registered person who has approved taxable period end dates may wish to change from using those dates to the default (month end) dates. For example, this may arise when the person purchases a new accounting system.

Section 15E(2) now provides that a registered person who has a change of end date approved under section 15EB(2) may subsequently choose to use the default end date. If they choose to do so, they must notify the Commissioner of this change.

In other situations, the Commissioner might discover that a person with approved taxable period end dates does not actually have good commercial reasons for those end dates, or the approval of those dates might not be consistent with the purpose of the rules set out in section 15EB(1). In this situation, the Commissioner may withdraw the approval for the person's end dates, meaning the person may be required to change back to using the default end dates if no other end date has been approved under section 15EB(2).

In either case (when the person chooses to change to the default end dates, or the Commissioner withdraws approval for the person's current end dates), a change to the default end dates takes effect under section 15ED at:

- the end of the taxable period in which the person chooses to use the default end date, or in which the Commissioner withdraws approval for the end dates that were previously approved under section 15EB(2), or
- the end of a later taxable period nominated by the person and approved by the Commissioner.

### Power for Commissioner to prescribe method for determining approved end dates and corresponding due dates

The rules that were formerly in section 15E(2B) and (2C) have been replaced with a power for the Commissioner to prescribe a method for certain registered persons that are approved to have taxable period end dates based on their accounting cycle to determine which of the reporting or "cut-off" dates in their accounting cycle are their approved end dates.

The former rules applied whenever a registered person had a taxable period with an end date that was not the last day of the month. However, it appears those rules were intended for a specific and relatively rare scenario, being when a registered person filing monthly or two-monthly was approved by the Commissioner to have taxable period end dates that were aligned with a four-weekly accounting cycle.

For a monthly filer in this situation, dividing their GST cycle into taxable periods of four weeks (or approximately four weeks) each would result in the person, in theory, having thirteen periods that are equivalent to a one-month taxable period in the year, when in fact they can only have twelve taxable periods over the course of a year. Likewise, for a two-monthly filer, dividing their GST cycle into taxable periods of approximately eight weeks each would result in the person having six and a half periods that are equivalent to a two-month period in the year (rather than six).

In both cases, there needs to be some way to deal with the "leftover" four-week period and to determine which dates the person may have as their approved end dates, as well as their corresponding filing and payment due dates. The rules in former section 15E(2B) and (2C) were intended to resolve these matters, but they only provided one (rather prescriptive and complex) method for determining the relevant dates when other methods may also make sense and be simpler for taxpayers to apply.

To address these issues, new section 15EB(5) applies to a registered person who has:

- a one-month or two-month taxable period, and
- approved taxable period end dates that are based on an accounting cycle that consists of 13 periods in a year that are each four weeks (or approximately four weeks) in length.

Section 15EB(5) sets out that the Commissioner may prescribe methods that a registered person in this situation may use to determine an approved taxable period end date for their circumstances. Such prescribed methods will be published shortly on the Inland Revenue Tax Technical website (**taxtechnical.ird.govt.nz**). These will include the method that was provided for in former section 15E(2B) and (2C), along with an alternative that some taxpayers may prefer to apply.

Taxpayers using a prescribed method to determine their approved taxable period end dates still need to tell Inland Revenue what those dates are before the end of the relevant month.

## Consequential amendments

The following consequential amendments have also been made:

- Repealing the changes that were made to sections 15(1) and (5)(a), 15C, and 15D in 2022, thus reinstating the respective versions of those sections that applied before the 2022 amendments. As outlined above, the provisions setting out when changes in taxable period end dates take effect are now contained in new sections 15EC and 15ED, rather than in section 15D.
- Minor wording changes to section 15B(4) and (4B). Previously, section 15B(4B) referred to section 15E(2B), which as outlined above has now been repealed. Under the new version of section 15(4B), a person's cycle of taxable periods is deemed to be aligned with their balance date (as per the requirement of section 15B(4)) if their last taxable period before their balance date ends on a date approved by the Commissioner under section 15EB(2).

2025/09-017

## Permanent change of use rule and assets acquired before 1 April 2023

*Section 143(3) of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023*

### Summary of amendment

The amendment allows section 21FB of the Goods and Services Tax Act 1985 (GST Act) to apply to assets acquired before 1 April 2023, so long as the relevant permanent change of use adjustment is made in a return for a taxable period starting on or after 1 April 2023.

### Effective date

The amendment took effect on 1 April 2023.

### Background

As part of 2023 reforms to simplify the GST adjustment rules, section 21FB of the GST Act was replaced by section 143(2) of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 (PERM Act) to enable a one-off GST adjustment to be made when there was a permanent change of use, rather than requiring two or more adjustments over consecutive adjustment periods. This was intended to reduce compliance costs, particularly for taxpayers who acquired business assets before registering for GST.

The application provision for the reform in section 143(3) of the PERM Act was "from a registered person's adjustment period starting on or after 1 April 2023". However, the interaction of this application provision and the definition of "first adjustment period" in section 21G of the GST Act created an unintended consequence.

If a person purchased a business asset before 1 April 2023 and subsequently registered for GST in the current year, they were required to initially apply the pre-1 April 2023 version of section 21FB, which required them to make two adjustments. In this case, the relevant adjustment period starts on "the date of acquisition" (which occurred on a date before 1 April 2023), rather than from the beginning of the tax year in which the adjustment occurs.

The amendment replaces the application date in section 143(3) so that section 143(2) of the PERM Act (which replaced section 21FB of the GST Act) applies to a registered person's adjustments made in returns for taxable periods starting on or after 1 April 2023.

2025/09-018

# Temporary registration for certain types of deemed supplies

*Sections 51(2) and 51B(4), (5), and (6) of the Goods and Services Tax Act 1985*

## Summary of amendments

The amendments expand the scope of the temporary GST registration rules so they can also be applied to an unregistered person who is subject to the existing deemed supply rule in section 5(16C) of the Goods and Services Tax Act 1985 (GST Act).

## Effective date

The amendment took effect on 30 March 2025.

## Background

If an unregistered person receives a supply of land that was incorrectly zero-rated, they may be liable to return GST on that land. In these cases, section 51B(4) to (6) of the GST Act provides the Commissioner of Inland Revenue with the ability to temporarily register the person for GST, assess GST on the supply of the land, and then deregister that person.

The amendments expand the scope of the temporary GST registration rules so these rules can also apply to an unregistered person who is subject to the existing deemed supply rule in section 5(16C).

Section 5(16C) applies to deem a supply of goods or services (usually land) to be considered a taxable supply in cases when a person has previously claimed input tax deductions but failed to correctly account for output tax when they deregistered or changed their use to non-taxable use. Section 5(16C) may also apply to a person who had applied section 21FB to increase their non-taxable use of the goods or services in contemplation of selling those goods. In both cases, the disposal of the goods is deemed to be a supply made by the person in the course or furtherance of a taxable activity.

The changes reduce administration costs by making it easier for the Commissioner to assess and collect GST under this deemed supply rule. They reduce compliance costs because the liable taxpayer can be deregistered from GST immediately after the GST is assessed (so is not required to continue filing GST returns).

2025/09-019

# Agreed adjustment methods and limitations on adjustments

*Section 21(2) of the Goods and Services Tax Act 1985*

## Summary of amendment

The amendment clarifies that when a registered person agrees an adjustment method with the Commissioner of Inland Revenue under section 21(4) or (4B) of the Goods and Services Tax Act 1985 (GST Act), then this agreed method will override the limitations on making adjustments listed in section 21(2).

## Effective date

The amendment took effect on 18 March 2019.

## Background

Under section 21(4) and (4B) of the GST Act, GST registered persons can agree a "fair and reasonable" adjustment method with the Commissioner to reduce their compliance costs.

Most agreed adjustment methods typically apply to all the registered person's inputs, regardless of the value of those inputs.

However, section 21(2) of the GST Act states that annual adjustments are "not permitted" on inputs purchased for $10,000 or less. It was previously unclear if this limitation would apply if the adjustment method that was agreed under section 21(4) or (4B) allows the registered person to make GST adjustments for all their inputs (not just those acquired for more than $10,000).

The amendments clarify that the agreed adjustment method overrides the limitation in section 21(2) and apply retrospectively from 18 March 2019, the date "not required" was changed to "not permitted" in the opening words of section 21(2).

2025/09-020

## Clarification of taxable activity exclusion on deregistration

*Section 6(3)(e) of the Goods and Services Tax Act 1985*

### Summary of amendment

The amendment clarifies that the taxable activity exclusion for certain goods in section 6(3)(e) of the Goods and Services Tax Act 1985 (GST Act) includes supplies that occur due to the person deregistering from GST.

### Effective date

The amendment is effective for supplies made on or after 1 April 2011.

### Background

When a person deregisters from GST, section 5(3) of the GST Act deems them to make a supply of any goods or services currently used in their taxable activity.

In April 2023, new section 6(3)(e) was added to the definition of taxable activity to exclude certain qualifying goods from being part of a registered person's taxable activity when the goods are sold (so they would not be required to charge GST for these goods). The qualifying goods will typically be dwellings that have a mainly private or exempt use and some minor business use (such as a home office) that the person has treated as not being used to make their taxable supplies.

The policy intention, reflected in the Bill commentary and Tax Information Bulletin guidance on this rule, noted that section 6(3)(e) is intended to apply to supplies that include the deemed supply that occurs when a person de-registers from GST. However, the opening words of section 6(3)(e) previously referred to a "supply of goods by way of sale" and the deemed supply is not an actual sale.

The amendment changes the opening words to insert a reference to a supply made under section 5(3) and to remove the words "by way of sale". The amendment has the same application date as section 6(3)(e) of the GST Act. However, a savings provision ensures it does not apply to supplies for which an assessment has been made before 30 August 2022.

2025/09-021

# Limitation on final deduction for non-taxable use of land supplied by property developer

*Section 21F(6) of the Goods and Services Tax Act 1985*

## Summary of amendment

The amendment clarifies that section 21F(6) of the Goods and Services Tax Act 1985 (GST Act) also applies to property developers that deal in land or erect buildings.

## Effective date

The amendment took effect on 24 February 2020.

## Background

When a registered person sells land that they have used partly for a taxable use (such as property development) and partly for a private or exempt use (such as a residential tenancy), they are generally required to treat the sale of the land as a taxable supply but can claim a final input tax deduction under section 21F of the GST Act for the percentage of private or exempt use.

However, for property developers, this deduction is limited by section 21F(6) to the GST fraction of the original purchase price. This ensures that GST is collected on the full increase in the land's value because the increase in value is likely to be due to their property development activity (for example, constructing new dwellings on the land), rather than the non-taxable use (for example, continuing a residential tenancy for an old dwelling until the new construction work begins).

Section 21F(6) refers to "developing land or dividing land into lots" to describe a taxable activity of property development. The same wording is also used in certain provisions of the Income Tax Act 2007 (ITA). However, because there are separate provisions in the ITA for "erecting buildings" and for "dealing in land", there is a potential risk that "developing land" could be interpreted narrowly in the GST context. The amendment clarifies that section 21F(6) also applies to property developers that deal in land or erect buildings.

For the purposes of section 21F(6), a property developer is defined as a registered person who disposes of land in the course and furtherance of a taxable activity that is their main activity and involves developing land, dividing land into lots, dealing in land, or erecting buildings.

The amendment takes effect on 24 February 2020, which is the date section 21F(6) was amended to include the reference to "developing land". However, a savings provision preserves a tax position based on the current legislation taken before 26 August 2024.

2025/09-022

## Associated persons and secondhand goods deductions

*Section 3A(3)(a)(i) and (3BB) of the Goods and Services Tax Act 1985*

### Summary of amendment

The amendment limits input tax deductions on arrangements when secondhand goods have been sold between several associated persons before being sold by an unregistered supplier to an associated registered person. In most cases, it limits the input tax deduction for the registered person to the tax fraction of the purchase price of the goods when they were last supplied by a non-associated person.

### Effective date

The amendment is effective for goods acquired by a person on or after 30 March 2022.

### Background

The Goods and Services Tax Act 1985 (GST Act) provides secondhand goods deductions for registered persons who acquire goods from an unregistered person. These deductions are limited by section 3A(3)(a) when the registered person acquires the secondhand goods from an associated person.

An amendment that was made to these rules with effect from 30 March 2022 unintentionally allows some taxpayers to claim a higher amount of deductions in a scenario when the same goods are sold multiple times between three or more associated persons (from one unregistered person to another unregistered person) before being acquired by a registered person.

Although this scenario is rare, some taxpayers could exploit this to produce an unintended tax advantage. A remedial amendment was required to address the potential fiscal risk. The amendment takes effect on 30 March 2022. However, a savings provision preserves tax positions taken before 26 August 2024 that applied section 3A(3)(a)(i) of the GST Act.

### Key features

New section 3A(3BB) applies when the supplier of the secondhand goods to an associated registered person has themselves acquired the same goods from an associated person.

In most cases, new section 3A(3BB)(a) then limits the input tax deduction for the registered person to the tax fraction of the purchase price of the goods when they were last supplied by a non-associated person.

**Example 35: Land acquired by registered person after last owned by series of associated persons**

Jacob is an unregistered person who purchased land from a non-associated person for $1.15 million in 2018.

Jacob later sells the land to a company he owns called Landbank for $2.3 million in 2023.

In 2025, Landbank sells the land to an associated GST-registered company that Jacob also owns, called Green Lane Development, for $2.4 million. Green Lane Development will be using the land to make taxable supplies.

Because Landbank is not a registered person, Green Lane Development is entitled to claim a secondhand goods input tax deduction. Under new section 3A(3BB)(a), this input tax deduction is limited to $0.15 million. This is because $0.15 million is the tax fraction of the $1.15 million paid by Jacob in 2018 when the land was last supplied by a person that was not associated with Landbank (the supplier to the associated registered person, Green Land Development).

New section 3A(3BB)(b) may apply in scenarios when the goods have been sold multiple times through a chain of associated persons that includes an associated supply by a registered person who had accounted for output tax on the supply of the goods. In these cases, the input tax deduction is limited to output tax previously accounted for on the associated supply made by the registered person.

NEW LEGISLATION

**Example 36: Land sold by registered person to associated unregistered person and then reacquired by registered person**

Build Co is a registered person who purchased land for $1.15 million in 2016.

Build Co constructs three dwellings on the land and sells it for $2.3 million to an associated unregistered person, Rent Co, in 2021, and returns $0.3 million of output tax. In 2025, Rent Co sells the land back to Build Co for $2.6 million because Build Co intends to renovate the existing dwellings before selling them as taxable supplies to some new buyers.

Under new section 3A(3BB)(b), Build Co can claim a secondhand goods input tax deduction for $0.3 million when it acquires the land for $2.6 million in 2025. This $0.3 million input tax deduction corresponds to the amount of output tax that was accounted for by Build Co when it sold the land to Rent Co in 2021.

2025/09-023

## Timing of GST on accommodation supplied through electronic marketplace

*Sections 19DB and 20(4)(e) of the Goods and Services Tax Act 1985*

### Summary of amendments

Amendments have been made to provide operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) with the option of accounting for GST on a supply of taxable accommodation[28] made through an electronic marketplace up to seven days after the completion of the performance of the services (in practice, this would be up to seven days after the guest's check-out date).

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

### Effective date

The amendments have effect on and after 1 April 2024.

### Background

The GST rules for supplies of listed services, which includes taxable accommodation performed, provided or received in New Zealand, came into effect on 1 April 2024. Under the new rules, operators of electronic marketplaces (and, in some cases, listing intermediaries) are required to account for GST on supplies of listed services made on or after 1 April 2024. In some cases, the provider of the accommodation (referred to as the "underlying supplier") may be able to opt out of the electronic marketplace rules to remain responsible for their own GST obligations.

When these rules were introduced, no corresponding changes were made to the rules determining when GST must be accounted for on supplies of taxable accommodation. This meant if the person treated as the supplier of the accommodation used the invoice basis, they had to account for GST on the supply in accordance with the normal time of supply rules, being the earlier of when:

- a payment was received for the supply, or
- an invoice was issued for the supply.

If the person instead used the payments basis, they had to account for GST to the extent to which payment was received for the supply.

These timing rules created several problems in the taxable accommodation context. For example, in situations when a GST-registered underlying supplier has opted out of the marketplace rules to remain responsible for their own GST obligations, the guest's payment may be received and held by the marketplace operator. Therefore, the marketplace operator may have triggered time of supply for the underlying supplier, with the underlying supplier potentially being unaware of this. Second, even in situations when the underlying supplier was aware that time of supply had occurred, they might not have had sufficient cash available to pay their GST liability.

### Key features

To address the issues outlined above, an optional accounting rule provides that operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) may choose to account for output tax (and deduct input tax for the flat-rate credit, if applicable) on a supply of taxable accommodation through an electronic marketplace up to seven days after the performance of the services is completed (in practice, this would be up to seven days after the guest's check-out date).

If a marketplace operator, listing intermediary, or underlying supplier chooses to use this rule, it does not affect when the time of supply is deemed to occur under section 9.

28 This refers to accommodation other than accommodation that is an exempt supply under the GST Act.

## Detailed analysis

New section 19DB applies when a registered person (which may be an operator of an electronic marketplace, a listing intermediary, or the underlying supplier, depending on the circumstances) is required to account for, as applicable:

- output tax on a supply of taxable accommodation made through an electronic marketplace
- input tax for a flat-rate credit that is required to be passed on to the underlying supplier of the accommodation.

Section 19DB also applies to other services that are closely connected to the supply of taxable accommodation if they are advertised, listed, or otherwise made available through an electronic marketplace.

Under section 19DB, the registered person may choose to account for output tax (and/or input tax for the flat-rate credit) in or before the taxable period that includes the date that is seven days after the performance of the services is completed. In practice, the "date that is seven days after the performance of the services is completed" would be the date that is seven days after guest check-out occurred.

### Rule is optional to apply, including on supply-by-supply basis

The accounting rule in section 19DB is optional to apply for any given supply covered by the section, meaning the registered person could choose to apply the rule to some supplies of taxable accommodation made through an electronic marketplace but would not have to apply it to all such supplies.

If a person chooses to apply the rule, it will be applied by accounting for GST on the relevant supplies in the taxable period in which the performance of the services is completed, or in an earlier taxable period (such as the taxable period in which the guest checked in to or checked out of the accommodation, if different to the taxable period that includes the date that is seven days after the check-out date). The person does not need to notify Inland Revenue of their choice to apply the rule, but they must keep evidence of their choice for a minimum period of seven years in accordance with the record-keeping rules in the GST Act.

If the person chooses to apply the optional rule, output tax on the supply is attributed to the taxable period in which the person chooses to account for it (see section 20(4)(e)). This taxable period must not be later than the taxable period that includes the date that is seven days after the performance of the services is completed. If the person is liable for both output tax on a supply and to meet requirements relating to the flat-rate credit for that supply, they must account for output tax and take an input tax deduction for the flat-rate credit on the supply in the same taxable period.

If the person chooses not to apply the optional accounting rule, they would account for GST on the supply according to their normal accounting basis.

**Example 37: Electronic marketplace chooses to account for GST on check-in date**

Max books accommodation at a holiday home in Queenstown for two nights through Willow's Hideaways Ltd, an electronic marketplace. The underlying supplier has not opted out of the electronic marketplace rules.

Willow's Hideaways Ltd chooses to use the optional rule by accounting for GST on the supply in the taxable period that includes Max's check-in date.

**Example 38: Underlying supplier makes supplies through multiple marketplaces**

Hotel Co makes supplies of accommodation through two electronic marketplaces: electronic marketplace A (EMA) and electronic marketplace B (EMB). Hotel Co is registered for GST and has elected to account for GST on the invoice basis. Hotel Co has notified the marketplace operators it will remain responsible for its own GST obligations because it makes supplies of more than $500,000 in a 12-month period.

When guests book accommodation with Hotel Co through EMA, the guest pays the marketplace operator directly and not Hotel Co. In this situation, Hotel Co chooses to apply the optional rule, allowing them to account for GST on the supply up to seven days after the performance of the services is completed (that is, seven days after the guest's check-out date). Hotel Co includes these supplies in its GST returns in accordance with the optional rule, based on when EMA remits the customer's payment to Hotel Co (which is never more than seven days after the check-out date).

For accommodation booked with Hotel Co through EMB, the guest pays Hotel Co directly (Hotel Co separately pays EMB's charges). In this situation, Hotel Co chooses to account for GST on the supplies according to the normal rules (that is, it accounts for GST in the taxable period in which time of supply occurred, being the earlier of when a payment was received, or an invoice was issued for the supply).

As part of normal record-keeping requirements, Hotel Co will need to keep sufficient records to show which rule it applied for supplies (the normal timing rules or the optional rule).

### Parties involved in supply can account for GST at different times

In situations when more than two parties are involved in a supply of taxable accommodation made through an electronic marketplace (that is, when a listing intermediary is involved), there is no requirement for all parties to apply this optional rule consistently.

The effect of this is that a marketplace operator may choose to account for output tax according to their normal accounting basis, while a listing intermediary could, for example, deduct input tax for the flat-rate credit up to seven days after the completion of the performance of the services (or vice versa – the marketplace operator could account for output tax using the optional rule, and the listing intermediary could deduct input tax for the flat-rate credit according to their normal accounting basis).

**Example 39: Listing intermediary involved chooses to use optional rule**

Jared provides short-term rental accommodation in a property he owns through an electronic marketplace. Jared is not registered for GST and is therefore eligible for the flat-rate credit. He engages the services of Kylie, a listing intermediary, to manage his property and list it on the electronic marketplace for him.

Kylie is responsible for deducting input tax for the flat-rate credit for Jared. She is not responsible for returning output tax on any of the supplies made through the electronic marketplaces. Guests booking Jared's property always pay the marketplace operator directly, and Kylie receives payments from the marketplace operator a week before the guests check in to the property.

Kylie chooses to take an input tax deduction for the flat-rate credit based on the optional rule. Because the optional rule allows Kylie to deduct input tax for the flat-rate credit seven days after the performance of the services is completed or at an earlier time, she chooses to take the deduction in her GST return for the taxable period that includes the date that is a week before the check-in date (rather than a week after the check-out date). It does not matter whether the marketplace operator has chosen to apply the optional rule or the normal timing rules

### Input tax deductions for taxpayers using accommodation in their taxable activities

As outlined above, if a marketplace operator, listing intermediary, or underlying supplier of accommodation chooses to apply the optional accounting rule, this will not affect time of supply.

This means a registered person purchasing taxable accommodation for use in their taxable activity is still entitled to deduct input tax on the supply at the normal time. This also means the usual rules for taxable supply information and supply correction information, including the timing of when this information must be provided to the recipient of the supply, still apply.

When a marketplace operator or a listing intermediary is responsible for providing taxable supply information to the recipient, the operator or listing intermediary must still provide it within 28 days of the time of supply, without the need for a request by the recipient. If the underlying supplier is instead responsible for providing taxable supply information, they must provide it within 28 days of a request for it by the recipient.

**Example 40: GST-registered business traveller using taxable accommodation made through electronic marketplace for taxable activity**

Todd is travelling to Auckland for a business conference. Todd books accommodation for three nights through Stephen's Stays Ltd, the operator of an electronic marketplace, and pays a 10% deposit on the accommodation at the time of the booking. Todd is registered for GST and is using the accommodation for his taxable activity. He has elected to account for GST on the invoice basis.

Stephen's Stays Ltd chooses to use the optional rule by accounting for GST on the supply when the performance of the services is completed (at Todd's check-out date).

Stephens Stays Ltd is still required to issue taxable supply information to Todd within 28 days of the time of supply, without the need for a request. Stephen's Stays Ltd emails a booking confirmation to Todd, which includes the taxable supply information. Todd takes a full input tax deduction for the accommodation in his GST return for the taxable period in which he paid the deposit.

**Example 41: GST-registered business traveller shortens booking**

Assume the same facts as in Example 40. A few months later, Todd decides to shorten his stay to two nights because the final day of the business conference is cancelled. Todd contacts Stephen's Stays Ltd to change his booking to two nights.

Stephen's Stays Ltd issues supply correction information to Todd, as per the existing rules. Todd then uses the supply correction information to return the excess input tax deducted (for the extra day of accommodation) as output tax in his next GST return.

Stephen's Stays Ltd has opted to use the optional rule (and has therefore not yet accounted for GST) so they do not need to adjust their GST position.

2025/09-024

# Flat-rate credit and deductions for income tax purposes

*Sections CH 5B, CX 1B, and DB 2(2B) of the Income Tax Act 2007*

## Summary of amendments

The amendments provide certain underlying suppliers who make supplies of listed services through an electronic marketplace the option to include the flat-rate credit as assessable income in their income tax returns. This allows them to deduct their expenditure for income tax purposes on a GST-inclusive basis without the need for apportionment.

## Effective date

The amendments are effective for the 2024–25 and later income years.

## Background

GST rules for supplies of "listed services"[29] came into effect on 1 April 2024. Included in these rules is a flat-rate credit scheme to ensure underlying suppliers of listed services who are not registered for GST do not have their supplies over-taxed. The flat-rate credit scheme achieves this by providing a "credit" of 8.5% of GST charged on supplies of listed services to underlying suppliers who are not registered for GST. The credit is a proxy for the input tax that the underlying supplier would be able to recover as a GST deduction if they were registered for GST. For this reason, it is treated as excluded income for income tax purposes.

If an underlying supplier who is not registered for GST incurs expenditure related to sales and income made from both an online marketplace and through another source (for example, sales they make directly through their own website), they will have to deduct their expenditure for income tax purposes:

- on a GST-exclusive basis for expenditure attributable to income derived from sales on an electronic marketplace because the GST component of their expenses will have already been accounted for in the flat-rate credit scheme, and
- on a GST-inclusive basis for expenditure attributable to income derived from other activities, consistent with the normal deduction rules in the Income Tax Act 2007 (ITA) for persons who are not registered for GST.

This requires the underlying supplier to apportion their expenditure to determine their GST-inclusive and GST-exclusive deductions for income tax purposes. It has been suggested that these rules are complex and place high compliance costs on these underlying suppliers.

## Detailed analysis

New section CH 5B of the ITA provides underlying suppliers with the ability to treat the flat-rate credit as income for the income year in which the underlying supplier receives the flat-rate credit. If the underlying supplier includes the flat-rate credit as income, they can take GST-inclusive income tax deductions on all their expenditure (including expenditure attributable to sales on an electronic marketplace).

The new section only applies to underlying suppliers who have received a flat-rate credit for an income year and who are not required to make an output tax adjustment for the credit. This means that underlying suppliers who were not registered for GST at the time they received the flat-rate credit are eligible to use this rule.

### Corresponding changes to sections CX 1B and DB 2(2B)

Amendments to section CX 1B of the ITA (which treats the flat-rate credit as excluded income) no longer treat the flat-rate credit as excluded income for income tax purposes if the underlying supplier (who is not registered for GST) chose to include it in their assessable income under new section CH 5B.

Section DB 2(2B) of the ITA currently treats unregistered persons as if they are registered for GST when determining income tax deductions for expenditure attributable to supplies of listed services made through an electronic marketplace. The amendments to section DB 2(2B) mean that underlying suppliers who chose to treat the flat-rate credit as assessable income are not treated as registered for GST for their expenditure related to listed services. This effectively allows them to take GST-inclusive income tax deductions on expenditure attributable to supplies of listed services made through an electronic marketplace.

29 Listed services are ride-sharing/ride-hailing, short-term rental accommodation, and delivery services for food and beverages.

**Example 42: Including the flat-rate credit as assessable income to claim GST-inclusive deductions**

In the 2024–25 tax year, Warren receives income from sales of short-term rental accommodation he provides through an electronic marketplace and through his own website (which is not an electronic marketplace). He is not registered, or required to be registered, for GST.

Warren receives the flat-rate credit for his sales made through the electronic marketplace. Warren incurs expenses, inclusive of GST, for commissions charged by the electronic marketplace, local council rates, and house and contents insurance. These expenses are attributable to Warren's income derived both through the electronic marketplace and through his own website.

Under current rules, Warren is required to apportion his expenditure between the GST-inclusive and GST-exclusive amounts of his rates and insurance for income tax purposes. Warren is also required to claim the full GST-exclusive amount of commissions charged by the electronic marketplace.

Under the amendments, Warren can choose to include the flat-rate credit he receives as income in his 2024–25 income tax return. If Warren makes this choice, he does not need to apportion his expenditure between GST-inclusive and GST-exclusive amounts. Instead, Warren can claim income tax deductions on the full GST-inclusive amounts of his commissions, rates and insurance.

2025/09-025

# Technical amendments related to platform economy

*Sections 2(1), 11A(1)(jc), 19NB, 20(2)(bb) and (3)(de), 60(1C) and (1D), 60CB(4), (5), (7), and (7B), and 60H(1B) and (3) of the Goods and Services Tax Act 1985*

## Summary of amendments

Changes have been made to the GST rules for listed services to ensure the rules work as intended.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

## Effective date

The amendments have effect on and after 1 April 2024, except for:

- the amendment to section 60H(3), which took effect on 30 March 2025, and
- the amendment to section 20(3)(de), and new section 20(2)(bb), which apply for taxable periods starting on or after 1 April 2025.

## Background

GST rules applying to supplies of listed services through electronic marketplaces took effect on 1 April 2024. "Listed services" refers to:

- accommodation, other than accommodation that is an exempt supply under the GST Act (referred to as "taxable accommodation")
- ride-sharing and ride-hailing services
- delivery services for food, beverages, or both,

provided that these services are performed, provided, or received in New Zealand.

The rules generally treat the operator of the electronic marketplace through which a supply of listed services is made as having supplied the services to the recipient, meaning the operator is liable to return and pay GST on the supply to Inland Revenue.

The rules were introduced to address concerns about the potential of the platform economy to erode the GST revenue base as more small suppliers shift towards operating on digital platforms. To minimise compliance and administration costs associated with applying GST to services provided by these small suppliers, the rules generally treat the operator of the electronic marketplace through which a supply of listed services is made as having supplied the services to the recipient, meaning the operator is liable to account for and pay GST on the supply to Inland Revenue.

The marketplace operator is also responsible for paying the flat-rate credit to unregistered underlying suppliers. The purpose of the flat-rate credit scheme is to compensate unregistered underlying suppliers for GST they incur on goods and services that they acquire to provide their services, so that they are in a comparable position to GST-registered underlying suppliers.

When an underlying supplier of taxable accommodation uses a "listing intermediary"[30] (such as a property manager) to list accommodation on electronic marketplaces on their behalf, special rules apply to require the listing intermediary to administer the flat-rate credit scheme for unregistered underlying suppliers, instead of the marketplace operator. This is because when a listing intermediary is involved, the marketplace operator might not have any information about the underlying supplier that is necessary for administering the scheme (and it may be difficult for the marketplace operator to obtain and hold this information).

In addition, the marketplace operator and listing intermediary may agree that the listing intermediary (instead of the marketplace operator) is also liable for GST on the supplies of accommodation.

30 A listing intermediary is a registered person who lists taxable accommodation on an electronic marketplace on behalf of an underlying supplier who makes those supplies through the marketplace. The definition of "listing intermediary" requires that the person enters into an agreement with the operator of the electronic marketplace to list or advertise the accommodation provided by the underlying supplier.

## Key features

The main changes that have been made are to:

- Allow marketplace operators (and listing intermediaries, if applicable) to deduct input tax for the flat-rate credit only if the underlying supplier has notified the marketplace operator or the listing intermediary that they are not registered for GST, consistent with the policy intention.
- Require taxable supply information to be provided by a marketplace operator or listing intermediary within 28 days of the time of supply.
- Allow a listing intermediary and an operator of an electronic marketplace to agree that the listing intermediary is responsible for providing taxable supply information and supply correction information to the recipient of the accommodation, if the listing intermediary and marketplace operator have also agreed the listing intermediary is liable to account for and pay GST on the supply of accommodation.
- Clarify that when a listing intermediary is interposed between:
  - an underlying supplier of taxable accommodation, who is eligible to unilaterally opt out of the electronic marketplace rules and wishes to do so, and
  - the operator of the electronic marketplace through which the accommodation is supplied,

  the underlying supplier must notify the listing intermediary they are opting out of the electronic marketplace rules. Further, if the marketplace operator would have been liable for output tax on the supplies of accommodation had the underlying supplier not opted out, the listing intermediary must notify the marketplace operator that the underlying supplier is opting out of the rules.

## Detailed analysis

### Claiming input tax deductions for the flat-rate credit

For taxable periods starting on or after 1 April 2025, marketplace operators (and listing intermediaries, when applicable) can only deduct input tax for the flat-rate credit for underlying suppliers who have notified that they are not registered for GST. To be notified, the marketplace operator or listing intermediary needs to be directly alerted to the information. If an underlying supplier has not provided information about their GST registration status to the marketplace operator or listing intermediary, input tax for the flat-rate credit cannot be deducted.

To claim a deduction under section 20(3)(de), section 20(2)(bb) requires the marketplace operator or listing intermediary to have obtained the information referred to in section 60H(1) (being the underlying supplier's name, tax file number, and GST registration status). A deduction for the flat-rate credit would therefore be available if the underlying supplier's GST registration status, at the time of supply of the listed services, has been notified as not registered.

### Timeframe for providing taxable supply information

Section 19NB provides that, for a supply of listed services made by an operator of an electronic marketplace, taxable supply information must be provided to the recipient of the supply without the need for a request. This ensures the recipient can deduct input tax, if applicable, for listed services they receive.

Previously, the section did not specify when taxable supply information must be provided. An amendment has been made to require taxable supply information to be provided within 28 days of the time of supply to align with the timeframe for requests for taxable supply information from other GST-registered persons.

### Enabling listing intermediaries to issue taxable supply information

As noted above, when a supply of listed services is treated as being made by an operator of an electronic marketplace, taxable supply information must be provided by the marketplace operator to the recipient of the supply without the need for a request. Notably, this rule governing the provision of taxable supply information (and supply correction information, if applicable) also applies when a listing intermediary is instead liable for output tax on a supply of taxable accommodation through an electronic marketplace.

Previously, there was no provision in the law for the listing intermediary and the marketplace operator to agree that the listing intermediary in this situation was also responsible for providing taxable supply information and supply correction information to the recipient of the supply. This meant the marketplace operator was technically responsible for providing the information to the recipient, even when a listing intermediary was treated as the supplier of the services for all other purposes of the GST Act and might have been amenable to providing the information.

New section 60CB(7B) applies when a listing intermediary is liable under section 60CB(7) for output tax on supplies of taxable accommodation that they list on an electronic marketplace. A listing intermediary is liable for output tax on a supply of taxable accommodation under section 60CB(7) when the listing intermediary:

- is a tax resident of New Zealand
- enters into agreements with more than one operator of an electronic marketplace to list or advertise taxable accommodation provided by underlying suppliers on those marketplaces
- enables or facilitates the supply of the accommodation through an electronic system that can automatically facilitate and manage the bookings made by recipients of the accommodation, and
- has agreed in writing with the operator of the electronic marketplace that the listing intermediary is liable for the payment of GST on supplies of taxable accommodation on that electronic marketplace.

When section 60CB(7) applies, new section 60CB(7B) provides that the listing intermediary and the operator of the electronic marketplace may agree that the listing intermediary is responsible for issuing taxable supply information and supply correction information (as applicable) to the recipient of the accommodation. This agreement must be recorded in a document. If the parties agree to this arrangement, the "supplier's details" (such as the supplier's name and GST registration number) included in the information must be those of the listing intermediary, not the marketplace operator.

### Notification requirements for unilateral underlying supplier opt-outs

Section 60H sets out the requirements on underlying suppliers of listed services to notify operators of electronic marketplaces of certain information. The notification requirements generally apply for the purposes of administering either the flat-rate credit scheme or "opt-outs" by GST-registered underlying suppliers who are entitled to unilaterally opt out of the electronic marketplace rules.[31]

When a listing intermediary is interposed between an underlying supplier of taxable accommodation and the operator of the electronic marketplace through which the accommodation is supplied, the underlying supplier must treat the listing intermediary as if they are the marketplace operator for the purposes of most of the notification requirements in section 60H. For example, this means the underlying supplier must provide the listing intermediary (not the marketplace operator) with their name, tax file number, and GST registration status, and notify the listing intermediary if their GST registration status changes.

A previously omitted cross-reference in section 60H(1B) could have been read as suggesting that the underlying supplier was not required to notify the listing intermediary when the underlying supplier unilaterally opted out of the electronic marketplace rules to remain liable for GST on supplies they made, and that the underlying supplier was instead still required to notify the marketplace operator they were opting out. This section has now been amended to clarify that when a listing intermediary is interposed between an underlying supplier of taxable accommodation (who is eligible to unilaterally opt out of the electronic marketplace rules and wishes to do so) and the operator of the electronic marketplace through which the accommodation is supplied, the underlying supplier must notify the listing intermediary they are opting out of the marketplace rules.

When an underlying supplier notifies a listing intermediary that they are opting out, the listing intermediary might be required to notify the marketplace operator of the opt-out. This applies if the marketplace operator (not the listing intermediary) would have been liable for output tax on the supplies of taxable accommodation had the underlying supplier not opted out. That is, the listing intermediary is not required to notify the marketplace operator of the opt-out if the listing intermediary would otherwise have been liable for output tax on the supplies of accommodation.

31 Underlying suppliers that are not eligible for a six-month taxable period because their taxable supplies in a 12-month period exceed the threshold in section 15(2)(a) (currently $500,000) can unilaterally opt out of the electronic marketplace rules by notifying the marketplace operator that they choose to remain liable for GST on supplies they make.

### Other minor amendments

The following minor amendments were also made:

- Amending section 60CB(5) and (7) to clarify that the Commissioner may disclose an underlying supplier's GST registration status to a listing intermediary for the purpose of the flat-rate credit scheme.
- Ensuring that section 60(1D), which creates three separate deemed supplies, only applies when a listing intermediary is involved in the supply of accommodation through an electronic marketplace, but the marketplace operator remains liable for output tax on the supply (as per the default rules for listing intermediaries).
- Amending section 11A(1)(jc) to ensure that a deemed supply by a GST-registered underlying supplier to a listing intermediary under section 60(1C)(a) is zero-rated.
- Amending section 60CB(4) to clarify that a zero-rated supply from an underlying supplier to a listing intermediary described in section 60CB(2)(a) does not create a requirement for the underlying supplier to provide taxable supply information to the listing intermediary.
- Correcting the terminology used in section 60(1C) (replacing the words "a supplier" with "an underlying supplier").
- Deleting the word "also" in section 60H(1B). This is to clarify that, when a listing intermediary is interposed between an underlying supplier of taxable accommodation and an operator of an electronic marketplace, the underlying supplier only needs to provide the information referred to in section 60H to the listing intermediary (instead of being required to provide the information to the marketplace operator and "also" to the listing intermediary).
- Adding "listing intermediary", as defined in section 60CB(8), to the defined terms in section 2(1).

2025/09-026

# Distributions made by GST-registered unit title body corporate to members

*Sections 5(13C) and (13D), and 20(3)(j) of the Goods and Services Tax Act 1985*

## Summary of amendments

The amendments provide that if a GST-registered unit title body corporate distributes funds to its members it can claim an input tax deduction on the GST fraction of the distribution.

If the member who receives the distribution from the GST-registered unit title body corporate is also a GST-registered person, they are required to account for output tax on the distribution to the extent to which they are using the unit to make taxable supplies.

## Effective date

The amendments took effect on 30 March 2025.

## Background

Unit titles are a common ownership model for apartment complexes. While a unit title body corporate will typically have a taxable activity for GST purposes, it will generally not become liable to register for GST. This is because the value of supplies it makes to its members is not counted towards the $60,000 GST registration threshold. For this reason, only a small number of unit title bodies corporate are registered for GST.

A GST-registered unit title body corporate must account for output tax on levies it receives from its members (refer section 5(8A) of the Goods and Services Tax Act 1985 (GST Act)). However, the GST Act does not specify how a GST-registered unit title body corporate should account for any distributions it may make to its members.

## Key features

Section 20(3)(j) of the GST Act allows the GST-registered unit title body corporate to claim an input tax deduction if it makes a monetary distribution to its members to reimburse them. The input tax deduction is equal to an amount of output tax that the unit title body corporate has previously charged or returned on a corresponding monetary amount for which it is reimbursing its members. This will most commonly be output tax that the unit title body corporate charged on a levy or other amount paid by the members due to section 5(8A). It may also include an amount of money for which the unit title body corporate returned output tax because section 5(8AB) applied to its funds on the day it registered for GST.

For example, a GST-registered unit title body corporate may implement an additional levy on its members to pay for repairs to a unit title development while it is awaiting an insurance payout to help fund those repairs. The unit title body corporate is required to return output tax on the initially levied funds and on the subsequent insurance payment. Once the insurance payout is received, the unit title body corporate will use the insurance payout to reimburse the additional levy amounts that it had previously charged its members.

In these circumstances, the amendment allows the unit title body corporate to claim an input tax deduction when it pays the distribution to its members that will offset the output tax it previously charged or returned when it collected the additional levy.

If the member who receives the distribution from the GST-registered unit title body corporate is also a GST-registered person, they are required under section 5(13C) and (13D) to account for output tax on the distribution to the extent to which they are using the unit to make taxable supplies.

**Example 43: Unit title body corporate distribution to members**

A unit title property comprises a café and 20 apartment units. Due to earthquake damage, the property requires extensive repairs. The unit title body corporate submits an insurance claim but is told by its insurer it will take months to process the claim, so it seeks funding from its members for the cost of the repairs.

The unit title body corporate collects payments totalling $2.3 million and decides to register for GST. It is required to return output tax of $0.3 million on the $2.3 million of funds it holds at the time it registers for GST. When it pays a GST-registered builder to complete the repairs, it can claim input tax deductions for these costs. Six months later, the unit title body corporate receives an insurance payout for the $2.3 million cost of the repairs on which it is required to return output tax of $0.3 million. The unit title body corporate uses the insurance proceeds to reimburse its members for the $2.3 million it had previously collected from them. It can claim an input tax deduction for $0.3 million in respect of the $2.3 million payments it makes to reimburse its members. This offsets the $0.3 million of output tax it returned when it registered for GST.

One of the members is a GST-registered commercial landlord for the café. This member is required to return output tax of $15,000 on the $115,000 distribution that they receive from the unit title body corporate.

2025/09-027

# Election to zero-rate B2B financial services – removing requirement to notify Commissioner

*Section 20F of the Goods and Service Tax Act 1985*

## Summary of amendment

The amendment removes the requirement for a financial service supplier to notify the Commissioner of Inland Revenue of their election to zero-rate business-to-business supplies of financial services.

## Effective date

The amendment is effective for taxable periods starting on or after 1 April 2025.

## Background

Section 20F of the Goods and Services Tax Act 1985 (GST Act) previously required the person to notify the Commissioner to zero-rate business-to-business supplies of financial services.

The amendment allows suppliers to elect to zero-rate qualifying supplies of financial services by taking the relevant GST position in a GST return. This is consistent with the general approach to self-assessment, other elections in the GST Act, and other types of zero-rated supplies (when there is no notification process).

## Key Features

Section 20F provides that a person may choose to apply the rules in sections 11A(1)(q) and (r) and 20C of the GST Act in relation to certain supplies of financial services. The person makes the election by taking a tax position in a return for the taxable period.

## Detailed analysis

In addition to zero-rating the qualifying business-to-business financial services in section 11A(1)(q) and (r), the relevant tax position may involve claiming deductions for a percentage of inputs (the goods and services the financial service supplier has acquired and will use to make the qualifying supplies). This may be relevant when the financial service supplier is a new entity that has not yet begun making zero-rated supplies, or because it is applying section 20C, which allows a special deduction for financial services that are supplied to another supplier of financial services who themselves make taxable (zero-rated) supplies to businesses.

**Example 44: New financial services supplier**

Building Finance Co is a new entity that will take deposits from GST-registered businesses that will be used to provide loans to GST-registered "build-to-sell" housing developers. These supplies can qualify as zero-rated supplies of business-to-business financial services when the relevant depositor or lender makes at least 75% taxable supplies. Building Finance Co registers for GST and purchases inputs, such as legal services, hires IT contractors, rents an office and pays for advertising. Building Finance Co elects to apply section 20F by claiming input tax deductions based on the extent (estimated percentage) to which the inputs will be used to make taxable (zero-rated) supplies. After the election is made, Building Finance Co begins making the qualifying zero-rated supplies. It will include these supplies in its GST returns and claim input tax deductions to the extent they are used to make these zero-rated supplies.

Registered persons who have previously notified the Commissioner that they are applying section 20F are able to continue to apply section 20F because their election will remain valid.

A registered person should take care to ensure that their GST return correctly reflects their intended position on a section 20F election. If they make a mistake or oversight, they will be able to amend their return or request the Commissioner amend the return, subject to the usual rules for amending GST returns.

Because the effective date of the amendment is taxable periods starting on or after 1 April 2025, for any taxable periods that began before 1 April 2025 the supplier must have notified the Commissioner to make a section 20F election.

2025/09-028

# Professional board member appointed by Governor-General

*Section 6(4) of the Goods and Services Tax Act 1985*

## Summary of amendment

An amendment has been made to allow GST-registered organisations to deduct input tax on fees paid to a board member who was appointed by the Governor-General and accounts to their employer for those fees.

All legislative references are to the Goods and Services Tax Act 1985.

## Effective date

The amendment took effect on 30 March 2025.

### Background

Section 6(4) applies when a person, such as a director of a company or a board member, is paid a fee in relation to their engagement or occupation for which they are required to account to their employer (such as their professional services company). The rule treats the fee as consideration for a supply of services by the person's employer to the organisation that paid the fee.

This ensures a GST-registered organisation acquiring the person's services as a director or board member can deduct input tax on the fees payable. This is because the person's employer, if registered for GST for a taxable activity of providing professional services, will be required to account for output tax on the fees even without the rule in section 6(4). However, an omitted cross-reference in section 6(4) previously meant the rule did not apply to appointments made by the Governor-General or the Governor-General in Council (such as, for example, the board members of independent Crown entities).

## Key feature

Section 6(4) now includes a cross-reference to section 6(3)(c)(iia), thus ensuring the rule applies to professional board members (operating through a professional services company) who are appointed to that position by the Governor-General or the Governor-General in Council. This means that the organisation acquiring the board member's services can claim an input tax deduction for the GST charged by the board member's professional services company.

2025/09-029

## Deemed supply of emissions units on deregistration

*Section 5(3C) of the Goods and Services Tax Act 1985*

### Summary of amendment

An amendment has been made to ensure that a deemed supply of an emissions unit when deregistering from GST is zero-rated instead of standard rated.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act) unless otherwise stated.

### Effective date

The amendment took effect on 30 March 2025.

### Background

An "emissions unit" for the purposes of the GST Act is a "unit" as defined in section 4(1) of the Climate Change Response Act 2002.

The supply of an emissions unit is almost always zero-rated under the GST Act.[32] However, there was previously a minor technical error with the interaction between one of the deregistration provisions in the GST Act and the zero-rating rules, which the amendment addresses.

### Key features

Section 5(3C) has been amended to ensure that, when a person holding emissions units for their taxable activity ceases their taxable activity and deregisters from GST, the deemed supply of the units under the deregistration provision in section 5(3) is zero-rated.

Section 5(3) treats all remaining assets of a registered person's taxable activity as having been supplied by the person in the course of their taxable activity immediately before they deregister. This deemed supply is treated as occurring for market value (meaning that GST is paid on the market value of the assets when the person deregisters).

Previously, this rule provided the unintended outcome that a deemed supply of an emissions unit was technically standard rated when a registered person holding the unit for their taxable activity ceased their taxable activity and deregistered from GST. This is because the relevant zero-rating rule (in section 11A(1)(s)) only applies if a supply of an emissions unit is by way of a transfer of that unit. Previously, there was nothing in the law that treated the deemed supply of the unit under section 5(3) as occurring by way of a transfer.

Section 5(3C) now ensures that a person in this situation is treated as making the supply of the unit by way of a transfer of that unit. This ensures the deemed supply is zero-rated under section 11A(1)(s).

32 The only exceptions are two very specific situations when the Crown transfers an emissions unit.

2025/09-030

## Quarterly filing for certain non-resident suppliers

*Sections 15(6) and 15C(4B) and (4C) of the Goods and Services Tax Act 1985*

### Summary of amendments

Amendments have been made to clarify that a non-resident supplier must have a three-month taxable period if its only supplies in New Zealand are of remote services to which section 8(3)(c) of the Goods and Services Tax Act 1985 (GST Act) applies, distantly taxable goods, and/or listed services referred to in section 8C.

All legislative references are to the GST Act.

### Effective date

The amendments took effect on 30 March 2025.

### Background

Non-resident suppliers of remote services, distantly taxable goods, and/or listed services generally must have taxable periods based on quarters in the year (that is, three-month taxable periods). The policy rationale for this is to align these non-resident suppliers' taxable periods with the typical VAT/GST reporting cycle in many overseas jurisdictions, including in the European Union member states. This is on the basis that providing consistency between these non-resident businesses' taxable periods for New Zealand GST purposes with VAT/GST reporting periods overseas may minimise their costs of complying with New Zealand's GST rules.

### Detailed analysis

Section 15(6) has been amended to provide the outcome that a non-resident supplier must have a three-month taxable period if its only supplies **in New Zealand** are of:

- remote services to which section 8(3)(c) applies
- distantly taxable goods, and/or
- listed services referred to in section 8C.

Previously, the section required that these three specific types of supplies were the "only" supplies the non-resident made. Otherwise, the non-resident was required to have a one-month, two-month or six-month taxable period like most other GST-registered businesses.

The problem with the former wording of section 15(6) was that virtually all non-resident suppliers make some supplies that are not included in the three categories referred to above – one example being supplies of goods or services to other non-residents that are not in any way imported into or consumed in New Zealand. Therefore, on a literal reading, it is likely that no non-resident supplier would have qualified for a three-month taxable period under the previous wording, which is contrary to the policy intention of the quarterly filing rule.

Qualifying the "only supplies" wording in section 15(6) so that this specifically refers to supplies in New Zealand will ensure that any supplies outside New Zealand that a non-resident supplier makes do not disqualify them from having a three-month taxable period. This means a non-resident supplier is only disqualified from having a three-month taxable period when they supply:

- goods (that are not distantly taxable goods)[33] that are in New Zealand at the time of supply, if the supply is to an unregistered person
- goods (that are not distantly taxable goods) that are in New Zealand at the time of supply, if the supply is to a GST-registered business that intends to use the goods for making taxable supplies and the non-resident supplier and business recipient have agreed to treat the goods as supplied in New Zealand (meaning that GST applies to the supply)

33 While distantly taxable goods are usually goods that are outside New Zealand at the time of supply that are subsequently imported into New Zealand, and goods that are in New Zealand at the time of supply would not normally meet the definition of "distantly taxable goods", low-value goods that are in New Zealand at the time of supply are distantly taxable goods in one specific circumstance. This is when the goods are supplied by a non-resident underlying supplier through an electronic marketplace and either the underlying supplier or the marketplace operator delivers the goods (or arranges or assists the delivery of the goods) to the recipient at a place in New Zealand.

- services (that are not listed services) that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed, if the supply is to an unregistered person
- services (that are not listed services) that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed, if the supply is to a GST-registered business that intends to use the services for making taxable supplies and the non-resident supplier and business recipient have agreed to treat the services as supplied in New Zealand.

### Requirement to change taxable period when criteria not met

New section 15C(4B) and (4C) applies when a non-resident supplier has a three-month taxable period, but they make other types of supplies in New Zealand (such that they do not meet the requirements for a three-month taxable period in section 15(6)). The amendment clarifies that a non-resident supplier in this situation must:

- apply to the Commissioner to change their taxable period to either a one-month, two-month, or six-month period, subject to the rules for taxable periods set out in section 15(2) to (5), and
- make the change at the end of the first taxable period in which their supplies in New Zealand no longer meet the test in section 15(6) for quarterly filing.

2025/09-031

## Non-residents and definition of "percentage actual use" in adjustment rules

*Section 21G(1B) of the Goods and Services Tax Act 1985*

### Summary of amendment

The Act amends the definition of "percentage actual use" in the adjustment rules so that GST-registered non-residents measure taxable supplies and total supplies by treating all their supplies as if they were made and received in New Zealand.

### Effective date

The amendment took effect on 1 April 2020.

### Background

Non-resident businesses may be required to register for GST (for example, because they supply remote services or low-value imported goods). In other cases, they may choose to register to claim back the 15% GST charged by Customs New Zealand on imported goods or on services received by their staff in New Zealand.

In most cases, these non-residents will not have purchased any long-lasting New Zealand inputs. In cases when they have acquired New Zealand inputs, they can claim input tax deductions for these inputs by treating all their supplies as though they were made or received in New Zealand – see section 20(3L) of the Goods and Services Tax Act 1985.

If they are still using the New Zealand input at their next balance date, the registered non-resident will be required to make an adjustment based on their "percentage actual use" of the input to make their taxable supplies.

Supplies made outside New Zealand by registered non-residents are not taxable supplies so would not ordinarily count as "actual use", even though they would be taxable supplies if they had been supplied in New Zealand. The definition of "percentage actual use" in section 21G(1)(a) of the adjustment rules is amended to allow supplies made outside New Zealand by non-residents to qualify as actual use. The amendment took effect on 1 April 2020 to align with GST positions previously taken by the affected non-resident businesses.

2025/09-032

# Adjustments when GST paid twice on imported goods

*Section 20(3)(df) of the Goods and Services Tax Act 1985*

## Summary of amendment

A rule that previously allowed a supplier to reduce their GST liability by an amount they were required to refund to a customer when imported goods were taxed twice has been effectively reinstated.

All legislative references are to the Goods and Services Tax Act 1985.

## Effective date

The amendment has effect on and after 30 March 2022, being the date the former credit note and debit note provisions in section 25(1) were replaced in their entirety, which inadvertently repealed the adjustment rule that previously applied.

## Background

GST applies to the supply of "distantly taxable goods" (generally low-value[34] imported goods supplied by a non-resident) to consumers. Special rules provide consumers with relief from double taxation on these goods when GST is charged on the supply of the goods under section 8(1) (and the supplier of the goods collects this GST), and GST is collected again by the New Zealand Customs Service when the goods are imported into New Zealand.

Essentially, double taxation on a supply of imported goods may occur in two scenarios:

- When the supplier incorrectly treats the supply as a supply of distantly taxable goods subject to GST at the standard rate of 15% (for example, a non-resident supplier incorrectly charges GST on a supply to a GST-registered business) and GST is collected on the goods again when they are imported into New Zealand.
- When the supplier correctly collects GST on a supply of distantly taxable goods (such as a supply of low-value imported goods to a consumer) and GST is incorrectly collected again when the goods are imported into New Zealand (despite GST already having been collected by the supplier).[35]

When double taxation occurs on a supply to a consumer, the consumer's only recourse is to obtain a refund of the GST collected at the point of sale from the supplier. If the consumer requests a refund from the supplier and provides a declaration that GST was paid on importation, the supplier must refund the GST they collected.

Prior to 2022, a specific rule allowed a supplier in this situation to make an adjustment by deducting the amount of GST they refunded to the consumer from their output tax in their GST return. However, an unintended consequence of legislative changes made to section 25(1) in 2022 was that, in some situations when double taxation arose, the supplier was technically not entitled to an adjustment of their GST liability for the amount refunded to the consumer.

This was because the post-2022 version of section 25(1) only applies when a registered person makes a GST return for a taxable period containing an "inaccuracy", and at the time the 2022 amendments were made, no deduction or adjustment rule was included elsewhere in the legislation to effectively reinstate the former deduction rule. Essentially, this meant an adjustment was technically not available to the supplier if they correctly collected GST on the supply of the goods and subsequently provided a refund of the GST to the consumer because double taxation occurred.

## Key features

New section 20(3)(df) applies when a supply of distantly taxable goods to which section 8(1) applies is taxed twice, first at the point of sale and again when the goods are imported into New Zealand. The new rule does not apply in the scenario when the supplier incorrectly collected GST, resulting in imported goods being taxed twice (because the rules currently in section 25 already deal with that scenario).

34 "Low-value goods" in this context means goods that are individually valued at or below $1,000.

35 Suppliers must take reasonable steps to ensure GST information is included on relevant import documents so the New Zealand Customs Service can identify when GST has already been paid on imported goods. However, circumstances outside the supplier's control may mean this information is not included on import documents.

If the supplier (correctly) collected GST on the supply of the goods, the new rule provides that the supplier is entitled to a deduction reducing their net GST liability if:

- the supplier receives a declaration from the recipient of the supply, or other confirmation, that the amount of GST charged under section 12 on the importation of the goods into New Zealand was paid when the goods were imported, and
- the supplier reimburses the recipient for the amount of GST included in the consideration for the supply.

If the above conditions are met, the supplier must deduct the amount of GST reimbursed from their output tax for the taxable period in which they reimbursed the recipient of the goods.

Because a supplier in this situation (who correctly collected GST) is still required to account for and pay the output tax on the supply if they have not already done so, it is necessary that they can deduct the amount reimbursed from their output tax in the taxable period in which they reimbursed the recipient, even if they have not yet filed a return including the output tax on the supply. Therefore, for the supplier to be entitled to take the deduction, there is no requirement that they had already accounted for the output tax on the supply in a previous return.

2025/09-033

# Supply correction information and the time bar

*Section 19N(7)(b) of the Goods and Services Tax Act 1985*

## Summary of amendment

The amendment clarifies that supply correction information cannot be issued to correct supplies in all circumstances when that supply is subject to the time bar.

## Effective date

The amendment is effective for taxable periods commencing on or after 1 April 2023.

## Background

In a GST setting, supply correction information (previously known as credit or debit notes) is issued to reflect that the payment for a good or service may have been incorrect. When the payment amount is incorrect, supply correction information can be issued to ensure that GST is correctly accounted for on the supply of the good or service. Some examples of when supply correction information may be issued include if an incorrect amount of GST is charged or if some of the goods are returned to the seller. Adjustments to GST positions as a result of supply correction information being issued are reflected in the current GST return period, rather than applying to the previous return period in which the incorrect supply occurred.

Under current law, supply correction information cannot be issued for a supply that is subject to the time bar (which generally applies four years from the end of the taxable period in which the return was filed). For supplies that give rise to an overpayment of tax, recently added section 19N(7)(b) of the Goods and Services Tax Act 1985 (GST Act) provides an additional four-year period to issue supply correction information, provided the Commissioner of Inland Revenue is satisfied that the registered person took due care to avoid errors in the taxable supply information. This additional four-year period is meant to align with the refund provisions that apply to overpayments of tax.

The issue is that when the tax invoicing rules were replaced with the new taxable supply information rules by the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, new section 19N(7)(b) applied the incorrect test to supplies that give rise to an overpayment of tax.

Therefore, section 19N(7)(b) has been amended to align with the test as set out in the refund rules, which provides for an additional four-year period to issue a refund if the overpayment of tax is a result of a clear mistake or simple oversight by the person.

It is important that this language remains consistent to ensure that the refund rules are aligned with the supply correction information provisions. This is because the current wording has generated some confusion as to whether supply correction information could be issued to generate a refund for otherwise time-barred returns in certain circumstances, which would be contrary to the policy intent.

Supply correction information amends the current return period and, therefore, without proper alignment, the time bar provisions alone are not sufficient in preventing the tax position from being changed (this is because the time bar applies to the previous return periods).

The amendment to section 19N(7)(b) makes it clear that supply correction information cannot be issued to correct supplies that would be subject to the time bar in section 45(4) of the GST Act (which applies a time bar to overpayments of tax resulting from a clear mistake or simple oversight by the person). The amendment takes effect on 1 April 2023, the date when section 19N originally took effect.

2025/09-034

## Pharmac rebates

*Section 25(1B) of the Goods and Services Tax Act 1985*

### Summary of amendment

The amendment clarifies that a Pharmac rebate does not alter the agreed consideration amount for a supply and therefore does not trigger the need for an adjustment.

### Effective date

The amendment took effect on 1 April 2023.

### Background

Before 1 April 2023, an agreed amount of consideration for the supply of a pharmaceutical was not altered if part of that consideration was rebated to Pharmac. This ensured that when Pharmac refunded part of the price of drugs purchased by medical institutions in a business context neither party had to make a GST adjustment to account for the rebated amount. This helped to minimise compliance costs for these entities.

However, this was inadvertently altered as part of the reforms to modernise the rules for tax invoices (now known as taxable supply information). As part of those reforms, the previous provision in section 25(1B) of the Goods and Services Tax Act 1985 was replaced with new section 19N(4). Although section 19N(4) provides that supply correction information does not need to be issued for a supply when part of the consideration is rebated to Pharmac, it provides for a narrower outcome. This is because it no longer specifically provides that the consideration amount is not altered if part of that consideration is rebated to Pharmac.

The amendment therefore clarifies that a Pharmac rebate does not alter the agreed consideration amount for a supply and therefore does not trigger the need for an adjustment. The amendment takes effect on 1 April 2023, the date the position was inadvertently altered.

2025/09-035

# Minor amendments to grouping rules

*Section 55(1AC) and (1AF) of the Goods and Services Tax Act 1985*

## Summary of amendments

The amendments to the GST grouping rules ensure the grouping rules reflect the policy intent and rectify minor drafting errors.

## Effective date

The amendments took effect on 30 March 2025.

## Background

The GST grouping rules allow multiple entities to group together for GST purposes as a compliance cost-saving measure and to reduce distortions that might arise between a single entity, a branch structure and a group structure. Under the grouping rules, the group is treated as a single entity for GST purposes, and a "representative member" files one GST return on behalf of the group. Taxable supplies between group members are also disregarded for GST purposes.

### Key features

The amendment to section 55(1AF) of the Goods and Services Tax Act 1985 clarifies that a non-taxable supply by a non-registered GST group member is treated as a supply by the representative member as a registered person.

Section 55(1AC)(b) is also repealed because it is a redundant provision.

2025/09-036

## Non-taxable government grants and subsidies

*Section 5(6E), (6EB), and (6ED), and schedule 2 of the Goods and Services Tax Act 1985*

### Summary of amendments

The amendments revoked the Goods and Services Tax (Grants and Subsidies) Order 1992 and shifted the list of non-taxable government grants and subsidies into a new schedule of the Goods and Services Tax Act 1985.

### Effective date

The amendments took effect on 30 March 2025.

### Background

Generally, government grants and subsidies are treated as consideration for a supply of goods or services from the recipient of the grant or the subsidy if it relates to the taxable activity of the recipient. There are several government grants and subsidies that this rule does not apply to. These government grants and subsidies were set out in a schedule to the Goods and Services Tax (Grants and Subsidies) Order 1992 which made it difficult to find.

### Detailed analysis

The Goods and Services Tax (Grants and Subsidies) Order 1992 has been revoked. The list of non-taxable government grants and subsidies included in the schedule to the revoked Order in Council has been shifted into the Goods and Services Tax Act 1985 in new schedule 2.

Section 89 of the Goods and Services Tax Act 1985, which was a transitional provision related to certain COVID-19 payments made by the Ministry of Social Development, has also been repealed. The effect of this provision has been incorporated into clause 8 of schedule 2 of the Goods and Services Tax Act 1985.

Consequential amendments have been made to the GST rules for government grants and subsidies in section 5(6E), (6EB), and (6ED). These amendments ensure appropriate cross-referencing of the new schedule and the list of non-taxable government grants and subsidies.

2025/09-037

## Assets acquired prior to registering for GST

*Section 21B(2) of the Goods and Services Tax Act 1985*

### Summary of amendment

A cross-reference to section 21FB of the Goods and Services Tax Act 1985 has been added to section 21B(2). This clarifies that a person who acquired an asset prior to registering for GST and is therefore subject to section 21B, can apply section 21FB at their next balance date to make an adjustment for that asset.

Section 21FB applies when the person has permanently changed their use of the asset. For example, they had non-taxable use of the asset prior to registering for GST but have used their asset to make taxable supplies since they registered for GST.

### Effective date

The amendment took effect on 30 March 2025.

# Trustee tax rate remedials

2025/09-038

# Tax rate for minor and corporate beneficiary rules

*Sections HC 35(2)(c), HC 38(3)(c), YA 1, and schedule 1 of the Income Tax Act 2007*

## Summary of amendments

The amendments clarify that income subject to the minor or corporate beneficiary rules is schedular taxable income and subject to a 39% tax rate, regardless of whether the trust is eligible for an exclusion from the 39% trustee tax rate.

## Effective date

The amendments are effective for the 2024–25 and later income years.

## Background

The trustee tax rate was aligned with the top personal tax rate of 39% for the 2024–25 and later income years. There are specific rules that tax certain amounts of beneficiary income earned from trusts by minors or certain companies at the 39% tax rate:

- The minor beneficiary rule in section HC 35 of the Income Tax Act 2007 limits the tax benefits that could otherwise be achieved by distributing the income of a trust to a minor beneficiary (likely to be on the lowest marginal tax rate).
- The corporate beneficiary rule in section HC 38 ensures that trustees cannot shelter income from the 39% trustee tax rate in a company as a beneficiary (which otherwise would be taxed at 28%).

Alongside the increase of the trustee tax rate to 39% for the 2024–25 and later income years, exclusions from the 39% rate were introduced for:

- trusts with no more than $10,000 net income in an income year
- deceased estates (for the first four income years)
- energy consumer trusts
- disabled beneficiary trusts, and
- legacy superannuation funds.

Eligible trusts are instead subject to a 33% tax rate on trustee income (28% for legacy superannuation funds).

2025/09-039

# Disabled beneficiaries and the minor beneficiary rule

*Section HC 35(4) of the Income Tax Act 2007*

## Summary of amendment

The amendment to section HC 35 of the Income Tax Act 2007 (ITA) ensures that the "minor beneficiary rule" does not apply to beneficiary income derived by a minor who meets the "disabled beneficiary" definition. The trust does not need to be a "disabled beneficiary trust" for the amendment to apply.

## Effective date

The amendment is effective for the 2024–25 and later income years.

## Background

Disabled beneficiary trusts are excluded from the 39% trustee tax rate under section HC 39 of the ITA and are subject to a 33% tax rate on trustee income. To qualify, all the beneficiaries must derive an eligible government support payment for the relevant income year. A minor can satisfy the disabled beneficiary definition if they derive the child disability allowance or the disability allowance.

The minor beneficiary rule in section HC 35 is an integrity measure that ensures that certain amounts of beneficiary income earned from trusts by minors are taxed at the 39% trustee tax rate. There is an existing exclusion for children that derive the child disability allowance, but not the disability allowance.

2025/09-040

# Corporate beneficiary rules amendments

*Sections CD 44(7)(dc), HC 26(1)(e), and HC 38(2) of the Income Tax Act 2007*

## Summary of amendments

The amendments clarify the interaction between the corporate beneficiary rule and the formula for calculating a company's available capital distribution amount (ACDA), and how foreign-sourced amounts should be taxed under the corporate beneficiary rule.

## Effective dates

The amendments are effective for the 2024–25 and later income years, except for the change to section HC 38 of the Income Tax Act 2007 (ITA), which is effective for the 2025–26 and later income years.

## Background

The "corporate beneficiary rule" in section HC 38 provides that certain amounts of beneficiary income derived by a company are subject to a 39% tax rate.

### Available capital distribution amounts

Generally, a transfer of value from a company to its shareholders is taxable as a dividend. However, certain amounts can be distributed to shareholders tax free when a company is liquidated. This is the company's ACDA, which is calculated under section CD 44 of the ITA.

Beneficiary income subject to the corporate beneficiary rule is treated as a "capital gain amount" when calculating a company's ACDA. This recognises that it has already been subject to tax at 39% and should be able to be distributed tax free on liquidation.

The legislation is currently unclear whether the capital gain amount included in the company's ACDA is the after-tax, rather than pre-tax, amount of beneficiary income.

### Foreign-sourced income derived by resident trustees

A foreign-sourced amount of income derived by a resident is normally assessable income. However, section HC 26 of the ITA provides that if a resident trustee of a trust derives a foreign-sourced amount that is included in trustee income, it is exempt income under section CW 54 of the ITA if no settlor:

- is at any time in the income year a New Zealand resident who is not a transitional resident, or
- exists in the income year and the last surviving settlor was a non-resident when that settlor ceased to exist.

Section HC 26 only applies to trustee income. It does not apply to income that is allocated to a beneficiary of the trust as beneficiary income.

Section HC 26(1)(e) excludes beneficiary income subject to the minor beneficiary rule from this section. In the absence of this exclusion, such income would be exempt from tax even though it is beneficiary income. This is because the minor beneficiary rule treats certain beneficiary income distributions to under 16-year-olds as trustee income. The exclusion in section HC 26(1)(e) ensures that the exemption does not override the minor beneficiary rule.

### Non-residents' foreign-sourced income

If a trustee earns foreign-sourced income and it is distributed as beneficiary income to a non-resident corporate beneficiary subject to the corporate beneficiary rule, then that income will not be assessable income of the corporate beneficiary under New Zealand law, but it will be taxed at 39% to the trustee under the corporate beneficiary rule. This is inconsistent with section BD 1(4) and (5) of the ITA, which excludes non-residents' foreign-sourced income from a person's assessable income.

### Key features

- The amendment to section CD 44 clarifies that when a company derives income subject to the corporate beneficiary rule, the relevant capital gain amount that is included in the calculation of the company's ACDA is the after-tax amount of beneficiary income they receive. This aligns with the policy intent that the capital gain amount reflects an amount that has already been subject to tax at 39%.
- The amendment to section HC 26 ensures that this section does not apply to amounts of income subject to the corporate beneficiary rule, consistent with the minor beneficiary rule.
- The amendment to section HC 38 ensures the corporate beneficiary rule does not apply to foreign-sourced amounts of income derived by non-resident companies without a New Zealand resident shareholder.

2025/09-041

## Energy consumer trust exclusion

*Section YA 1 of the Income Tax Act 2007*

### Summary of amendment

The amendment ensures that trusts that no longer hold shares in electricity distribution companies but continue to have the same class of beneficiaries for which the trust was established also qualify as energy consumer trusts. Trusts that meet the current definition are not affected by this amendment.

### Effective date

The amendment is effective for the 2024–25 and later income years.

### Background

Lines trusts (or energy consumer trusts) are trusts that hold shares in electricity distribution companies. The definition of a "lines trust" in section YA 1 of the Income Tax Act 2007 (ITA) requires that a trust has had specified shares allocated, transferred to, or vested in it. The trust must also continue to hold these shares.

Energy consumer trusts are excluded from the 39% trustee tax rate and are instead subject to a 33% tax rate on their taxable income (see schedule 1, part A, clause 6B(c) of the ITA). This is because they faced an increased risk of over-taxation.

The exclusion is currently too narrow because the lines trust definition does not include trusts that no longer hold the specified shares that were once allocated, transferred to, or vested in it but that continue to have the same class of beneficiaries for which the trusts were established. This means they are subject to the 39% trustee tax rate.

### Key features

The amendment to the "lines trust" definition in section YA 1 ensures that it includes a trust that previously held the specified shares and continues to have the same class of beneficiaries for which the trust was established. Such a trust is subject to a 33% tax rate on its taxable income.

# Partnership remedials

2025/09-042

# RWT-exempt status, AIL eligibility and other matters relating to partnerships

*Sections DC 3, DC 4, FD 1, GC 5(2), HG 3, HG 4, HG 5, HG 6, HG 7, HG 8, HG 9, HG 10, HG 11, RE 30 RE 31, RF 3, RF 12, RF 12B, and YA 1 of the Income Tax Act 2007*
*Sections 32IB, 32JB, 32M, and 42(3) of the Tax Administration Act 1994*
*Section 86G of the Stamp and Cheque Duties Act 1971*

## Summary of amendments

The amendments address a number of remedial issues raised by the Tax Counsel Office in response to their Public Advice Project on the taxation of partnership income.

## Effective date

The amendments have differing effective dates. Some amendments took effect on 1 April 2008 (the date of the introduction of the limited partnership rules) and others apply to income years starting on or after 1 April 2008. This includes a savings provision in the event taxpayers had previously filed on this basis.

## Background

Inland Revenue's Tax Counsel Office has identified issues with the legislative provisions concerning partnerships. These are either misalignments between the legislation and current practice or alternatively the provisions produce unnecessary compliance costs for taxpayers.

## Key features

The amendments:

- allow limited partnerships to apply for RWT-exempt status under the name of the limited partnership
- allow non-resident partners of limited partnerships to access the approved issuer levy (AIL) when there is a resident partner in the limited partnership, and
- address other minor technical issues relating to non-resident income tax filing, basis calculation errors, balance dates, and other wording issues.

## Detailed analysis

### RWT-exempt status for limited partnerships

The amendment allows limited partnerships to apply for RWT-exempt status at the partnership level, rather than each partner having to assess their eligibility for exemption.

### AIL for limited partnerships

The amendment allows limited partnerships to access the AIL regime when the following requirements are met:

- the borrower/limited partnership is registered for AIL (under section 32M of the Tax Administration Act 1994 (TAA))
- the security is registered for AIL (under section 86H of the Stamp and Cheque Duties Act 1971)
- the requirements of section RF 12(1)(a)(ii) and (iv) of the Income Tax Act 2007 (ITA) are met, and
- the interest is derived by a non-resident limited partner as non-resident passive income.

To enable non-resident partners to access the AIL regime it is, in practice, necessary for the limited partnership to be responsible for the deduction and payment of non-resident withholding tax (NRWT) or AIL on interest payments made to non-resident limited partners. The limited partnership is therefore required to deduct NRWT or pay AIL as agent for the borrower.

The limited partnership has a statutory right of recovery against the relevant non-resident limited partner for NRWT or AIL on interest derived by that non-resident limited partner, replicating the power in sections HD 5(2) and HD 20B of the ITA.

This amendment allows limited partnerships to elect accounting for NRWT or AIL before making a payment. As a result, borrowers entering lending arrangements will know in advance of payment if a partnership plans to make this election.

## Other partnership remedial items

### Interest derived by two or more persons jointly

The amendment clarifies that "interest derived by two or more persons jointly" in section RF 12B of the ITA includes interest derived by partners of a partnership.

### RWT-exempt status eligibility thresholds

The amendment clarifies that the $2 million income amount, deduction, assessable income and credit amounts referred to in the RWT-exempt status eligibility criteria (sections 32E(2) and 32I(1) of the TAA) are determined on an aggregate basis (ie, the partnership is treated as a non-transparent entity for the purposes of this test).

This amendment also clarifies that limited partnerships that are sufficiently related are treated as one limited partnership for assessing the thresholds for RWT-exempt status.

### Partnership or partner with non-standard balance date

The amendment allows partners who are part of a partnership with a non-standard balance date to include their share of the partnership income in the same corresponding income year as the partnership when filing their separate returns. An option is included for when the partner wishes to apportion the partnership income to the partner's income year. Such an election can be made by the partner in their tax return.

This requires the Commissioner to treat the partners as having the same non-standard balance date for this source of income so that partners do not have to reallocate the income based on their separate balance dates. However, a partner needs to continue returning their other income to 31 March or another relevant date (if the partner has a non-standard balance date for another business).

This amendment does not allow partners to switch their elections year on year. If a partner elects to return their share of partnership income to the same corresponding tax year as the partnership, this election will remain in place until the partnership changes its balance date, or the partner leaves the partnership.

Note that partners who are claiming research and development tax incentives (RDTI) should carefully consider the interaction between this election and the rules relating to the claiming of an RDTI before they make an election.

**Example 45: Returning partnership income from different balance date**

Dory has a 31 March balance date and is also a partner in the Nemo partnership, which has a late balance date of 30 June due to the nature of the partnership activities.

When Dory is completing her individual tax return for the 2024–25 income year ending 31 March 2025 she would:

- return her personal income (excluding partnership income) for the year 1 April 2024 to 31 March 2025, and
- either:
  - return her share of partnership income for the period 1 July 2024 to 30 June 2025 (ie, to match the 2024–25 income year), or
  - apportion the partnership income of those two partnership income years that fall within the partner's income year (ie, three months from 1 April 2024 to 30 June 2024 and nine months from 1 July 2024 to 31 March 2025 (to align the balances dates).

### Non-resident partner income tax filling

The amendment allows a non-resident partner to forgo filing individual income tax returns if:

- they have no New Zealand-sourced income, or
- they meet both of the following criteria:
  - all their income is non-resident passive income, and
  - the NRWT withheld is a final tax (referred to in section RF 2(3) of the ITA).

NEW LEGISLATION

This amendment stipulates that a limited partnership, which includes a non-resident partner deriving passive income from foreign sources, is not subject to a joint assessment. Additionally, a non-resident limited partner who earns New Zealand-sourced income that is fully exempt from New Zealand tax under a double tax agreement is not required to file a tax return.

**Application of transparency rules for partnerships**

The amendment clarifies that partnerships are to be treated as opaque, not transparent, for the purposes of sections DC 3(2) and (3), DC 4(2), FD 1(1)(a), and GC 5(2)(d) of the ITA.

**RWT liability after retirement**

The amendment clarifies that a retired partner of a general partnership is not liable for RWT debt that has arisen after their retirement, but they are liable for RWT debt that arose when they were still a member.

**Overrides in safe harbour provisions**

The amendment clarifies that, in sections HG 3 to HG 10 and in paragraph (h)(iii) in the definition of "dispose" in section YA 1 of the ITA, the safe harbour provisions apply unless the disposal occurs in the circumstances described in section HG 4(1).

**Disposal of partner's interests – basis calculation**

The amendments:

- clarify that section HG 5(2) of the ITA refers specifically to the market value of financial arrangements, and
- correct the spelling of "arrangements" in section HG 5(2)(c)(i).

**Limitation on deductions by partners in limited partnerships**

The Act:

- amends section HG 11 to clarify that multiple instances of amounts should be aggregated
- amends section HG 11 so any repayment of debt would be accounted for in a partner's basis calculation
- amends section HG 11(5)(b) so it includes "the assignment of partnership property" rather than "the assignment of capital contributions"
- amends section HG 11(5)(c) so the term "investments" includes "the secured amounts" only if they are not already accounted for under section HG 11(5)(b) by that partner or another partner in the partnership
- amends section HG 11(7) to clarify that amounts from both the current and previous years should be included
- repeals section HG 11(7)(c) and (8)(c) because these subsections are superfluous
- amends section HG 11(10) to allow partners to exclude the deductions accrued from the selling of their interests when calculating their partner's basis in section HG 11(3).

2025/09-043

# Application of associated persons rules to certain structures involving limited partnerships

*Sections FH 15, YA 1, YB 12, and YB 16B of the Income Tax Act 2007*

## Summary of amendments

The amendments provide that, in certain situations, a limited partnership is treated as a company for the purpose of applying relevant associated persons tests in subpart YB of the Income Tax Act 2007 (ITA). This ensures that including a chain of two or more limited partnerships (or a chain of entities including both limited partnerships and companies) in a structure does not result in a break in association between closely connected entities, which is not consistent with the policy intent.

## Effective date

The amendments took effect on 26 August 2024 (the introduction date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill).

The exceptions to this are the amendments to the definition of "company", "voting interest" and "market value interest" relating to the existing rule in section YB 14(4), which take effect on 1 April 2010, with application from 6 October 2009 for the purposes of the land provisions and the 2010–11 and later income years for all other purposes. This is consistent with the dates that section YB 14(4) applies from.

## Background

A person that is not a partner in a limited partnership (a non-partner) may be associated with a limited partnership because of their association with a partner in the limited partnership.

However, under the previous law, including a chain of two or more limited partnerships in a structure could have resulted in a break in association between a non-partner and a limited partnership they are closely connected with. Similar issues could have arisen when a combination of limited partnerships and companies were used.

This could have occurred because:

- The tripartite test in section YB 14(1) will not apply in some situations involving limited partnerships. A limited partnership is treated as a company for the purpose of applying the tripartite test in section YB 14(1) (section YB 14(4)), meaning the tripartite test requirement that persons must be associated with the same third person under different associated persons tests may not be satisfied.
- The limited partnership aggregation rules in section YB 12(3) and (4) would not result in association when an additional limited partnership is interposed between the partner the non-partner is associated with and the limited partnership. This is because, for the purposes of determining the non-partner's associates, the rule in section HG 2 of the ITA that a partnership is transparent does not apply[36] and each layer of limited partnership will be treated as opaque.

The outcome was not consistent with the policy intent of the associated persons rules because it meant association may not occur between closely connected entities.

It also resulted in inconsistent treatment of limited partnerships and companies for the purpose of the associated persons rules. The corporate look-through rule in section YC 4 of the ITA means a company with a voting interest or market value interest in another company can be "looked through". Therefore, if the structure involved companies rather than limited partnerships, association would occur (provided the association thresholds in section YB 2 were satisfied).

From a policy perspective, the outcome should be the same irrespective of whether companies or limited partnerships are used. That is, association between a company and a limited partnership (or two limited partnerships) should be tested in a similar way to association between companies.

36 The application of section HG 2 in the context of the associated persons rules was considered by Inland Revenue's Tax Counsel Office in a recent Binding Ruling and as part of its Public Advice Project on the taxation of partnerships.

## Key features

New section YB 16B treats a limited partnership as a company for the purpose of applying sections YB 2, YB 3 and YB 12(2) to (4) in certain circumstances. A key feature of this is that section YB 16B means, in certain circumstances, the two companies associated persons tests in section YB 2, together with the corporate look-through rule in section YC 4, determine whether a company and a limited partnership or two limited partnerships are associated persons (instead of section YB 3 or YB 12(2)).

## Detailed analysis

New section YB 16B treats a limited partnership as a company for the purposes of the associated persons tests in sections YB 2, YB 3 and YB 12(2) to (4) and the corporate look-through rule in section YC 4, when:

- a company is a limited partner of the limited partnership
- the limited partnership is a limited partner of another limited partnership
- another limited partnership is a limited partner of the limited partnership
- the limited partnership has a voting interest in a company or a market value interest in a company for which a market value circumstance exists.

This means new section YB 16B applies when a company is a limited partner in a limited partnership, a limited partnership is a limited partner in another limited partnership, or a limited partnership holds an interest in a company. Section YB 16B is not triggered by a limited partnership having a general partner that is a company.

When new section YB 16B is triggered, the two companies associated persons test (section YB 2) determines whether a company and a limited partnership or two limited partnerships are associated, instead of the company and other person test (section YB 3) or the limited partner and limited partnership test (section YB 12(2)). It also means that, when a limited partnership is treated as a company because of new section YB 16B, association between a limited partner that is not a company and the limited partnership is tested under section YB 3 rather than section YB 12(2) (sections YB 3 and YB 12(2) both contain a 25% association threshold). This is because the effect of section YB 16B is not limited to testing association between the parties that triggered its application. As noted above, when section YB 16B has been triggered, the limited partnership will be treated as a company for the purpose of sections YB 2, YB 3 and YB 12(2) to (4).

When new section YB 16B is triggered, a limited partnership and a company or two limited partnerships are associated under section YB 2(1) if a group of persons existed whose total "voting interest" in each entity is 50% or more. When a market value circumstance existed for a company, the company and limited partnership will be associated under section YB 2(2) if a group of persons existed whose total "market value interest" in each entity is 50% or more.

When new section YB 16B applies, a limited partnership is also treated as a company for the purpose of the corporate look-through rule in section YC 4. This makes it possible to look-through a chain of two or more limited partnerships, or a chain of entities including both limited partnerships and companies, for the purpose of establishing whether a company and a limited partnership or two limited partnerships are associated under section YB 2.

### Amendments to definitions of "voting interest", "market value interest" and "company"

Amendments have also been made to the definitions of "voting interest" and "market value interest" in section YA 1 of the ITA so that, when a limited partnership is treated as a company under new section YB 16B or the existing rule in section YB 14(4) (which treats a limited partnership as a company for purpose of the tripartite test in section YB 14(1)), these terms include the partnership share a person had in a right, obligation, or other property, status, or thing of the limited partnership. See new paragraphs (bb) and (bc) of the definition of "voting interest" in section YA 1 (paragraph (bb) applies when a limited partnership is treated as a company under section YB 14(4), and paragraph (bc) applies when a limited partnership is treated as a company under new section YB 16B), and new paragraph (ab) of the definition of "market value interest" in section YA 1.

When a limited partnership is treated as a company under new section YB 16B, "voting interest" includes a partnership share in a limited partnership for the purposes of sections YB 2, YB 3 and YC 4 and "market value interest" includes a partnership share in a limited partnership for the purpose of determining whether a limited partnership is associated with a company for which a market value circumstance exists under section YB 2(2). These amendments apply for the purpose of testing association when a limited partnership is treated as a company under section YB 16B.

Ordinarily, when section YB 16B applies, a person's partnership share in a limited partnership would be treated as a voting interest for the purpose of testing association. A partnership share would only be treated as a "market value interest" when section YB 16B is triggered and association is being tested between a limited partnership and a company, and a market value circumstance exists for this other company. This is why the amendments to the definitions of "voting interest" and "market value interest" use different language.

The amendments use "partnership share" for consistency with the existing limited partnership association test in section YB 12(2), where association is also determined by reference to a person's partnership share in a right, obligation, or other property status, or thing of the limited partnership.

A limited partner's partnership share may be different for different things. For example, a limited partner's partnership share in the partnership income could, in some cases, be different from their partnership share in something else in the limited partnership.

When a limited partner in a limited partnership has differing partnership shares in different things in that limited partnership, the largest partnership share (in percentage terms) should be treated as the person's voting interest or market value interest for the purpose of the amendments.

**Example 46: Partnership share when partner has differing rights**

Company X is a limited partner of Limited Partnership Y. Under the partnership agreement, Company X has a 20% share of Limited Partnership Y's property and a right to 20% of Limited Partnership Y's income. However, Company X has no voting rights in Limited Partnership Y.

For the purpose of the amendments to the definition of "voting interest" and "market value interest", Company X would be treated as having a 20% partnership share in Limited Partnership Y.

The associated persons tests are applied on a point in time basis (that is, to determine whether parties are associated at the point in time that a particular transaction occurs). Therefore, what needs to be considered is the partnership share the limited partner has in any right, obligation, or other property status, or thing of the limited partnership at the date association is being tested.

Amendments to paragraph (ab) of the definition of "company" in section YA 1 recognise that a limited partnership is a company when section YB 14(4) or new section YB 16B applies.

As discussed under "Effective date" above, the amendments to the definitions of "voting interest", "market value interest" and "company" take effect either on 1 April 2010 for the purpose of the existing rule in section YB 14(4) or 26 August 2024 for those related to new section YB 16B.

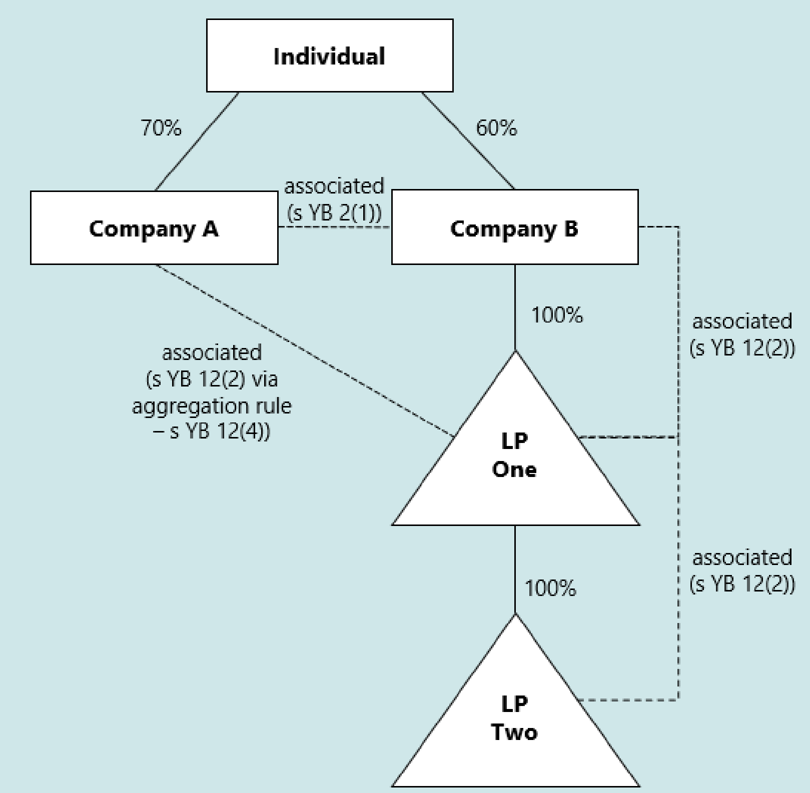
### Consequential amendments

Consequential amendments have been made to the definitions of "control group" and "related" in section FH 15 of the ITA, which apply for the purpose of the hybrid and branch mismatch rules. These provisions rely on the associated persons tests in subpart YB. The consequential amendments are to recognise that, because of section YB 16B, a limited partnership may be treated as a company for the purpose of the associated persons tests.

### Examples

The following two examples illustrate the effect of the amendments in respect of a two-tier limited partnership structure.

**Example 47: Two-tier limited partnership structure – outcome under the previous law**




Company A wants to establish whether it is associated with LP Two, which is a land developer.

Although the Individual has a 70% direct interest in Company A and a 60% indirect interest in LP Two, under the previous law, Company A and LP Two were not associated.

Under the previous law, Company A and LP One would be associated under the limited partnership association test in section YB 12(2). This is because Company A and Company B are associated (section YB 2(1)), so Company A was treated as holding Company B's 100% partnership share in LP One under the limited partnership aggregation rule in section YB 12(4).

However, Company A and LP Two were not associated under the tripartite test in section YB 14(1) even though they are associated with the same third person (LP One). This is because LP One and LP Two would be treated as companies for the purpose of applying the tripartite test (section YB 14(4)). As a result, the tripartite test requirement that persons must be associated under different associated persons tests would not be satisfied and the tripartite test would not apply.

Section HG 2 does not apply so the land development activity carried on by LP Two cannot be attributed to LP One (ie, LP Two's limited partner). For Company A to be "tainted" by the land development activity carried on by LP Two, an association must be established between Company A and LP Two. Under the previous law, no such association occurred.

**Example 48: Two-tier limited partnership structure – outcome with new section YB 16B**

The amendments result in Company A and LP Two in the structure in Example 47 being associated.

Both LP One and LP Two are treated as companies under new section YB 16B. LP One is treated as a company because a 100% partnership share in it is held by a company (Company B) and it holds a 100% partnership share in another limited partnership (LP Two). LP Two is treated as a company because 100% of its partnership share is held by another limited partnership (LP One).

As a result of the amendments, the corporate look-through rule in section YC 4 also applies and the Individual is treated as holding a 60% "voting interest" in LP Two (ie, 60% x 100% x 100%, with the 100% partnership shares in LP One and LP Two treated as voting interests).

The Individual's voting interests in Company A and LP Two are more than 50% so Company A and LP Two are associated under section YB 2(1).

For further guidance on the application of section YB 16B and examples of its effects see interpretation statement **IS 25/11** *Income tax – Partnerships (including limited partnerships) – general guidance* (4 April 2025) at [275] to [291].

2025/09-044

# Clarifying application of limited partnership and LTC aggregation rules

*Sections YA 1, YB 12, and YB 13 of the Income Tax Act 2007*

## Summary of amendments

The amendments clarify that:

- the application of the limited partnership aggregation rules enables association between a person that is associated with a limited partner but is not a limited partner themselves (a non-partner) and a limited partnership under section YB 12(2) of the Income Tax Act 2007 (ITA), and
- the application of the look-through company aggregation rules enables association between a person that is associated with an owner of an effective look-through interest but is not an owner of an effective look-through interest themselves and a look-through company under section YB 13(2) of the ITA.



## Effective date

The amendments to section YB 12 and the definition of "partnership share" in section YA 1 took effect on 6 October 2009 for the purpose of the land provisions, and for all other purposes on 1 April 2010 for the 2010–11 and later income years.

The amendments to section YB 13 took effect on 1 April 2011 for income years beginning on or after 1 April 2011.

## Background

### Limited partnership aggregation rules

Section YB 12(3) and (4) includes aggregation rules applying for the purpose of the limited partnership associated person test in section YB 12(2). Under the aggregation rules, a person is treated as holding anything held by a person they are associated with under certain other associated persons tests.

The aggregation rules mean the interests of limited partners that are associated with one another will be combined for the purpose of determining whether a limited partner's partnership share meets the 25% association threshold in section YB 12(2).

Another intended effect of the aggregation rules is to enable association between a non-partner and a limited partnership when the non-partner is associated with a limited partner in the limited partnership. For example, if Spouse A is a limited partner with a 25% partnership share in a limited partnership, Spouse B (an associate of Spouse A under section YB 4(1)(b) of the ITA) should also be treated as holding this partnership share and associated with the limited partnership.

Under the previous law, section YB 12(2) associated a limited partnership and a "limited partner". While the aggregation rules meant a non-partner could be treated as holding a limited partner's partnership share in a limited partnership, the rules did not result in the non-partner being treated as a limited partner for the purpose of section YB 12(2). Therefore, the meaning of "limited partner" in section YB 12(2) needed to be stretched to achieve the policy intent of the aggregation rules in relation to non-partners.

This could be compared with the company and person other than a company association tests in section YB 3, which associate a company and a "person". The use of "person" makes it clearer that a person that does not hold a voting interest or market value interest in a company may be associated with the company because of the aggregation rules in section YB 3(3) and (4) of the ITA.

## Look-through company aggregation rules

A similar issue arose for the look-through company aggregation rules in section YB 13(3) and (4).

Under the previous law, section YB 13(2) associated a look-through company and an "owner" of an effective look-through interest. "Owner" was defined in section YB 13(1) as a person who has a look-through interest for the look-through company.

The use of "owner" created uncertainty about whether the aggregation rules enabled association between a person that is associated with an owner, but is not an owner themselves, and a look-through company under section YB 13(2).

## Key features

### Limited partnership aggregation rules

To clarify that the aggregation rules enable association between a non-partner and a limited partnership, the references to "limited partner" in section YB 12(2) and the definition of "partnership share" in section YA 1 of the ITA are replaced with "person".

Previously, association between a general partner and a limited partnership occurred under the partnership and partner association test in section YB 12(1). The amendments also result in a separate provision being applied to associate a limited partnership and a general partner (new section YB 12(1B)). In respect of a limited partnership and a general partner, the effect under old section YB 12(1) and new section YB 12(1B) would be the same. Section YB 12(1) would continue to apply to partnerships that are not limited partnerships.

Consequential amendments have also been made to the headings in section YB 12.

The effective date of the amendments, set out above, are consistent with the dates that section YB 12 applies from. There is a savings provision for persons that have taken a tax position that is inconsistent with the amendments before 26 August 2024 (the introduction date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill).

### Look-through company aggregation rules

To clarify that the aggregation rules enable association between a person that does not hold an effective look-through interest and a look-through company, the references to "owner" in section YB 13(2) are replaced with "person".

Consequential amendments remove the reference to "owner" from section YB 13(1) and from the headings in section YB 13 because the term is no longer used in the section.

The effective date of the amendments, set out above, are consistent with the date and income year section YB 13 applies from. There is a savings provision for persons that have taken a tax position that is inconsistent with the amendments before 26 August 2024 (the introduction date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill).

# Land rules remedials

2025/09-045

# Bright-line start date when land partitioned or subdivided

*Section CW 3C of the Income Tax Act 2007*

## Summary of amendments

Section CW 3C of the Income Tax Act 2007 (ITA) has been amended to:

- provide that the bright-line period does not restart when land is allocated to each co-owner as part of a partition or subdivision, and
- introduce an apportionment rule to provide that when a co-owner has acquired materially more land than they held originally, that "new portion" of land is treated as being acquired on the date they became entitled to that land, rather than the date they acquired the undivided land. This change applies both to the bright-line test and the acquisition date for the purpose of other land sale rules.

## Effective date

The amendments took effect on 27 March 2021.

The changes relating to the bright-line start date took effect on 1 July 2024.

## Background

A partitioning transaction is one when a group of people purchase land together as co-owners to pool resources and then subdivide the land and allocate the subdivided parcels to each of the co-owners. Section CW 3C was introduced in 2023 (with effect on 27 March 2021) to ensure that these transactions would not give rise to tax when the amount of land allocated to each co-owner broadly reflects what they held prior to the subdivision.

In a partitioning scenario, each co-owner will have a new registration date for their subdivided parcel of land, which technically restarts the bright-line period for them. It was not intended for the bright-line period to restart when land is partitioned or subdivided in this way.

A co-owner can also end up with proportionately more land following subdivision than they held originally. When this acquisition is more than a material amount, it is appropriate for the bright-line period to restart for this "extra bit" of land.

## Detailed analysis

New section CW 3C(3) to (6) and the replacements of section CW 3C(5) and (6) that apply from 1 July 2024 all essentially do the same thing, but for different land sale rules. Essentially, they set the date that the subdivided land is treated as being acquired. This is relevant if the subdivided land is subsequently sold because many taxing provisions in the ITA turn on when land was acquired. The following table of changes to section CW 3C outlines the rules:

**Table 1: Changes to section CW 3C**

| Section | Application date | What it does |
|---|---|---|
| CW 3C(3) | 27 March 2021 | This provision sets the land acquisition date for the purposes of the land provisions (this is a defined term in the ITA and includes sections CB 7 to CB 11, and CB 15), as well as sections CB 12 to CB 14.<br><br>It provides that the land the person acquires on a partition or subdivision, provided they have not acquired more than an additional 5% over what they held originally, is acquired on the date they acquired their interest in the undivided land, or the date they are treated by section CB 15(2) as acquiring their interest in the undivided land if that is earlier.<br><br>Whether the co-owner has acquired more than an additional 5% over what they held originally is calculated by determining if their "end value proportion" is more than 105% of their "acquisition proportion". The end value proportion is the value of the land the person receives on subdivision out of the total value of land held by persons who were co-owners. The acquisition proportion is the person's contribution to the cost of the land, including costs to subdivide, develop and build on the land, as a proportion of total cost incurred by all co-owners. This is the same for subsections (4) to (6). |
| CW 3C(4) | 27 March 2021 | This provision applies for the same provisions as section CW 3C(3) does, except it provides the rule when the person has acquired more than an additional 5% of the land compared to what they held originally.<br><br>It provides that the "extra bit of land" is acquired on the date the person became entitled to it, or the date they are treated as acquiring it by section CB 15(2) if they acquired it from an associated person. When a person becomes entitled to land differs depending on the circumstances, for example it can be when the land is transferred to the person, or if a company owns land and the person became a shareholder of that company, at the point the person became a shareholder.<br><br>The portion of the land that relates to what they held originally is treated as being acquired on the date they acquired the undivided land. |
| CW 3C(5) | 27 March 2021 and 1 July 2024 | Section CW 3C(5) has been replaced from 27 March 2021, and then again from 1 July 2024.<br><br>Both replacements essentially do the same thing – which is, put simply, to set the land acquisition date following a subdivision of land between co-owners for the purposes of the bright-line test. The first replacement is for the 10-year bright-line test, and the second is for the 2-year bright-line test. The terminology changed from "bright-line acquisition date" to "bright-line start date" with the bright-line test change from 10 to 2 years, hence the need for two amendments.<br><br>In more detail, the provisions provide that the person's bright-line start date (or bright-line acquisition date in the case of the 10-year bright-line test) for the subdivided land is their bright-line start date/acquisition date for the undivided land, provided they have not acquired more than an additional 5% land over what they held originally.<br><br>This change ensures the bright-line period does not restart on subdivision or partition between co-owners. Before this change, each co-owner had a new registration date for their subdivided parcel of land, which technically restarted the bright-line period for them. |

| Section | Application date | What it does |
|---|---|---|
| CW 3C(6) | 27 March 2021 and 1 July 2024 | Similar to subsection (4), this rule provides the bright-line start date/bright-line acquisition date for land subdivided following a partition or subdivision between co-owners for a co-owner that has acquired more than an additional 5% of land compared to what they held prior to the subdivision or partition.<br>The rule provides that the bright-line start date for the "extra bit" of land that the person acquires on subdivision is the date they became entitled to the land, and the bright-line start date for the portion that relates to what they held originally is their bright-line start date for the undivided land.<br>As with subsection (5), subsection (6) has been replaced from 27 March 2021 for the 10-year bright-line test, and then again from 1 July 2024 for the 2-year bright-line test. |
| CW 3C(6B) | 1 July 2024 | This provision provides a transitional rule for subsections (5) and (6) to account for the change in terminology from "bright-line acquisition date" to "bright-line start date" when the bright-line test went from 10 years to 2 years.<br>As outlined above, subsections (5) and (6) provide that the bright-line start date for a co-owner's subdivided land (to the extent it relates to what they held originally) is their bright-line start date for the undivided land. If the co-owner acquired the undivided land before 1 July 2024 when the 10-year bright-line test was in force and therefore the term was "bright-line acquisition date", the transitional rule provides that the bright-line acquisition date it treated as a bright-line start date for the purposes of the provision.<br>For example, Amy and Bill purchased land in April 2023. They subdivided the land in October 2024 and built a house each. Their bright-line start date for the subdivided land is treated as being April 2023, when they acquired the undivided land, rather than October 2024 when they acquired the subdivided land. |

**Example 49: Bright-line start date for partition or subdivision transaction**

Rob and Ruth acquire a block of bare land in April 2024 for $600,000 with the intention of building constructing a house each. In November 2024 they bring on Rob's brother Rowan as a co-owner, each owning one-third of the land. They construct three houses and subdivide the property into three lots in December 2025, retaining one each. Rowan's house is bigger than the other two and ends up using more than one-third of the land.

Rowan's total contribution to the costs is $800,000 out of a total cost incurred by all co-owners of $2 million. His acquisition proportion is therefore 0.4%.

Rowan's house is valued at $1.35 million out of a total of $3 million (being the value of all the co-owner's houses). His end value proportion is therefore 45%.

The calculation for Rowan is as follows:

Rowan's end value proportion is more than 105% of his acquisition proportion, as 40% x 105% = 42%. Therefore, his bright-line start date is calculated under section CW 3C(6).

The additional land that Rowan acquires on subdivision is calculated as follows under section CW 3C(6)(b):

(end value proportion – acquisition proportion) / end value proportion

(0.45 -0.4) / 0.45 = 11.11%

Therefore, the bright-line start date for 11.11% of Rowan's land, representing the additional portion of land that he acquired on subdivision, will be December 2025 because he became entitled to the additional land upon completion of the subdivision.

The bright-line start date for the remaining 88.89% of his land will be November 2024 – the date he acquired an interest in the undivided land.

2025/09-046

# Inherited land and bright-line test

*Section CB 6A(5) of the Income Tax Act 2007*

## Summary of amendment

The amendment reverses a drafting error that removed the exclusion from the bright-line test for disposals of land to a third party by an executor, administrator or beneficiary of an estate.

## Effective date

The amendment took effect on 1 July 2024.

## Background

Disposals of residential land acquired by an executor, administrator or beneficiary of an estate following the death of a person have been specifically excluded from the bright-line test since it was originally introduced. This was achieved by section CB 6A(2B) of the Income Tax Act 2007 (ITA) for the 10-year and 5-year new build bright-line tests and section CZ 39(7) for the 5-year bright-line test.

When the bright-line test was rewritten to reduce it to two years in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024, the provision excluding the transfer of land to a third party by an executor, administrator or beneficiary of an estate was unintentionally omitted.

## Key features

Key features of the amendment:

- Section CB 6A(5) is amended to include an exemption from the bright-line test for transfers of land to a third party by an executor, administrator or beneficiary of an estate.
- The amendment took effect on 1 July 2024, which is the effective date for the new 2-year bright-line test.

2025/09-047

## Amendments to section FC 9

*Section FC 9(2) of the Income Tax Act 2007*

### Summary of amendments

The amendments remove unnecessary words and amend a cross-reference error in section FC 9 of the Income Tax Act 2007 (ITA).

### Effective date

The amendments took effect on 1 July 2024.

### Background

Section FC 9 contains specific rules that apply when residential land is transferred on a person's death. The amendments correct two errors that were identified in the section.

### Key features

Section FC 9(2) is amended to:

- remove the words "including any intervening transfer to an executor or administrator" because they are unnecessary and repeat words already contained in section FC 9(1), and
- correct the cross-reference to section CB 6A(5) of the ITA.

2025/09-048

## Rollover relief for those in civil unions and de facto relationships

*Section FD 1(1)(b)(i) of the Income Tax Act 2007*

### Summary of amendment

The amendment ensures that section FD 1 of the Income Tax Act 2007, which provides rollover relief from the bright-line test when land is transferred between associated persons, applies to trusts when the beneficiaries are associated with the transferor as a result of civil union and de facto relationship, as well as marriage.

### Effective date

The amendment is effective for a person's disposal of residential land if the bright-line end date for the land is on or after 1 July 2024.

### Background

Section FD 1 was inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 on 1 July 2024. The section extended the rollover relief rules, which essentially allow a transfer of land between specified people to be ignored for the purposes of the bright-line test, to all transfers between associated persons. However, the original provision allowing rollover relief for newly established trusts when the transferor is associated with a beneficiary (section FD 1(1)(b)(i)), only referred to marriage and did not include civil unions and de facto relationships. The amendment corrects this oversight.

2025/09-049

## Rollover relief rules

*Subpart FD of the Income Tax Act 2007*

### Summary of amendments

The amendments ensure that the rollover relief rules operate as intended.

### Effective date

The changes took effect on 1 July 2024, the date the rollover relief rules originally applied from.

### Background

The rollover relief rules from the bright-line test provide relief in certain circumstances. For example, when land is transferred between associated persons it is treated as being disposed of at the date the first person acquired it and for the price that person acquired it at.

### Key features

The amendments:

- remove the requirement for land to be "transferred within the bright-line period" to qualify for rollover relief
- introduce a transitional rule to account for a change in terminology when the bright-line test went from 10 to 2 years, and
- include civil union and de facto relationships in the exception from the two-year association rule to qualify for rollover relief.

### Detailed analysis

***Remove "transferred within the bright-line period"***

The bright-line period is defined as the period beginning on the bright-line start date and ending on the bright-line end date. The bright-line end date is the earliest of several dates, including when the sale and purchase agreement was entered into. This created an issue in situations when land was sold rather than simply transferred (ie, a sale and purchase agreement was entered into first, and the land was transferred upon settlement). In such cases, the rollover rules did not apply because the land was transferred outside the bright-line period. This outcome was unintended.

Sections FD 1(1), FD 2(1), and FD 3(1) of the Income Tax Act 2007 have been amended to delete the requirement that the land be transferred within the bright-line period. Consequential amendments have also been made to change references to "transfer" in other subsections to "disposal". This resulted in many subsections being amended, so it was easier to just replace the entire subpart.

***Introduction of transitional rule***

The rollover relief rules provide that the transferee's bright-line start date for the land is the transferor's bright-line start date. This created issues when the transferor transferred the land to the transferee before 1 July 2024 because there was no "bright-line start date" at that time, only a "bright-line acquisition date". The term "bright-line acquisition date" was used under the 10-year bright-line test but was replaced with "bright-line start date" when the bright-line test changed to 2 years from 1 July 2024.

New sections FD 1(4), FD 2(5), and FD 3(5) introduce a transitional rule that treats the transferor's bright-line acquisition date as the bright-line start date if the land was acquired before 1 July 2024.

**Example 50: Bright-line acquisition date treated as a bright-line start date**

Daniel acquires land on 1 December 2021 and therefore his bright-line acquisition date is 1 December 2021. On 1 November 2023 the land is transferred to his family trust. On 25 March 2025 the land is sold by the family trust.

1 December 2021 is treated as the trust's bright-line start date. The trust's bright-line end date of 25 March 2025 is more than two years after this date so the bright-line test does not apply to the sale of the land.

***Inclusion of civil union and de facto relationships in exception from two-year association rule***

Section FD 1 was inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 on 1 July 2024. The new section extended the rollover relief rules, which essentially allow a transfer of land between specified people to be ignored for the purposes of the bright-line test, to all transfers between associated persons. However, the original provision allowing rollover relief for newly established trusts when the transferor is associated with a beneficiary (section FD 1(1)(b)(i)), only referred to marriage and did not include civil unions and de facto relationships. The amendment corrects this oversight.

2025/09-050

## Sale of subdivided land acquired from co-owner

*Section CB 15E of the Income Tax Act 2007*

### Summary of amendment

The amendment ensures that the rules that apply when land that was acquired on a subdivision between co-owners is subsequently disposed of operate as intended.

### Effective date

The amendment took effect on 27 March 2021.

### Background

Individuals can pool resources to purchase land, becoming co-owners. When co-owners subdivide land and keep a parcel each, each co-owner goes from owning a share in the whole of the undivided land to being the sole owner of the part of the land they obtain. While the share of the divided land they get may reflect the share they held as co-owner, they are considered to have disposed of their share in the parcel they did not keep to the other co-owner (or each other co-owner). These disposals by each co-owner may be taxable events because the land sale rules in the Income Tax Act 2007 (ITA) apply in certain situations to tax disposals of land.

The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 inserted section CW 3C into the ITA to ensure that no income tax is imposed when there is no substantive change of ownership following a subdivision. However, the intent of this provision could be defeated because a subsequent disposal of the land by the co-owner may be taxable under provisions that impose tax on land acquired from developers or associates in certain circumstances (the land sale rules). To remedy this, the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 inserted section CB 15E into the ITA to ensure that any income arising under the land sale rules, when land subdivided between co-owners is subsequently disposed of, is exempt to the extent to which the income on subdivision is exempt under section CW 3C.

Section CB 15E(3) understated the amount of income a person should have when they disposed of land that they acquired from a co-owner on a partition or subdivision and that acquisition was more than minor. Section CB 15E(3) reduced the person's income amount, but because they can still claim a full deduction, the person's net income was lower than it should be.

### Key features

#### Understated income amount

The Act amends section CB 15E(3) to provide that instead of reducing the person's income by the amount given by the formula, the income is exempt to the extent given by the formula. By designating an exempt income amount, the person is only able to claim a deduction to the extent they had assessable income. This ensures the person has the appropriate amount of net income.

#### Consequential amendment because of changes made to section CW 3C

The amendments to section CW 3C, which altered the date on which land partitioned between co-owners is considered acquired for tax purposes (refer to "**Bright-line start date when land partitioned or subdivided**"), mean that fewer taxing provisions apply to the subsequent sale of that land. This is because many land taxing rules depend on the date the land was acquired. As a result of this amendment, the references to section CB 10 were repealed from section CB 15E because the subsequent sale of the land would not be taxable under section CB 10 considering the changes to the date of acquisition.

2025/09-051

# Disposals of land to the Crown – repeal of income spreading rule

*Sections EI 8, EX 21(20), and EZ 8B of the Income Tax Act 2007*

## Summary of amendments

The amendments repeal a concessionary rule that allows a person to spread income derived by them on disposal of land to the Crown over a four-year period. This rule was inconsistent with the Government's broad-base, low-rate tax policy. Such income will generally now be recognised in the year it is derived.

Consequential amendments provide a transitional rule for those persons currently applying the concessionary rule and remove a cross-reference to the repealed rule.

## Effective date

The amendments are effective for disposals of land to the Crown on or after 24 August 2024.

## Background

Under section EI 8 of the Income Tax Act 2007, a person who derived income from the disposal of their land to the Crown could apply to the Commissioner of Inland Revenue to spread that income (and corresponding deductions) over a four-year period.

This concession was likely enacted to reduce the impact of unexpected tax liabilities arising for taxpayers whose land was compulsorily acquired by the Crown. This was of greater concern when the rule was originally introduced in the mid-1950s because the top income tax rate was over 60%. Income tax rates are now significantly lower, and we do not consider there to be sufficient reason to depart from standard income timing rules. Income is generally allocated to the income year in which it is derived.

# International tax remedials

2025/09-052

# Thin capitalisation changes related to non-debt liabilities

*Sections FE 6(1), FE 16B, and YA 1 of the Income Tax Act 2007*

## Summary of amendments

The amendments to the thin capitalisation rules relate to the calculation of non-debt liabilities and the debt percentage of the group. In broad terms the changes:

- Exclude interest-free loans from a settlor of a trust in calculating the non-debt liabilities of the trust when the settlor has made one or more settlements on the trust totalling 10% or more of the value of the total settlements on the trust.
- Extend the exclusion from non-debt liabilities for interest-free loans provided by, and redeemable shares held by, members of the same wholly-owned group of companies to also include non-corporate persons (such as a settlor of a trust, trustee of a trust, or individual) and to also apply to funding that is not proportional to shareholder voting interests if the group holds at least 10% of the voting interest.
- Extend the non-debt liabilities exclusion to apply in the context of funding from a shareholder directly to an indirect subsidiary that is a member of the New Zealand thin capitalisation group.
- Correct the link between the calculation of group debt percentage and the requirement to adjust an excess debt entity's interest deduction to ensure that entities with non-debt liabilities equal to or greater than the total assets are required to reduce their total interest deductions.

## Effective date

The first three amendments are effective for the 2025–26 and later income years.

The fourth amendment is effective for income years beginning on or after 1 July 2018.

## Background

### Non-debt liabilities – interest-free loans from settlor of trust

The thin capitalisation rules help protect the tax base by preventing the use of excessive debt to reduce the taxable profits in New Zealand for both inbound and outbound investment. In practice, the rules limit interest deductions by setting a maximum allowable debt percentage for the New Zealand group.

The debt percentage of a group was historically calculated based on its debt relative to its gross assets: that is, group debt ÷ group assets. This was amended in 2018 so that non-debt liabilities are now subtracted from group assets in calculating the debt percentage: that is, group debt ÷ (group assets – non-debt liabilities). The amendments strengthened the thin capitalisation rules by more accurately reflecting the group's true debt to asset position.

Interest-free loans from shareholders to companies are excluded from non-debt liabilities when they are proportional to shareholding or when the shareholder holds at least 10% of the voting interests in the company (see section FE 16B(1)(b) of the Income Tax Act 2007 (ITA)). This is because such loans are more akin to equity than debt, and so they should not reduce the group assets for thin capitalisation purposes.

Interest-free loans from a settlor to a trust are analogous in some respects to interest-free loans from a shareholder to a company.

New section FE 16B(1)(ba) has been added so that the non-debt liabilities exclusion also applies to interest-free loans from a settlor that has made one or more settlements totalling at least 10% of the value of total settlements on the trust.

### Non-debt liabilities – extension to wholly-owned group exclusion

Section FE 16B(1)(b) and (c) excludes interest-free shareholder loans and some redeemable shares from being non-debt liabilities for thin capitalisation purposes. This exclusion was extended in 2020 by inserting section FE 16B(3) to cover situations when the loans are provided by, or the shares are held by, a member of the same wholly-owned group of companies as the shareholder.

**Inclusion of non-corporate persons**

The extension under section FE 16B(3) only applied to companies within the same wholly-owned group. However, there were some analogous situations that were not covered, such as when a non-corporate person (for example, a settlor of a trust, trustee of a trust, or individual) that holds 100% of the voting interests in a member of the wholly-owned group is the provider of the interest-free loans or holder of the redeemable shares.

To cater for these non-corporate person scenarios, there are separate amendments to cover whether the shareholder is a company or a trustee of a trust.

When the shareholder is a company, the amendments to section FE 16B(3) replace the "wholly-owned group" wording in that section with a new term "equity group" defined in new section FE 16B(5), which:

- means companies within the same wholly-owned group as the shareholder if the shareholder is a member of a wholly-owned group, or the shareholder company itself (when it is not a member of a wholly-owned group), and
- includes:
  - the group of persons (the natural group) who are relatives (which may consist of a single person) and that holds 100% of the voting interests in a member of the wholly-owned group or in the shareholder company itself, and
  - if a member of the natural group is a trustee of a trust, a settlor of that trust and relatives of the settlor, provided the settlor and relatives have made at least 90% of the settlements made on the trust.

The amendments cover various scenarios, such as when the shareholder is a foreign company wholly owned by a foreign trust when a settlor has made at least 90% of the settlements on the trust, and either the settlor, or the trustee of the trust, provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

It also covers scenarios when the shareholder is a foreign company wholly owned by an individual or a group of relatives, and the individual or the relatives provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

In each of the above scenarios, the interest-free loan made to the company in the New Zealand thin capitalisation group is excluded from non-debt liabilities.

The amended section FE 16(B)(3) does not cover scenarios when the shareholder is a trustee of a trust, but not a company, and the settlor provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

New section FE 16(B)(4) applies when the shareholder is a trustee of a trust. Under this section, if a settlor and relatives of the settlor have made at least 90% of the settlements on the trust, then the trustee is treated both as the shareholder for all the shares held by the settlor and relatives of the settlor, and as the provider of all interest-free loans provided by the settlor and relatives of the settlor for the purposes of section FE 16B(1)(b) and (c).

### Group holding at least 10% of the voting interest

Section FE 16B(1)(b) and (c) apply when:

- the amount of an interest-free loan, or the number of redeemable shares issued, is proportional to the voting interest of each shareholder, or
- the shareholder and associated persons hold at least 10% of the voting interests in the company.

This means that non-proportionate funding, or redeemable shares, can be carved out of non-debt liabilities if it comes from a shareholder who holds at least 10% of the voting interest. However, prior to the amendments, section FE 16B(3) only applied in circumstances when the amount of interest-free loan, or the number of redeemable shares issued, was proportional to the voting interest of each shareholder.

The amendments extend the non-debt liabilities exclusion for wholly-owned groups of companies or equity groups so that it also applies to non-proportionate funding, or redeemable shares, when the shareholder and associated persons hold at least 10% of the voting interests in the company.

### Non-debt liabilities – interest-free loan to indirect subsidiary

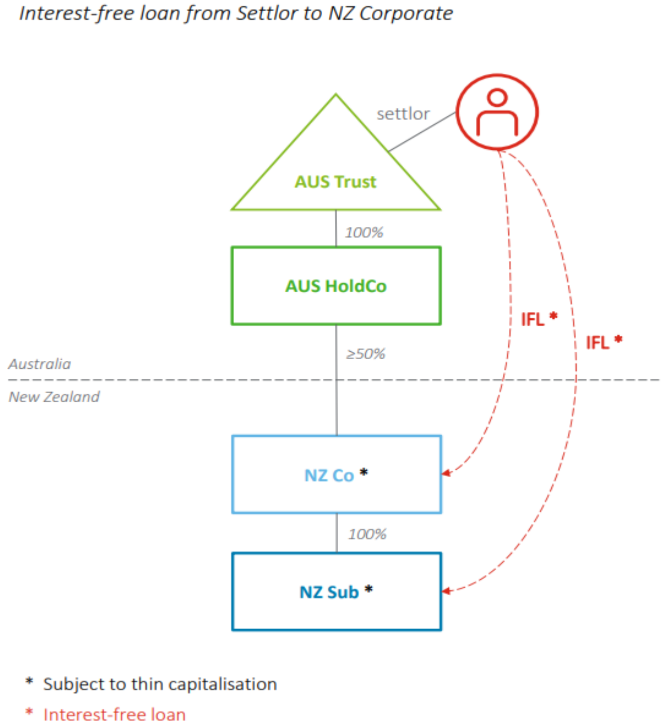
The exclusion from non-debt liabilities has been amended to apply in the context of an interest-free loan from the shareholder/equity group directly to an indirect subsidiary that is a member of the New Zealand thin capitalisation group (ie, the funding can be provided to a subsidiary within the New Zealand group that is not the top company in that group).

Consider Diagram 1 below, when Aus Hold Co holds more than 50% of the shares in NZ Co, which means NZ Co and NZ Sub are subject to the thin capitalisation rules. Aus Hold Co is in turn owned by Aus Trust, which is 100% settled by an Australian settlor who provides interest-free loans to NZ Co and NZ Sub.

Prior to the amendments, section FE 16B(1)(b) could be read as requiring the funding to be provided to the top company in a New Zealand thin capitalisation group (the interest-free loan (IFL) to NZ Co in Diagram 1). However, it is possible for the funding to be provided to another company in the New Zealand thin capitalisation group (the interest-free loan to NZ Sub in Diagram 1) and this is economically the same. This is because the arrangement still involves an economically whole group (the equity group) lending on an interest-free basis to the New Zealand thin capitalisation group.

Section FE 16B(1)(b) has been amended so that it also applies to the scenario when the funding is provided to another company that is not the top company in the New Zealand thin capitalisation group (the interest-free loan to NZ Sub in Diagram 1).

**Diagram 1: Interest-free loan from settlor to New Zealand corporate**




## Legislative link between debt percentage calculation and interest apportionment calculation formula

The debt percentage calculation in section FE 12(3) of the ITA was amended in 2021 so that the debt percentage is deemed to be zero when non-debt liabilities equal or exceed assets. While not common, this can happen when an entity is insolvent.

The intended impact of the 2021 amendment to section FE 12(3) was that when non-debt liabilities equal or exceed assets, it should generally result in the full denial of the interest deductions in New Zealand under section FE 6.

Section FE 6 only applied if section FE 5 requires the entity or person to apportion their interest expenditure. However, section FE 5 does not apply when the New Zealand group debt percentage is zero. Therefore, there was no clear legislative link to require the interest apportionment calculation in section FE 6 to be undertaken when the New Zealand group debt percentage is calculated to be zero under section FE 12(3).

Therefore, section FE 6(1) has been amended to ensure that entities that have a group debt percentage of zero because their non-debt liabilities are equal to or greater than their total assets are also required to reduce their total interest deductions.

This change has retrospective application to the effective date of the previous amendment to section FE 12(3) (ie, income years beginning on or after 1 July 2018). This is consistent with the clear policy intent of the thin capitalisation rules and how the rules are being applied in practice.

2025/09-053

# FIF cost method eligibility

*Section EX 46(9) of the Income Tax Act 2007*

## Summary of amendment

The amendment clarifies that the eligibility to use the cost method to calculate foreign investment fund (FIF) income depends on whether a market value for the investment at the start of the income year is readily available. Eligibility is not impacted by the valuation skills and experience of the investor. This is consistent with the policy intent and is not intended to change how the FIF cost method is being used in practice.

## Effective date

The amendment is effective for income years beginning on or after 1 July 2011.

## Background

A FIF is a type of offshore investment subject to special tax rules. There are five methods available to calculate FIF income, with restrictions placed on which method a person can choose. One of the methods is the cost method.

The cost method was designed as a back up to the fair dividend rate (FDR) method. It is intended to cater for situations when verifiable market values for the investments are not readily available, such as investments in foreign unlisted shares.

However, prior to the amendment, section EX 46(9) of the Income Tax Act 2007 may have been interpreted to mean that the cost method cannot be used by investors possessing the skills, experience, and information needed to personally apply a commercially acceptable valuation method to determine the market value. This interpretation goes beyond the policy intent.

Inland Revenue intends to confirm the interpretation of "readily available" through an interpretation statement.

2025/09-054

## Foreign tax credit rules and trust rules

*Section LJ 5(7) of the Income Tax Act 2007*

### Summary of amendment

This amendment fixes an unintended interaction between the trust rules and the foreign tax credit (FTC) rules that can give taxpayers a larger FTC than they should get.

The amendment requires a trust beneficiary who receives a distribution of foreign-sourced income from a trust to take into account any deductions that relate to that income when calculating their FTC entitlement.

### Effective date

The amendment took effect on 1 April 2025.

### Background

When a New Zealand trust earns foreign-sourced income and pays foreign tax on it but distributes it to a beneficiary as beneficiary income, the beneficiary has the New Zealand tax liability on that income. To ensure there is no double taxation, the beneficiary is entitled to an FTC to offset against their New Zealand tax liability.

Under sections LJ 2(2) and LJ 5(2) of the Income Tax Act 2007 (ITA), an FTC is capped at the lower of:

- the foreign tax actually paid on the income, or
- the tax that would have been paid in New Zealand if not for the FTC, calculated on a net basis (ie, after subtracting deductions). This is known as the "notional liability" for the person.

However, when a trust incurs expenses, section DV 9 of the ITA requires deductions to be taken at the level of the trustee, even if all the relevant income is distributed to the trust's beneficiaries. Consequently, prior to the amendment outlined in this Commentary, the trust's deductions were not included in the beneficiary's calculation of the notional liability described above, meaning the FTC cap was higher than it should have been when trustees distributed more than the net amount of the income.

### Key features

New section LJ 5(7) of the ITA provides that, if a beneficiary of a trust has received a distribution of foreign-sourced income from the trust, they are treated as having the trust's deductions relating to that income for the purpose of section LJ 5. This means that, in the formula in section LJ 5(5) used to calculate the person's notional New Zealand tax liability, the "person's net income" will take into account the trust's deductions.

If the beneficiary does not know the amount of deductions relating to the foreign-sourced income distributed to them, then the trust will need to either:

- inform the beneficiary of the amount of the deductions, or
- calculate the beneficiary's FTC for them.

**Example 51: Foreign tax credit when foreign-sourced income distributed to beneficiary of trust**

In the 2025–26 income year, Melon Trust has $8,000 of foreign-sourced income from country A, which it incurred $3,000 of expenses in deriving. Its net foreign income is therefore $5,000. It pays country A tax on that income at a rate of 40%, which equals $2,000.

However, Melon Trust has allocated the gross foreign income of $8,000 to Peter Ltd, a widely-held company. The $3,000 of foreign expenses remain with Melon Trust.

The time comes for Peter Ltd to work out its FTC entitlement. When calculating the notional New Zealand tax payable, Peter Ltd is now required to take into account the foreign expenses, despite them remaining with Melon Trust, because it was the net (not gross) income that was subject to foreign tax. Melon Trust informs Peter Ltd that the foreign expenses are $3,000. Peter Ltd therefore calculates the notional New Zealand tax payable as ($8,000 less $3,000) x 28% = $1,400.

Peter Ltd can claim an FTC equal to the lesser of:

- foreign tax paid, and
- the notional New Zealand tax payable on the foreign income.

The notional New Zealand tax payable of $1,400 is less than the foreign tax paid of $2,000, so the FTC allowed is $1,400.

2025/09-055

## Failure to withhold NRWT amount

*Section RF 6 of the Income Tax Act 2007*

### Summary of amendments

The amendments clarify the available options for rectifying cases when a person is required to withhold non-resident withholding tax (NRWT) for a payment of passive income but fails to do so.

### Effective date

The amendments are effective for the 2008-09 and later income years.

### Background

A person who makes a payment of non-resident passive income, such as interest or dividends, is required to withhold NRWT. When the payer fails to do so, the Income Tax Act 2004 contained provisions that confirmed the available options to rectify this. During the 2007 rewrite of the Income Tax Act, the references to persons in some of the provisions became unclear as to whether they refer to the payer or the recipient, and one provision was omitted. This creates undesirable uncertainty for taxpayers.

### Key features

The amendments:

- confirm that the person referred to in section RF 6(2) of the Income Tax Act 2007 (ITA), who is obliged to pay the Commissioner of Inland Revenue the amount that should have been withheld, is the payer
- clarify that the persons mentioned in section RF 6(4), in relation to whom the Commissioner may take the steps the Commissioner deems fit to recover the amount, refer to the payer and the recipient, and
- provide a signpost to section 165 of the Tax Administration Act 1994 under subpart RF of the ITA to confirm the payer's right to recover from the recipient an amount of NRWT that the payer failed to withhold but must subsequently pay to the Commissioner.

2025/09-056

## Interaction between transfer pricing rules and dividend rules

*Sections GC 11, GC 12, and GC 13(6) of the Income Tax Act 2007*

### Summary of amendments

The amendments:

- clarify that the transfer pricing and dividend rules apply concurrently regardless of whether the other party applies for a matching transfer pricing treatment under section GC 11 of the Income Tax Act 2007 (ITA), and
- align the four-year time bar that currently applies to other adjustments that are related to any adjustments made under the transfer pricing rules in sections GC 6 to GC 14 of the ITA or the interest limitation rules in sections GC 15 to GC 19 of the ITA (such as the withholding requirements and tax loss carry forward or offset against other group members' net income) with the seven-year time bar that applies to the adjustments under sections GC 6 to GC 19, so that these adjustments are subject to the same seven-year time bar.

### Effective date

The amendments to confirm the concurrent application of the transfer pricing and dividend rules took effect on 30 March 2025.

The amendment to align the time bar rules applies to cross-border arrangements done on or after 1 April 2025 and tax positions in returns relating to income years beginning on or after 1 April 2025.

### Background

The transfer pricing rules set out in sections GC 6 to GC 14 substitute an arm's length consideration if the taxpayer's net income is reduced by non-arm's length pricing in a cross-border arrangement with an associated person.

Under the dividend rules in subpart CD of the ITA, a transfer of value from a company to a person that has been caused by a shareholding will be treated as a dividend and taxed accordingly.

In many cases, the difference between the arm's length amount and the amount actually payable or receivable by the taxpayer under a transfer pricing arrangement constitutes a transfer of value from a company. Therefore, arrangements that require a transfer pricing adjustment also often give rise to a dividend for tax purposes. This dividend should be subject to non-resident withholding tax (NRWT) under Part R of the ITA.

#### Clarifying application of dividend rules

Both the above rules are intended to apply concurrently. However, section GC 12, which sets out the interaction between these two regimes, could be interpreted to mean that the dividend rules do not apply when there is a transfer pricing adjustment unless the other party applies for a matching treatment under section GC 11. The amendments clarify that dividends can still be deemed to arise when transfer pricing adjustments are made, regardless of whether an application for matching treatment is made.

The amendments also limit the application of section GC 11 to cases when the difference between the arm's length amount and the amount payable or receivable by the taxpayer under the transaction does not constitute a dividend. This is intended to further clarify that a matching treatment application under section GC 11 is not needed for arrangements that already give rise to dividends under subpart CD.

#### Alignment of time bars

When an adjustment is required under the transfer pricing rules in sections GC 6 to GC 14 or the interest limitation rules in sections GC 15 to GC 19 (which apply to remove features not typically found in third party debt), there are often other related adjustments required to reflect the adjusted income or expenditure. These include:

- income tax offset adjustments if the adjustment reduces the taxpayer's net losses when those net losses have already been offset to an associated company and/or carried forward and utilised in future periods under Part I of the ITA — in this case, the relevant adjustments would be both to reduce the taxpayer's net losses and to increase the net income of the associated company against whom the disallowed net losses were offset

- determination of the amount of the dividend under subpart CD and the taxpayer's ability to retrospectively attach imputation credits (under section OB 62) or repay the dividend (under section CD 42), and
- adjustments to the NRWT amounts under Part R if the arrangements involve payments of passive income.

Section 108 of the Tax Administration Act 1994 specifies a four-year time bar that applies generally to the amendments of assessments.

Section GC 13(6) of the ITA provides for an extension to this general time bar to allow the Commissioner of Inland Revenue to amend an assessment for a tax year to give effect to adjustments under sections GC 6 to GC 19 within seven tax years if the taxpayer is notified about an audit or investigation within four years after the tax year in which the return is assessed.

The amendments ensure that any adjustments that are related to an adjustment under sections GC 6 to GC 19 can still be made, even after the general four-year time bar for adjustments.

In particular, new section GC 13(7) has been added to ensure that the seven-year time bar applies to other related adjustments listed above. In addition, an amendment to section GC 13(6) also confirms that a notification to a taxpayer informing them about a commencement of a transfer pricing audit is sufficient to trigger the seven-year time bar for the other party in the transfer pricing arrangement or the group company against whose net income the notified party's net losses were offset.

# Other remedials

2025/09-057

# R&D Tax Incentive: General approval application due date

*Section 68CB of the Tax Administration Act 1994*

## Summary of amendment

The amendment extends the due date for Research and Development Tax Incentive (RDTI) general approval applications for a given income year to the last day of the third month after the end of that year.

## Effective date

The amendment took effect on 1 April 2025.

## Background

Approximately 73% of businesses enrolled in the RDTI have an income year ending in March. For these businesses, the general approval application deadline for the year falls on 7 May. This is only a week away from the annual peak for filing supplementary returns for the previous year, which falls on 30 April for taxpayers with an extension of time. The proximity of these two dates causes a peak in RDTI filing, which creates a high compliance and administrative burden for businesses and scheme administrators alike.

## Detailed analysis

The general approval due date in section 68CB(2) of the Tax Administration Act 1994 is currently the seventh day of the second month after the end of the income year. This date is extended to the last day of the third month after the end of the income year.

Businesses can also apply to add to or vary an existing general approval. These applications must be also made by the due date for general approval applications for that year. Consequently, the due dates for variation applications are extended to:

- Section 68CB(7) – the last day of the third month after the end of the income year, for variations generally.
- Section 68CB(7B) – the last day of the 15th month after the end of the income year, for variations relating to supporting R&D activities conducted in the year immediately after the year of the corresponding core R&D activity.

2025/09-058

## R&D Tax Incentive: ICAs and shareholder continuity breaches

*Section OB 37(1C) of the Income Tax Act 2007*

### Summary of amendment

The amendment ensures that when a company's shareholder continuity is breached between the time a company files its income tax return and the time it is refunded a Research and Development Tax Incentive (RDTI) tax credit, the imputation credit account (ICA) incurs only one imputation debit corresponding to the imputation credit.



### Effective date

The amendment is effective for the 2019–20 and later income years.

### Background

Filing for an RDTI tax credit gives rise to an imputation credit in the ICA. If this tax credit is approved, the ICA then has an equal imputation debit should the tax credit be refunded to the company.

When shareholder continuity is lost, an ICA has an imputation debit equal to a credit balance in the account. If this breach happens after a company has filed its income tax return (the ICA has already been credited), but before the company may be refunded an RDTI tax credit (the ICA has not yet been debited), then the subsequent refund will result in two ICA debits overall, corresponding to one credit for the RDTI amount.

Ordinarily, when a refundable tax credit is paid out, the imputation debit that results from the breach of shareholder continuity is reduced by the amount of the refundable tax credit. This avoids the double debit. However, while RDTI credits are refundable, they are not listed as a defined refundable tax credit under section LA 6(1) of the Income Tax Act 2007 (ITA). Under current law, this means that the imputation debit resulting from a shareholder continuity breach cannot be reduced, which effectively means the business must incur both debits described above.

### Key features

The amendment ensures that when an RDTI credit is refunded to a business that has previously incurred an ICA debit for a breach in shareholder continuity, two ICA debits are not incurred in relation to one ICA credit.

### Detailed analysis

Section OB 37(1)(b) of the ITA sets out that an ICA company has an imputation debit for the amount of a refundable tax credit that is refunded to the company. Section OB 37(1C) sets out that an imputation debit for a refundable tax credit that arises in a tax year after a debit has been incurred in relation to a breach in shareholder continuity under section OB 41 of the ITA is reduced by the lesser of:

- the debit incurred under section OB 41, or
- the amount by which the refundable tax credit exceeds the total credits to the company's ICA.

Section OB 37(1C) is amended to ensure that it would operate to reduce an imputation debit that arises for an RDTI tax credit by the amount debited to the ICA under section OB 41 at the time of the continuity breach.

2025/09-059

## FamilyBoost remedials

*Sections MH 2, MH 3, MH 4, MH 5, and YA 1 of the Income Tax Act 2007*
*Sections 3, 41C, 120VE, 139B, and schedule 7, part C, subpart 2, clause 46B(1)(a) of the Tax Administration Act 1994*

### Summary of amendments

The Act makes a number of remedial amendments to the FamilyBoost provisions to ensure the legislation is aligned with the policy intent and operational practice, and to clarify wording.

### Effective date

The amendments apply retrospectively from 1 July 2024, the introduction date of the original FamilyBoost provisions in the Taxation (Budget Measures) Act 2024.

### Background

FamilyBoost provisions came into force from 1 July 2024 to provide a new tax credit based on the amount of early childhood education fees paid in a previous tax credit quarter of the year, up to a maximum amount. A quarterly household income test also applies to reduce the maximum amount for those earning over the threshold. The first payments were made from 1 October 2024. Following the original enactment, a number of remedial amendments were identified. A Tax Administration Act 1994 (TAA) section 6E exemption and two Orders in Councils were approved to provide temporary adjustments while Parliament considered permanent remedial amendments.

### Key features

The amendments:

- ensure that the income calculation for FamilyBoost applicants accurately reflects the income of individuals receiving schedular payments
- allow late filers who have subsequently provided their return of income to be eligible for FamilyBoost
- clarify which annual return of income should be used to determine a FamilyBoost applicant's tax credit income
- clarify the application of the "greater of" test for FamilyBoost applicants who derive both reportable income and non-reportable income
- remove the requirement to publish significant overpayment and underpayment thresholds
- ensure that debit interest is applied to FamilyBoost tax credit overpayments if they are not repaid by the due date
- ensure that credit interest is not applied to FamilyBoost tax credit payments
- ensure that late payment penalties are not applied to FamilyBoost tax credit payments
- replace the phrase "early childhood education and care service" with "licensed early childhood service" in schedule 7 of the TAA to ensure consistency and to maintain the scope of administration in an information-sharing provision.

#### Schedular payments

Prior to this amendment, FamilyBoost applicants earning income through schedular payments may have faced reduced or no entitlement due to the income test inaccurately inflating their income. This is because reportable income includes schedular payments received but does not account for the related allowable expense deductions, which are disclosed in the end-of-year tax return. As a result, the tax credit income of those receiving schedular payments was overstated, leading to a reduction in their FamilyBoost entitlement.

This amendment treats schedular payments as other income for the purpose of FamilyBoost, allowing the use of taxable income in the end-of-year tax return, including the necessary deductions. For applicants earning income through schedular payments this results in a more accurate level of income to be used in assessing FamilyBoost entitlement.

### Allowing for late filing of returns of income

The previous FamilyBoost provisions required individuals (and their partners) to have filed their most recent return of income to access FamilyBoost. However, it also mandated that the tax return be filed on time according to the individual's filing obligations. As a result, individuals who filed their most recent annual return of income late were ineligible for FamilyBoost, even after submitting the necessary income information. This issue primarily affected self-employed individuals who must declare their income by filing an annual tax return.

This amendment to section MH 3(5) of the Income Tax Act 2007 allows late filers who have subsequently filed a return to access the FamilyBoost tax credit.

### Most recent return of income

It was unclear in the previous FamilyBoost provisions as to which annual return of income should be used to determine "tax credit income". As it was described, the term "most recent return of income," could refer to any return filed before the start of the period the applicant is applying for. Consequently, a person's eligibility for the tax credit payment could have been determined based on an outdated return. The policy intention is to use income information, as held by the Commissioner, that best reflects current income levels. This amendment ensures that the tax return used can only be up to two income years preceding the income year that includes the tax credit quarter the person is applying for. If a person has no tax return in that period, for example, because they had not earned any income in that period, their income would be considered to be zero.

### Clarifying the "greater of" income test

The FamilyBoost provisions apply an income test based on whether a person derives reportable income (eg, salary and wage income) and/or non-reportable income (eg, self-employed income) in a quarter. However, Inland Revenue does not know if a person has derived non-reportable income until they file a tax return at the end of their income year.

The method for determining a person's tax credit income when they derive both reportable and non-reportable income was ambiguous. An amendment:

- clarifies that the Commissioner may determine whether a person has derived non-reportable income by looking at their most recent tax return, up to two income years preceding the tax credit quarter the person is applying for
- specifically refers to situations when a person has not yet filed a return of income for an income year that includes the tax credit quarter, and
- when a person has both reportable income and other income during an income year, the tax credit income is the greater of the amount of reportable income only, or the amount of other income only.

### Publishing significant overpayment and underpayment thresholds

A person's FamilyBoost tax credit is typically considered final based on the information available at the time of processing and payment. Reassessments may occur if the Commissioner identifies a significant overpayment or underpayment, with consideration of the resources available to the Commissioner. The previous legislation mandated the publication of these thresholds, a practice formerly used for student loan repayments. However, it has become evident that publishing these thresholds poses an integrity risk. Therefore, this amendment has removed the requirement to publish the overpayment and underpayment thresholds.

### Application of debit interest

In the event of people receiving a significant FamilyBoost tax credit overpayment, it was intended that debit interest apply to that tax credit. This would require people who received the overpayment to pay debit interest on this amount if they had not repaid the overpayment by the given due date (30 days after receiving notice of the overpayment). This amendment ensures debit interest is applied to FamilyBoost tax credit overpayments.

### Application of credit interest

Credit interest was not intended to apply to the FamilyBoost tax credit. However, the previous FamilyBoost provisions did not prevent Inland Revenue being required to pay credit interest to taxpayers on the amount of a FamilyBoost tax credit underpayment or when a payment is backdated and paid (for example, an application for payment some months or years after the first date an application could have been made). This amendment in section 120VE of the TAA clarifies that credit interest does not apply to the FamilyBoost tax credit.

### Late payment penalties

Late payment penalties were not intended to apply to the FamilyBoost tax credit. However, the previous FamilyBoost provisions required people who receive overpayments on their FamilyBoost tax credit to pay late payment penalties and incremental late payment penalties if they do not repay the overpayment by the due date. This amendment in section 139B of the TAA clarifies that late and incremental late payment penalties do not apply to the FamilyBoost tax credit.

### Inconsistent use of terminology

The FamilyBoost provisions had an inconsistency in terminology that required an amendment to align the terminology used when referring to licensed early childhood services. This amendment was made in the information-sharing provisions in the TAA, schedule 7.

2025/09-060

## Portfolio investment entity eligibility requirements

*Sections HM 7(1), HM 10B, HM 12, HM 71, and YA 1 of the Income Tax Act 2007*

### Summary of amendments

The amendments improve clarity around an important portfolio investment entity (PIE) eligibility requirement – a PIE must have the majority of its assets employed in deriving eligible income, which is typically known as passive income (the income-type requirement).

The amendments clarify that:

- a person in the business of borrowing and lending money cannot be a PIE, and
- income cannot generally be channelled into a PIE by way of interest payments from an associated person that is not eligible to be a PIE or a foreign PIE equivalent.

### Effective date

The amendments took effect on 1 April 2025.

### Background

A PIE is a collective investment vehicle that must have, as its principal activity, the provision of investment and savings services (as defined by the proportion of its underlying assets that are used to derive specified investment income).[37] The intention of the PIE regime is to encourage investors to invest through collective investment vehicles by providing the same tax outcomes that would have occurred if they had invested directly.

The PIE rules contain certain beneficial tax settings for savings and investment. Therefore, the PIE rules contain strict eligibility requirements. The PIE eligibility criteria are designed to distinguish genuine savings and investment vehicles from other entities, and they are broadly designed to replicate the situation of the vast majority of individuals who invest directly (the alternative to investing via a managed fund). The officials' report on the Bill, when the income-type requirement was originally introduced, is clear that an important eligibility requirement is that a PIE must have the majority of its assets employed in deriving what is typically known as passive income (such as income from trading shares, dividends, land and rents).[38]

It became apparent that there was some uncertainty around the scope of the income-type requirement. Therefore, amendments have been made to provide more certainty.

### Key features

- New section HM 10B of the Income Tax Act 2007 (ITA) excludes a "licenced deposit taker", as defined in the Deposit Takers Act 2023 (DT Act), from the PIE rules. Until the relevant parts of the DT Act come into force, new section HM 10B excludes a "registered bank" as defined in the Banking (Prudential Supervision) Act 1989 and a "licensed NBDT" (non-bank deposit taker) as defined in the Non-bank Deposit Takers Act 2013.
- An amendment to section HM 12(1)(b)(iii) clarifies that eligible PIE income does not include "excluded interest". Excluded interest is defined in new section HM 12(1B) as interest derived from a person associated with the PIE, unless:
  - the interest is received from a licenced deposit taker (or registered bank or licensed NBDT until the "licenced deposit taker" definition comes into force)
  - the interest is received from an entity that is a PIE, is eligible to be a PIE or is a foreign PIE equivalent, or
  - the interest received is for funds that were originally borrowed by the entity from third parties and on-lent at the same interest rate or the weighted average of the interest rates charged on all active loans the entity has from third parties.

37 Commentary on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill (May 2006), page 4.

38 Officials' Report to the Finance and Expenditure Committee on Submissions on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill (8 November 2006), Volume 4, page 14.

## Detailed analysis

The requirements that must be satisfied for an entity to be a PIE are set out in section HM 7 of the ITA. In particular, section HM 7 requires that the entity meet, and continue to meet, the PIE eligibility requirements (contained in sections HM 8 to HM 20, as applicable).

Relevant to the amendments, section HM 11 requires that at least 90% of a PIE's investments must be in listed types of investments (being land, financial arrangements or excepted financial arrangements). Section HM 12 requires that at least 90% of the PIE's income be listed types of income (the income-type requirement).

### Deposit takers

It was not intended that a deposit taker (such as a bank or finance company) could become a PIE. This is because, while the income derived by a deposit taker is technically interest income similar to a passive investment (for example by a managed fund), the income is, in substance, profit derived from carrying on an active business of borrowing and lending.

To provide clarity on this issue, new section HM 10B excludes a "licenced deposit taker", as defined in the DT Act, from the PIE rules. The DT Act defines a "licenced deposit taker" as a person that holds a licence.[39] Every person who carries on business as a deposit taker must hold a licence.40 The term "deposit taker" is defined as, essentially, a person carrying on a business in New Zealand of borrowing and lending money.[41] As part of implementing the DT Act, the Reserve Bank of New Zealand will provide further guidance on the deposit taker definition in due course.

The relevant provisions in the DT Act are not expected to come into effect until approximately 2028. Therefore, during the transitional period until the relevant parts of the DT Act come into force, an interim new section HM 10B excludes a "registered bank" as defined in the Banking (Prudential Supervision) Act 1989 and a "licensed NBDT" as defined in the Non-bank Deposit Takers Act 2013 from being a PIE. These are both existing definitions within section YA 1 of the ITA used for other purposes. Upon the relevant sections of the DT Act coming into force by Order in Council under section 2(2) of that Act, the interim new section HM 10B of the ITA will be replaced to reflect the new definition.

This amendment is not intended to prevent cash PIEs, KiwiSaver schemes, or other managed funds offered by registered banks from being PIEs. These PIEs will not meet the definition of "deposit taker" in the DT Act.

This amendment will also not prevent mortgage lending by a KiwiSaver scheme or other fund that was funded by shares or other equity because such an entity has a business of lending but not borrowing and lending, which would be required to meet the definition under the DT Act.

This amendment took effect on 1 April 2025.

### Interest from associated persons

In 2009, section HM 12(1)(b)(iv) was amended to ensure that income received from leasing land to an associated person would not be eligible PIE income. The intention was to ensure that active business income could not be channelled into a PIE by an associated person because this was inconsistent with the policy for the PIE rules.

The same result can be achieved by a PIE lending to an associated person carrying on an active business and receiving interest income from that associated person that is essentially a transfer of active income into the PIE. The Commissioner's view is that this type of arrangement would not be within Parliament's contemplation given the express amendment made for associated rental income. The Commissioner's view is consistent with the policy intent. However, to provide greater clarity on this point, a similar amendment has been made to section HM 12(1)(b)(iii) to confirm that interest income derived from an associated person would not be eligible PIE income.

39 Section 6 of the DT Act.

40 Section 10 of the DT Act.

41 Schedule 2, clause 2 of the DT Act.

Some PIEs have arrangements with associated parties that are not for the purpose of transferring active income into a PIE. Therefore, interest income derived by a PIE from an associated party will continue to be eligible income in the following circumstances:

- When the PIE and the entity paying the interest are associated but only because a group of persons exists who control both companies by any other means (section YB 2(3)). This is intended to reduce the compliance costs of entities that do not have the same owners but may be controlled by the same people, for example, potentially a cash PIE operated by a bank.
- When the interest is received from a licenced deposit taker (and, during the transitional period until the relevant parts of the DT Act come into force, a registered bank or licenced NBDT). This ensures that a PIE, for example a cash PIE, can continue to derive passive interest income from a related bank in the same way as from an unrelated bank.
- When the interest is received from an entity that is also a PIE, is eligible to be a PIE or is a foreign PIE equivalent (essentially, an entity that would meet the PIE requirements except for being non-resident). In these circumstances no active income can been transferred into a PIE because neither entity is able to derive more than 10% non-eligible income.
- When the interest is for funds that were originally borrowed by the entity from third parties and on-lent at the same interest rate or the weighted average of the interest rates charged on all active loans the entity has from third parties. This allows a PIE to continue to act as a financing intermediary rather than associated entities having to borrow separately. The amended legislation does not cover lending at different maturities or when there is a different interest rate, for example, because the two entities have a different credit risk. This was an intentional decision that reduces the complexity of the new legislation. On-lending at different interest rates and maturities requires more active management than on-lending under the same terms.

This amendment takes effect on 1 April 2025. However, a transitional provision allows existing PIEs to continue to apply the current law (should they wish to dispute the Commissioner's current position) until 31 March 2030 in relation to interest income from a loan that was most recently entered into, renewed, extended or renegotiated before 1 April 2025. Inland Revenue officials' view is that the amended law is consistent with the existing law, so the later effective date does not widen the scope of the eligibility criteria during the transitional period. However, it provides certainty that no existing PIEs will be removed from the regime as a result of outstanding borrowing under the changes during the transitional period.

**Example 52: Transfer of active income**

Company A and Listed PIE A are stapled together so a person owning a share in Company A must also own a share in Listed PIE A. Company A is a retailer that has earnings before tax and interest of $1 million per year. However, Company A has borrowed $10 million from Listed PIE A at an interest rate of 10%. Therefore, Company A has nil taxable income. Listed PIE A has no debt and no other activities, so has $1 million of taxable income. Company A has effectively transferred its income from a normal company into a PIE.

The Commissioner considers that Listed PIE A would have been ineligible to be a PIE under the previous law. The new provision confirms that Listed PIE A derives 100% non-eligible income so does not qualify for PIE status.

2025/09-061

## Portfolio investment entity association rule

*Section YB 2(8) of the Income Tax Act 2007*

### Summary of amendment

The amendment extends a special associated person rule that applies to portfolio investment entities (PIEs) so it also applies to "foreign PIE equivalents" (essentially, an entity that would meet the PIE requirements except for being non-resident).

### Effective date

The amendment took effect on 30 March 2025.

### Background

A PIE is a collective investment vehicle that must have, as its principal activity, the provision of investment and savings services. Section YB 2(8) of the Income Tax Act 2007 contains a specific rule excluding PIEs and entities that are eligible to be PIEs from the rule that associates two companies, on the basis that PIEs are widely held.

### Key features

The amendment extends section YB 2(8) so that it also applies to "foreign PIE equivalents" (as defined in section YA 1).

2025/09-062

## Securitisation entities and Pillar 2

*Sections HP 1(1) and (2), and YA 1 of the Income Tax Act 2007*
*Section 78J(1B) of the Tax Administration Act 1994*

### Summary of amendments

The amendments exclude securitisation entities from liability to top-up taxes under New Zealand's Global Anti-Base Erosion (GloBE) rules, and from being required to file a multinational top-up tax return when there is another group entity in New Zealand that is not a securitisation entity.

### Effective date

The changes came into force on 1 January 2025.

### Background

#### Securitisation

Securitisation is a funding arrangement involving the transfer of loans from an originator to a special purpose vehicle (securitisation entity) that then issues debt securities backed by the expected cash flows from those loans.

Securitisation provides an important source of funding for a range of businesses by allowing them access to wholesale debt markets for their funding needs on competitive terms, thereby serving as an alternative to the provision of funding from the major banks. Tax or other impediments to securitisation transactions may reduce competition in the financial sector, to the detriment of New Zealand businesses and consumers.

For investors to be prepared to provide debt financing to a securitisation entity, the securitisation entity must have no unanticipated liabilities, including tax liabilities (ie, the entity must be "bankruptcy remote" and "tax neutral"). A confirmation of tax neutrality is always required for the draw down of funding by the securitisation entity, illustrating the commercial importance of the tax treatment.

#### Global Anti-Base Erosion (GloBE) rules

The GloBE rules impose a 15% "global minimum tax" on large multinational groups. In some cases, they could require New Zealand to collect "top-up tax" from a New Zealand entity as a result of a group member having a less than 15% effective tax rate in a jurisdiction.

#### Securitisation entities and GloBE rules – OECD Administrative Guidance

In its June 2024 Administrative Guidance on the GloBE rules, the OECD addressed a problem that had been identified with the application of the GloBE rules to securitisation entities. The problem was that, if a securitisation entity could become liable for top-up tax in respect of the undertaxed profits of other entities in the multinational group, it would not be bankruptcy remote or tax neutral. The entity's potential exposure to unexpected tax liabilities would negatively affect its own credit rating. This would undermine the viability of securitisation arrangements.

The OECD addressed the issue by clarifying that jurisdictions could choose to exclude securitisation entities from liability to top-up taxes. Other entities in the multinational group would then incur the top-up tax instead.

#### Key features

- Amended section HP 1(1) of the Income Tax Act 2007 (ITA) provides that a securitisation entity is not required to pay top-up tax.
- Amended section HP 1(2) provides that a securitisation entity is not jointly and severally liable with other entities in the same multinational group for top-up tax.
- Amended section 78J of the Tax Administration Act 1994 (TAA) provides that a securitisation entity is not required to file a multinational top-up tax return when there is another group entity in New Zealand that is not a securitisation entity.

- "Securitisation entity" is defined in section YA 1 of the ITA as:
  - a securitisation entity as defined for or in the OECD's publication Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules or any replacement
  - a securitisation trust
  - a debt funding special purpose vehicle.

## Detailed analysis

### Securitisation entities not liable to top-up tax

When securitisation entities are excluded from liability to top-up tax under section HP 1 of the ITA, the tax will most likely be payable by the originator or another New Zealand entity in the multinational group instead.

In the very unlikely scenario when the only New Zealand entities in the multinational group are securitisation entities, no top-up tax will be payable by the group in New Zealand; it will be allocated to other countries where group entities are located.

### Securitisation entities not required to file top-up tax return if other New Zealand entity in group

Amended section 78J of the TAA excludes securitisation entities from the requirement to file a multinational top-up tax return, provided there is at least one other New Zealand entity in the group that is not a securitisation entity. Another entity will need to file the top-up tax return for the group.

As previously noted, it is very unlikely that the only New Zealand entities in a group are securitisation entities. However, in such a case, a securitisation entity will need to file the top-up tax return. A return is required so that Inland Revenue can determine whether Article 2.6.3 of the model GloBE rules applies. This article provides that, if a jurisdiction has not collected top-up tax despite such tax being allocated to entities in that jurisdiction, that jurisdiction is excluded from the allocation mechanism in subsequent fiscal years.

### Definition of securitisation entity

The new definition of "securitisation entity" in section YA 1 of the ITA includes the OECD's definition of "securitisation entity" (introduced in the June 2024 Administrative Guidance), as well as two existing domestic definitions for these entities: "securitisation trust" and "debt funding special purpose vehicle". These additional definitions are important to ensure that the particular nature of securitisation vehicles in the New Zealand market is appropriately recognised. An entity will qualify for the exclusions in section HP 1 of the ITA and section 78J of the TAA if it meets any of the three definitions.

2025/09-063

## Value of emissions units surrendered following deregistration of forest

*Section CB 36(4) and (6) of the Income Tax Act 2007*

### Summary of amendment

The amendment clarifies that emissions units surrendered to meet a forestry deregistration obligation are deemed to be disposed of for nil value.

### Effective date

The amendment is backdated with effect from 1 January 2009, because the technical omission has existed from that date.

### Background

Just as emissions units are received when post-1989 forests registered in the emissions trading scheme sequester carbon, emissions units need to be surrendered if a registered forest or part of a registered forest is removed from the scheme. Conceptually, such surrenders should be for nil value, comparable to units surrendered because of an emissions liability. The amendment clarifies the tax legislation to avoid any confusion for taxpayers that the units are surrendered for market value.

2025/09-064

## Deductions for forestry releasing expenditure

*Section DP 1(1)(e) of the Income Tax Act 2004*
*Section DP 1(1)(e) of the Income Tax Act 2007*

### Summary of amendments

The changes clarify that forestry releasing costs are immediately deductible.

### Effective date

The amendments took effect on the commencement date of the Income Tax Act 2004, 1 April 2005, when the relevant provisions were combined into new section DP 1 and the problem arose.

### Background

Releasing involves the clearing of weeds and other undergrowth from around young trees to encourage their growth. It is a cost of maintaining the forest. Since the early 1990s it has been intended that the costs of planting and maintaining a forest be immediately deductible in the year that they are incurred. Various legislative amendments were made at that time to achieve that outcome. However, the legislation has since been rewritten and, as a result, it was not clear that the immediate deductibility treatment extended to expenditure on releasing.

### Key features

The amendments ensure that releasing costs are immediately deductible by removing the words "excluding releasing" from section DP 1(1)(e) of both the Income Tax Act 2004 and Income Tax Act 2007. Associated amendments to both Acts ensure that past contrary tax positions cannot be reopened as a result of the changes.

2025/09-065

# Value of forestry land emissions units transferred for zero value

*Section ED 1(7B) of the Income Tax Act 2007*

## Summary of amendment

The change clarifies the value at which forest land emissions units are received by foresters.

## Effective date

The amendment is backdated to 1 July 2010, the date from which the uncertainty first arose.

## Background

Emissions units are received by foresters when post-1989 forests registered in the emissions trading scheme sequester carbon. Although the legislation correctly specifies the value of the units at the end of the income year, the acquisition value of these emissions units is not stated in the legislation. This technical oversight makes the value of such units unclear for tax purposes. The units should be received for nil value and taxpayers have been valuing them on that basis. The oversight stems from various consequential tax changes made following changes to the Climate Change Response Act 2002 in 2009.

## Key features

The amendment clarifies that forest land emissions units transferred under section 64 of the Climate Change Response Act (that is, from the Crown to a forester in relation to carbon sequestration activities) have an acquisition value of zero for the period beginning with their transfer and ending before the end of the income year in which they are received.

2025/09-066

## Clarifying IETC eligibility

*Section LC 13(1) of the Income Tax Act 2007*

### Summary of amendment

This amendment clarifies the eligibility criteria to receive the independent earner tax credit (IETC) to align with the original policy intent, which was to exclude those receiving any Working for Families (WFF) tax credit payments.

### Effective date

The amendment applies from 30 March 2025.

### Background

The current IETC eligibility criteria exclude a person who is entitled to a WFF tax credit from receiving IETC payments. This ineligibility is also extended to spouses, civil union partners or de facto partners of a person who is entitled to a WFF tax credit.

This means the legislation can be interpreted to exclude a person who meets the criteria for a WFF tax credit even if no WFF tax credit payment is actually received, that is, they have not applied to receive WFF tax credits but would receive a WFF tax credit if they did.

The commentary at the time the eligibility criteria was introduced is clear that those actually receiving a WFF tax credit should be excluded. This remedial clarifies the legislation to better reflect that policy intent.

### Key features

The amendments to the eligibility criteria for receiving IETC clarify that those who are entitled to and receive WFF tax credit payments are excluded.

2025/09-067

## Share-lending arrangements

*Section EA 5 of the Income Tax Act 2007*

### Summary of amendment

The amendment allocates income from a sale of shares as part of a share-lending arrangement to the year the replacement shares are purchased if that occurs in the following income year.

### Effective date

The amendment is effective for share sales under a share-lending arrangement entered into on or after 30 March 2025.

### Background

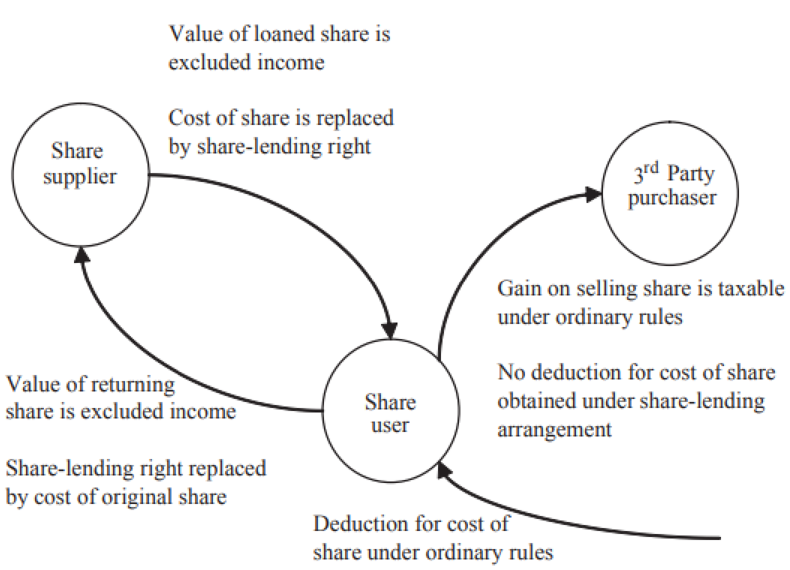
The share-lending rules were introduced by the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 and explained in Tax Information Bulletin Vol 18, No 5 (June 2006) (the TIB).[42]

Legally, a share-lending transaction is a sale of shares from the share supplier to the share user that is unwound through a further sale from the share user back to the share supplier. However, for tax purposes the share-lending rules effectively ignore these sales. The treatment under the share-lending rules includes:

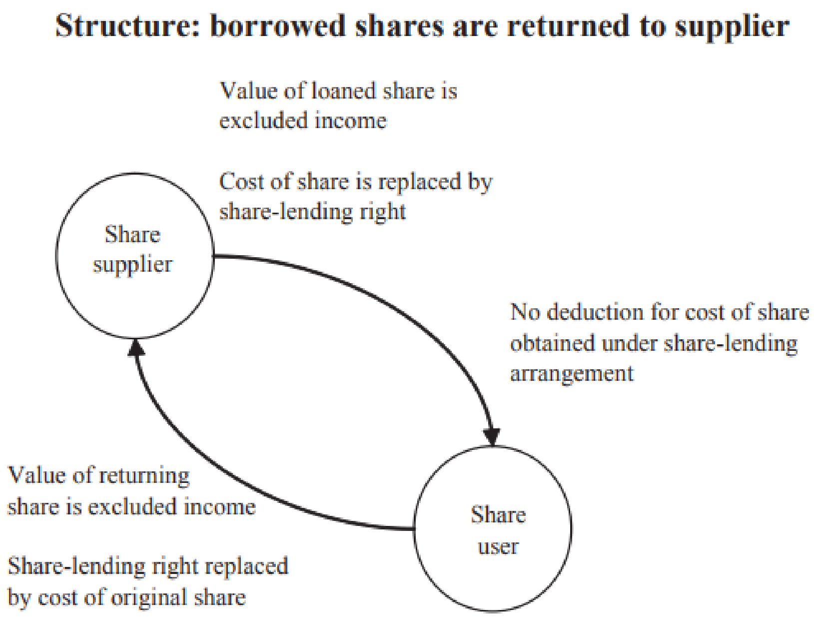
- Lending the shares to the share user is excluded income.
- The share user has taxable income under ordinary concepts from selling the shares to a third party – no deductions are available, so the entire sale proceeds are taxable income.
- The share user has a deduction under ordinary concepts from purchasing identical shares from a third party – there is no income at this stage, so the entire purchase cost is deductible.
- Returning the identical shares to the share supplier is excluded income.

These were explained in the following diagrams in the TIB.

**Structure: borrowed shares are on-sold to a third party**




42 **https://www.taxtechnical.ird.govt.nz/new-legislation/act-articles/taxation-depreciation-payment-dates-alignment-fbt-and-miscellaneous-provisions-act-2006-2006-no-3-/taxation-of-share-lending-transactions**




While a share-lending arrangement must have a term of one year or less,[43] there is no legislative requirement that the arrangement must end within the same income year. However, when the arrangement crosses the share user's balance date, the income from selling the original share will be derived one year before the deduction from acquiring the identical share is incurred. This can incur the high cash cost of paying tax in the first year and providing a deduction in the second year when there may be insufficient income to offset the deduction. Officials understand this generally prevents a share user from entering into a share-lending arrangement that crosses a balance date.

## Key features

New section EA 5 of the Income Tax Act 2007 allocates income from disposal of an original share under a share-lending arrangement to the following income year if the identical share is acquired during that later income year.

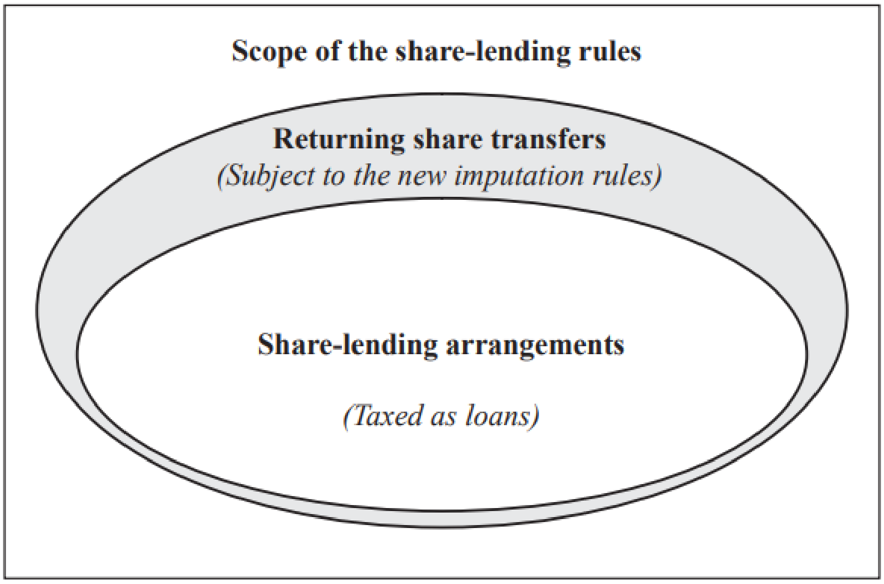
Income from the sale of an original share when the identical share is acquired within the same income year will continue to be taxable under ordinary concepts in the year it was sold.

43 Section YA 1 definition of a "share-lending arrangement", paragraph (a).

## Detailed analysis

### Ceasing to qualify

A share-lending arrangement is a subset of a returning share transfer as shown in the following diagram from the TIB:




The amendment applies only to share-lending arrangements and not to returning share transfers that are not share-lending arrangements.

Taxpayers are required to determine whether a transaction qualifies as a share-lending arrangement at the start of the transaction.

If an arrangement fails to qualify at some point during its term (for example, because an identical share is no longer available) then it fails to qualify from the start of the transaction and the normal tax rules must be applied.

Taxpayers entering share-lending transactions are subject to the normal self-assessment rules. Therefore, if a taxpayer mistakenly treats a transaction as qualifying for the share-lending rules when they should not have done so, they will need to restate the tax treatment of the transaction. Use of money interest and penalties could apply depending on the circumstances that gave rise to an incorrect treatment being adopted.

2025/09-068

# Debt-funding special purpose vehicle eligibility

*Sections HR 9, HR 9BAA, HR 9BA, HR 10, HR 10B, HZ 9, HZ 10, YA 1, and YB 16 of the Income Tax Act 2007*

## Summary of amendments

The amendments expand the eligibility of the securitisation regime in the Income Tax Act 2007 (ITA) to allow debt funding special purpose vehicles (SPVs) to elect into the regime if they have received assets from a third party or if they have "self-originated" assets in certain situations.

## Effective date

The amendments took effect on 30 March 2025.

## Background

A securitisation is a funding mechanism that involves issuing marketable securities that are backed by the expected cash flows from specific assets. Securitisations can have some commercial benefits when compared with other funding mechanisms, such as risk management and lower cost of funding.

New Zealand businesses with assets, such as large books of trade credits or other receivables, may wish to raise funds through a securitisation. To undertake a securitisation, a company (referred to as the "originator") that owns income-producing assets transfers those assets to a debt funding SPV. The debt funding SPV (typically a trust in New Zealand) is usually structured to be bankruptcy remote from the originator, which means that the SPV's assets cannot be accessed by the originator's creditors. The debt funding SPV then borrows from third parties on the strength of the assets that have been transferred to it and remits the borrowed funds to the originator as the purchase price for those assets.

The ITA contains an elective securitisation regime (sections HR 9 to HR 10A) that makes the debt funding SPV transparent, so that its assets and liabilities are treated as held by the originator for tax purposes. This means that the transfer of assets to the debt funding SPV by the originator is ignored, and the debt funding SPV itself is not subject to tax (with any tax on its activities being payable by the originator instead).

Previously, an originator was required to be a person that "is a member of the same wholly-owned group of companies as all other persons who have transferred some or all of their assets to the debt funding SPV". This meant that an originator needed to be a company because a trust cannot be a member of a wholly-owned group. Therefore, if a debt funding SPV held assets that were received from a trust or a company outside of the wholly-owned group, or if the assets were "self-originated", the debt funding SPV was not eligible to elect into the securitisation regime in the ITA.

## Key features

The amendments expand the eligibility of the securitisation regime. Debt funding SPVs are now eligible to elect into the regime in relation to assets transferred from a company or "attributed assets", provided that a beneficiary or shareholder of the debt funding SPV is either:

- treated as holding those assets for financial reporting purposes, or
- a member of a wholly-owned group of companies that includes a person who prepares consolidated financial statements that include those assets.

An amendment to section YB 16 of the ITA introduces an exclusion from the associated persons rules for securitisation trusts in certain situations.

## Detailed analysis

### Definition of "originator"

New section HR 9BAA of the ITA replaces the definition of "originator" in section YA 1.

### When assets transferred to SPV by company

The amendments reproduce the previous definition of "originator" in new section HR 9BAA(1)(a) and (2) of the ITA.

NEW LEGISLATION

### Other assets

New section HR 9BAA(1)(b) and (3) introduces new criteria for debt funding SPVs that hold assets that were not transferred from a company. In these situations, a person is an originator of the debt funding SPV if they are a beneficiary or shareholder of the debt funding SPV (or a member of the same wholly-owned group as a beneficiary or shareholder) and they are either:

- treated as holding those assets for financial reporting purposes (new section HR 9BAA(3)(a)), or
- a member of a wholly-owned group of companies that includes a person who prepares consolidated financial statements that include those assets (new section HR 9BAA(3)(b)).

The effect of these new rules is that a debt funding SPV is eligible to elect into the securitisation regime in the ITA if it holds assets that were transferred from a trust or assets that were "self-originated". New section HR 9BAA(3)(b) ensures that a beneficiary or shareholder of the debt funding SPV (or a member of the same wholly-owned group as a beneficiary or shareholder) can be the originator, despite not being the person that transferred the assets to the debt funding SPV, provided that they are either treated as holding the assets for financial reporting purposes or are a member of a wholly-owned group that includes a person that is treated as holding those assets.

Throughout the amendments, the assets described in the above situations are referred to as "attributed assets".

#### Group members

New section HR 9BAA(4) clarifies that for the purposes of transferred assets or attributed assets, a beneficiary or shareholder includes a member of the same wholly-owned group of companies as a beneficiary or shareholder.

### Associated persons rules

New section YB 16(3) provides that a person is not associated with a securitisation trust if:

- the person is party to a financial arrangement with the securitisation trust,
- the person is a beneficiary of a "security trust" that is established for the main purpose of securing the security trust's beneficiaries' rights and obligations in relation to the securitisation trust, and
- the person and the securitisation trust are associated due to one or more of the following reasons:
  – the person is a settlor of the securitisation trust or the security trust, because the person is a party to the financial arrangement
  – the person has a power of appointment or removal for trustees of the securitisation trust or the security trust, because the person is a party to the financial arrangement.

### Consequential amendments

The amendments include the following consequential changes to the securitisation regime in the ITA.

#### Elections to treat debt funding SPVs as transparent

The amendment to section HR 9BA(2)(b) ensures that an election to treat a debt funding SPV as transparent has effect from either the date on which the originator first transferred an asset to the debt funding SPV or the date on which an asset first becomes an attributed asset for the originator.

New section HR 9BA(2B) clarifies that there cannot be two originators in relation to the same asset. If an originator makes an election in relation to an attributed asset, no other originator may make an election in relation to that asset.

#### Ceasing to be originator

New section HR 10B provides rules for when a person ceases to be an originator of a debt funding SPV at a particular date (the breach date). This section overrides the rule in new section HR 9BA(2B) that there cannot be two originators in relation to the same asset.

This section applies if another person is (or becomes) a beneficiary or shareholder of the debt funding SPV, they are a member of the same wholly-owned group of companies immediately before the breach date, and immediately after the breach date they hold the assets of the first originator as attributed assets.

Section HR 10B(2) provides that the second originator is treated as if:

- they acquired and held the same assets on the same basis as the first originator (and the first originator would be treated as not having acquired or held the assets), and
- they paid (or received) the amount of consideration originally paid (or received) by the first originator for, or under, an asset that is a financial arrangement or excepted financial arrangement of the first originator.

Section HR 10B(2B) provides that the first originator is treated as if they were not an originator for the assets and arrangements referred to above for the income year and later income years. Section HR 10B(4) provides that the first originator is treated as a party that is not required to calculate a base price adjustment despite section EW 29.

New section HR 10B(6) clarifies that for the purposes of transferred assets or attributed assets, a beneficiary or shareholder includes a member of the same wholly-owned group of companies as a beneficiary or shareholder.

New section HR 10B overrides the limitation in section HR 9BA(2B) that provides that only one originator can make an election in relation to an asset.

**Existing debt funding SPVs**

The amendments replace section HZ 9(1) to ensure that debt funding SPVs that exist before 30 March 2025 are able to elect into the look-through regime in section HR 9.

**No supply of goods or services**

New sections HR 10(6), HR 10B(7) and HZ 10(4) of the ITA ensure that a supply of goods or services does not arise under the Goods and Services Act 1985 when an entity stops being a debt funding SPV or when a person replaces another person as an originator for a debt funding SPV.

2025/09-069

## Restrictive covenant payments – sale of business exclusion

*Section CE 9 of the Income Tax Act 2007*

### Summary of amendment

The amendment ensures that the sale of business exclusion for restrictive covenant payments applies when a person sells all their shares in a company carrying on a business, despite the other shareholders not selling their shares.

### Effective date

The amendment is effective for amounts derived on or after 30 March 2025.

### Background

A restrictive covenant payment is the consideration (or payment) given for a restriction on a person's ability to perform services. Broadly, a restrictive covenant payment is subject to income tax under section CE 9 of the Income Tax Act 2007 to ensure that these payments are not used as a substitute for taxable personal services income (such as salary or wages).

However, under section CE 9(3) a restrictive covenant payment is not subject to taxation when the payment is received by a person when they sell a business. This recognises that payments received on the sale of a business are part of a larger capital receipt (that is, the purchase price of a business) and are less likely to be substituted for taxable income from services.

The sale of business exclusion currently only applies when all the shares in a company carrying on the business are sold. It does not apply when a person sells all their shares in a company despite other shareholders not selling their shares. This is inconsistent with the intent of the existing exclusion.

The amendment to section CE 9 ensures that the sale of business exclusion applies when a person sells all their shares in a company carrying on a business despite the other shareholders not selling their shares.

2025/09-070

## Revised introductory wording for livestock valuation

*Section EC 1(1) of the Income Tax Act 2007*

### Summary of amendment

The amendment clarifies what livestock needs to be valued under subpart EC of the Income Tax Act 2007 (ITA) for tax purposes. These are land and sea animals that are farmed commercially.

A savings provision has also been included to ensure the revised wording does not impact on past tax positions taken, in the unlikely event that some taxpayers have not previously valued their livestock correctly due to any current uncertainty.

### Effective date

The amendment took effect on 1 April 2008, the commencement date of the ITA.

### Background

Trading stock (ie, items held for sale or exchange) that is on hand at the end of each income year is valued and included as income for tax purposes to ensure that the cost of sales for the year is not overstated. That value is deducted at the beginning of the following income year. This approach also applies to livestock, even though not all livestock is held as trading stock. For example, livestock can be held to produce products such as milk and wool, and/or to breed replacement livestock.

The previous wording of section EC 1(1) (the introductory section of the ITA's livestock valuation provisions) was problematic because in using the phrase "…holds livestock for the purposes of sale or exchange in the ordinary course of carrying on a business", it seemingly excluded livestock held for other income-generating purposes. Such an exclusion was clearly not the intent, and taxpayers and their tax advisers generally understood this. Nevertheless, there was concern that this inaccurate wording could create confusion and could potentially result in some businesses valuing their livestock incorrectly or simply not valuing them, leading to an inaccurate assessment of income.

### Detailed analysis

The amendment to the wording in section EC 1(1) ensures that the valuation provisions in subpart EC apply to a person when they:

- own or carry on a farming business, other than a livestock dealing business, and hold the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business, or
- provide their livestock to another person under a bailment, lease or other agreement.

This is intended to include both land and sea animals that are farmed.

The wording "hold(s) the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business" excludes animals on the farm that are not farmed, such as working dogs and horses that are simply used in a farming business, as well as feral animals that are not farmed.

The Commissioner of Inland Revenue has published an operational statement on livestock valuation that, among other things, includes a more detailed explanation of the impact of the reworded section EC 1.

2025/09-071

# Challenging civil penalties unrelated to tax

*Section 138L of the Tax Administration Act 1994*

## Summary of amendments

The amendments clarify the process a person must follow to initiate challenge proceedings for a penalty that has been assessed by the Commissioner of Inland Revenue that does not relate to an assessment of tax.

## Effective date

The amendments took effect on 30 March 2025.

## Background

The Commissioner is empowered to impose numerous civil penalties under the Tax Administration Act 1994 (TAA). Many of these civil penalties relate to tax (such as income tax and goods and services tax) and are challengeable in the same way that the tax to which the penalty relates is challengeable. This process is set out in the TAA.

In addition to penalties that relate to assessments of tax, the Commissioner also has the power to assess penalties that do not relate to an assessment of tax. These penalties usually relate to an information reporting requirement, such as:

- information required to be provided to Inland Revenue by a financial institution who has obligations under the Common Reporting Standard
- information required to be provided to Inland Revenue by the operator of a digital platform who has obligations under the model reporting standard (or the extended model reporting standard) for operators of digital platforms, and
- information required to be provided by trustees of foreign exemption trusts.

These types of penalties should be subject to the dispute and challenge processes set out in the TAA. However, it was unclear the process for initiating challenge proceedings for these types of penalties before the amendments made to the TAA.

## Detailed analysis

New section 138L(1B) of the TAA sets out that the process for challenging a civil penalty that is unrelated to an assessment of tax is the same as the process for challenging an assessment of tax. A challenge can proceed only if all the following apply:

- The assessment of the penalty was the subject of an adjustment proposed by the person, and the Commissioner rejected, by notice, the adjustment proposed by the person within the applicable "response period".
- The Commissioner issued a challenge notice to the person.
- The person files the proceedings in accordance with the Taxation Review Authorities Regulations 1998 or the High Court Rules 2016 within two months of the challenge notice being issued.

Section 138L(2) of the TAA sets out the civil penalties that are not challengeable. New section 138L(2)(a) clarifies that civil penalties that are "late filing penalties" are not challengeable even though there are some other civil penalties that relate to the non-provision of information that are.

NEW LEGISLATION

2025/09-072

# Taxation treatment of Veterans' Affairs backdated lump sum payments

*Sections RD 20B, YA 1, and schedule 1, part A, clause 13 of the Income Tax Act 2007*

## Summary of amendment

The amendment applies an alternative tax treatment for backdated Veterans' Affairs lump sum payments, when the backdated lump sum payment will be taxed at the recipient's average tax rate for the four years prior to the year they receive the payment.

## Effective date

The amendment took effect on 30 March 2025.

## Background

Backdated lump sum payments are a category of payments made by government departments to affected taxpayers. These payments are often compensatory in nature and can relate to more than one prior tax year. However, when made as a single payment, the taxation of these amounts can occur at a higher rate than if the components of the payment had been spread over the years to which they relate.

The taxation of Veterans' Affairs backdated lump sum payments presents a similar issue to Accident Compensation Corporation (ACC) and Ministry of Social Development (MSD) backdated lump sum payments. When a taxpayer receives a large lump sum payment amount, it can "artificially" push the taxpayer into a higher income tax bracket. By contrast, if delays or disputes did not take place, the backdated lump sum payment would have been spread over the tax years to which it applied, and the taxpayer would have had a lower tax liability.

The amendment to section RD 20B(1) of the Income Tax Act 2007 includes Veterans' Affairs lump sum support payments made over multiple years under the current treatment of payments of accident compensation for periods of more than one year.

Note, the amendment does not apply to the payments listed in section RD 20B(1)(c)(i) and (ii) because these are exempt income.

Note also, two minor consequential amendments are made to reflect the change to the title of section RD 20B.

2025/09-073

## Commissioner fails to respond to taxpayer statement of position

Section 89M(6BAB) of the Tax Administration Act 1994

### Summary of amendment

The amendment makes "deemed acceptance" the consequence of the Commissioner of Inland Revenue failing to respond to a taxpayer's statement of position within the required two-month response period.

### Effective date

The amendment took effect on 1 April 2025.

### Background

During the disputes process, a taxpayer can issue the following forms to Inland Revenue:

- A notice of proposed adjustment (NOPA), which allows the taxpayer to formally dispute one or more tax assessments.
- A statement of position (SOP), which allows a taxpayer to finalise their argument in a dispute after they receive a disclosure notice from Inland Revenue.

There are specific timeframes that govern when the taxpayer is required to send the relevant form and similarly when the Commissioner is required to respond to the taxpayer.

When the Commissioner fails to respond to a NOPA issued by a taxpayer within two months or issue a challenge notice within four years, the Commissioner is deemed to have accepted the taxpayer's position.

However, when a taxpayer issues an SOP and the Commissioner fails to respond within the required two-month response period, there is no consequence for the Commissioner.

Including an additional consequence within the dispute process that includes "deemed acceptance" for the Commissioner failing to respond to an SOP ensures the taxpayer's dispute is resolved. Additionally, it provides an incentive for the Commissioner to engage with the taxpayer's issue.

2025/09-074

# Additional criterion for Commissioner to make assessment

*Section 89C of the Tax Administration Act 1994*

## Summary of amendment

The amendment inserts an additional criterion to allow the Commissioner of Inland Revenue to make a new assessment without the need to issue a notice of proposed adjustment (NOPA). The criterion is a required response period of two months for the taxpayer to respond to the Commissioner's queries.

## Effective date

The amendment took effect on 1 April 2025.

## Background

During the disputes process, the Commissioner must issue a NOPA prior to issuing an assessment when they disagree with a tax position taken by a taxpayer.

There are exceptions to this rule that allow an assessment to be issued without first issuing a NOPA. For example, in cases when there is flight risk, a simple error, or fraudulent activity.

When a taxpayer has entered information into an individual tax return, such as claiming expenses, Inland Revenue will query these with the taxpayer. In many cases the taxpayer fails to respond to this request for additional information. This leaves the Commissioner with no ability to issue an assessment and resolve the case without issuing a NOPA, which can be problematic due to the lack of information.

Allowing the Commissioner to issue an assessment without the need for a NOPA when the taxpayer fails to respond to a request for information will help resolve these cases.

The change does not alter a taxpayer's right of appeal. If they disagree with the assessment, they can issue a NOPA in response to dispute it.

2025/09-075

## Motor vehicle used wholly and exclusively for business purposes

*Section YA 1 of the Income Tax Act 2007*
*Section OB 1 of the Income Tax Act 2004*

### Summary of amendments

The amendments clarify that the business use of a vehicle must involve travel wholly and exclusively for business purposes.

### Effective date

The amendment took effect on 1 April 2005.

### Background

Motor vehicle expenses are generally deductible for income tax purposes if the vehicle is used to help earn income for the business. A person can claim a deduction for expenditure that they incur for business use of a vehicle.[44] Business use is currently defined as travel undertaken by the vehicle wholly in deriving the person's income.45

The definition of "business use" was amended during the rewrite of the Income Tax Act in 2004. Previously, the Income Tax Act defined business use (and business purposes) to be travel undertaken "wholly and exclusively" in deriving the person's income.

Removal of the word "exclusively" was not intended to change the definition, but it has led to an arguable widening of the business use deduction. The amendment reinserts the term "exclusively" in line with the original definition to correct the unintended change. The amendment took effect on 1 April 2005, the date the Income Tax Act 2004 came into force.

44 Section DE 2 of the Income Tax Act 2007

45 Section YA 1 of the Income Tax Act 2007

2025/09-076

## Payments related to health or safety

*Sections CE 5(3)(b)(vb), CW 17(5), CW 17D, CX 19(1)(c), EA 3(7), and YA 1 of the Income Tax Act 2007*

### Summary of amendments

New section CW 17D of the Income Tax Act 2007 (ITA) ensures that employers are not worse off if they reimburse an employee for a benefit relating to a specific workplace health and safety risk, rather than providing it on their premises or by voucher.

Consequential amendments have also been made to ensure that new section CW 17D applies as intended.

### Effective date

The amendments took effect on 1 April 2025.

### Background

Certain health and safety benefits, such as flu vaccinations, will generally not be subject to fringe benefit tax (FBT) when an employer:

- arranges them to be provided on their premises, or
- provides a voucher to employees to receive them off-premises (for example, at their doctor or a clinic).

These benefits are exempt because they fall under the health and safety FBT exemption under section CX 24 of the ITA, in that they are targeting a specific health and safety risk in the workplace.

If an employee instead pays for the health and safety benefit and is later reimbursed by their employer, the cash payment was previously subject to PAYE. The reimbursement would not have been exempt income of the employee under section CW 17 of the ITA due to the private limitation under section DA 2 because health-related expenditure is generally seen as private in nature.

New section CW 17D provides that an amount an employer pays to or on behalf of an employee for a benefit that would qualify for the health and safety FBT exemption if it was non-cash is exempt income of the employee.

2025/09-077

## Taxation of extra pay when employment ends

*Section RD 17 of the Income Tax Act 2007*

### Summary of amendment

The amendment clarifies that employers can apply the same tax treatment to amounts of extra pay that are paid together when one of the amounts of extra pay arises from the ending of an employee's employment.

### Effective date

The amendment took effect on 1 April 2025.

### Background

Section RD 17 of the Income Tax Act 2007 was recently amended by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024. This recent amendment changed the way employers determine the taxation of extra pay when the extra pay arises from the ending of an employee's employment.

Previously, the taxation of extra pay was, in all cases, determined with reference to the amount of the extra pay and the annualised value of all PAYE income payments made to the employee over the four-week period beginning before the date of the payment of the extra pay.

The recent amendment created an exception to this rule and provides that, in the specific case when the extra pay arises from the ending of employment, employers must determine the taxation of that extra pay with reference to the amount of the extra pay and the annualised amount of PAYE income payments received over the last two pay periods. This amendment is designed to promote greater accuracy in the taxation of extra pay by increasing the likelihood the marginal rate applied to the employee's extra pay reflects the employee's actual marginal rate. The new rule took effect from 1 April 2025.

However, discussions with stakeholders have since identified that an unintended consequence of this recent change is to require employers to apply differing tax treatments to amounts of extra pay when one amount arises from the ending of employment and another amount does not, despite the amounts being paid together.

This was not an intended outcome of the recent change and presents compliance costs for employers, so the Act makes an amendment whereby employers are permitted to apply the same tax treatment to amounts of extra pay when they are paid together.

In practice, this means that an amount of extra pay can be taxed in the same way as an amount of extra pay arising from the ending of employment if it is paid together with an amount of extra pay arising from the ending of an employee's employment. This simplifies the application of the new rule in force from 1 April 2025.

2025/09-078

# Filing obligations of charities and non-profits

*Section 33(1) of the Tax Administration Act 1994*

## Summary of amendment

The amendment ensures that entities that only derive exempt income, such as charities, do not need to file a return of income.

## Effective date

The amendment took effect on 1 April 2025.

## Background

Section 33(1) of the Tax Administration Act 1994 provides that a person must file a return of income for a tax year. This has been interpreted as requiring charities and other entities that only derive exempt income to file a return of income because a charity or other exempt entity is a person for tax purposes and "return of income" is not defined, so could include a return of "no income".

Section 33(1) is amended so that the requirement to file a return of income does not apply to a person who derives only exempt income. This means that a charity or other exempt entity is not required to file a return of income but can still choose to file one.

2025/09-079

## Record-keeping requirements for gift-exempt bodies

*Schedule 32 of the Tax Administration Act 1994*

### Summary of amendments

The amendments clarify that gift-exempt bodies must keep relevant records for at least seven years after the income year to which they relate. The amendments also allow records to be kept in te reo Māori.

### Effective date

The amendments took effect on 30 March 2025.

### Background

Gift-exempt bodies are required to keep certain records. This allows the Commissioner of Inland Revenue to determine the source of donations received by these bodies and how they apply those donations.

Other record-keeping provisions in the Tax Administration Act 1994 have minimum retention times and allow records to be kept in English or te reo Māori. The record-keeping requirements for gift-exempt bodies did not include a minimum length of time for the retention of these records. The requirements also stated that records must be kept exclusively in English unless authorised by the Commissioner.

The amendments correct this.

2025/09-080

## Deemed source of income rule

*Section YD 4(17D)(b) of the Income Tax Act 2007*

### Summary of amendment

The amendment clarifies that the double tax agreement (DTA) source rule does not extend to technical service fees under the New Zealand and India DTA.

### Effective date

The amendment applies retrospectively to income years starting on or after 1 July 2018. A retrospective application date is necessary to ensure the original amendment operates as intended. This retrospective application date is taxpayer favourable.

### Background

Income earned by a non-resident is only taxable under New Zealand's domestic law if it has a "source" under our domestic rules. The DTA source rule was introduced in the 2019 income year and deems income to have a source in New Zealand, under our domestic rules, if there is a right to tax that income under a DTA.

This rule resulted in an overreach because three of our DTAs (those with India, Malaysia and Fiji) give New Zealand the right to tax a non-resident on payments made from New Zealand for technical services, even if the non-resident performs the services outside New Zealand and has no presence here.

This was not intended and is outside our normal tax settings (which require a non-resident to have some presence or activity in New Zealand before personal services income has a source here). Prior to the DTA source rule, New Zealand did not tax these amounts.

An amendment was made in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 to ensure these payments would not be taxed in New Zealand unless they had a source under one of our other domestic source rules.

However, the way the amendment was drafted arguably results in New Zealand still being able to tax technical services fees provided from Indian residents.

### Key features

The amendment ensures that the DTA source rule does not apply to technical services feels paid to Indian residents, as originally intended. This is achieved by clarifying that the DTA source rule does not extend to technical service fees under the New Zealand and India DTA.

2025/09-081

## Interaction between cash-settled employee share schemes and ACC

*Sections 11(1)(cb) and 15(7) of the Accident Compensation Act 2001*

### Summary of amendment

The amendment broadens the exemption in the Accident Compensation Act 2001 so that it applies to all employee share scheme (ESS) benefits, not only those when the employer has elected to pay PAYE.

### Effective date

The amendment applies from the 2024–25 tax year.

### Background

ESS benefits are not counted as income under the Accident Compensation Act. This means that the ACC earners' levy does not apply to ESS benefits in these instances.

This exclusion does not currently apply to cash-settled ESS benefits. Because it is considered an extra pay, there is no option to not withhold tax on a cash-settled ESS benefit. Cash-settled ESS benefits are also not excluded for the purposes of calculating what is considered earnings as a shareholder–employee, for the same reason that there is no option to not withhold tax on cash-settled ESS benefits.

There is no material difference between cash-settled and share-settled ESS benefits, and its omission from the exclusion was likely unintended.

The amendment clarifies that cash-settled ESS benefits are not considered earnings as an employee or earnings as a shareholder–employee to align the ACC earner levy treatment of share-settled ESS benefits and cash-settled benefits.

2025/09-082

# Clarifying use of power to extend time under Inland Revenue legislation

*Section 226 of the Tax Administration Act 1994*

## Summary of amendment

The amendment clarifies that the Governor-General can, by Order in Council, extend a timeframe to do something (for example, file tax information) under the Inland Revenue Acts in advance of that timeframe expiring.

## Effective date

The amendment took effect on 30 March 2025.

## Background

The power to extend a timeframe via Order in Council provides taxpayers with certainty in situations when that timeframe has not been met. However, a recent interpretation had suggested that the power could only be applied in two scenarios. Firstly, before the time for doing something has expired in circumstances when that thing **cannot** be done. Second, after the time for doing something has expired in circumstances when that thing **has not** been done. This meant, for example, the due date for filing a GST return could not be extended until after the original due date had passed unless the reason for the extension was because taxpayers "could not" file the return (due to, say, a natural disaster).

This increased taxpayer uncertainty because those impacted would not have received an advance notice of a timeframe being extended until after they had failed to meet that timeframe.

The amendment to the power was required to align the law with current practice and intent of the power's use. The amendment was included in an amendment paper because the power is used for unusual and unexpected situations that cannot be foreseen and delaying this change to a future tax Bill may have resulted in uncertainty for taxpayers in one of those situations when certainty is paramount.

## Key features

The amendment allows the Governor-General to, by Order in Council, extend a timeframe to do something in advance of that timeframe expiring. The amendment also limits the power to only extend the timeframes that apply to taxpayers, and not those that apply to the Commissioner.

2025/09-083

# Extend date to allow repeal of schedule 7, part C, clause 36 of Tax Administration Act 1994

*Section 231(3) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022*

## Summary of amendment

This amendment ensures that the current authorising provision for an information share between Inland Revenue and the Companies Office can be repealed on the same date the proposed approved information-sharing agreement may come into force.

## Effective date

The changes come into force on 31 March 2025.

## Background

The proposed approved information-sharing agreement (AISA) between Inland Revenue and the Ministry of Business, Innovation and Employment would replace an existing information-sharing provision in the Tax Administration Act 1994. To avoid a situation where there are two authorising provisions for the same information share, clause 36 of part C, subpart 1, schedule 7 to the Tax Administration Act 1994 must be repealed when the AISA takes effect.

The Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 includes a provision to repeal the current authorising provision for information sharing with the Companies Office by a date set by Order in Council. This provision was set to repeal itself on 1 April 2025, which is before the proposed AISA may take effect. The date the repeal provision is set to repeal has been extended by two years to 1 April 2027 to ensure the repeal of the current authorising provision for the information share can align with the commencement of the proposed AISA.

## Key features

The amendment extends the date of 1 April 2025 in section 231(3) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 by two years to 1 April 2027.

2025/09-084

## Trust disclosure rules amendments

*Sections 3(1) and 59BA(2)(b), (2)(d), (2B), and (2C) of the Tax Administration Act 1994*

### Summary of amendments

The amendments remove the requirement for trustees to disclose nil value distributions and settlements and replace the "minor and incidental" test for non-cash distributions and settlements with a $100,000 bright-line for each beneficiary or settlor.

### Effective date

The amendments apply retrospectively for the 2024–25 and later income years, so that they can apply for the 2025 trust tax returns.

### Background

In late 2020, increased disclosure requirements were introduced in section 59BA of the Tax Administration Act 1994 (TAA) for domestic trusts for the 2021–22 and later income years.

Trustees subject to the disclosure requirements were previously required to disclose all distributions and settlements, including nil-value distributions or settlements.

Trustees were not required to disclose non-cash distributions or settlements if they were "minor and incidental" to the activities of the trust. This was a subjective test that required trustees subject to the disclosure rules to value non-cash transactions and consider whether the distribution or settlement was incidental to the activities of the trust, which could be a compliance-heavy exercise.

### Key features

Nil value distributions and settlements no longer need to be disclosed by trustees subject to the disclosure rules in section 59BA of the TAA.

A bright-line of $100,000 per beneficiary and settlor has been introduced for the disclosure of non-cash distributions and settlements. If the total market value of non-cash distributions made by the trustees of a trust to a beneficiary is less than $100,000 in an income year, then those distributions do not need to be disclosed. The same applies for non-cash settlements.

All cash distributions and settlements are still required to be disclosed by trustees subject to the disclosure rules in section 59BA of the TAA.

**Example 53: Disclosure of non-cash distributions**

The Zeus Trust is a trust that was settled for the benefit of three beneficiaries, Gerard, Mark and Jeff. The Zeus Trust earns income from investments and owns a bach that the beneficiaries can stay in.

In the 2024–25 income year, the trustees earn $25,000 assessable income and distribute the full amount to Gerard as beneficiary income. No beneficiary income is distributed to Mark or Jeff.

Throughout the year, Mark stays at the bach for a weekend each month and does not pay any rent to the trustees.

The trustees distribute a car with a market value of $80,000 to Gerard and two paintings to Jeff with a market value of $60,000 each.

The trustees are required to comply with the trust disclosure obligations in section 59BA of the TAA because they earned assessable income and do not qualify for one of the exclusions from the disclosure rules.

*Disclosure obligations for distributions made to Gerard*

The $25,000 of beneficiary income must be disclosed by the trustees – all cash distributions must be disclosed, regardless of their value.

Although Gerard has received more than $100,000 in distributions from the trust, the distribution of the $80,000 car does not need to be disclosed. This is because the $100,000 bright-line only applies to non-cash distributions.

Although the total non-cash distributions paid to all three beneficiaries is valued at more than $100,000, the car does not need to be disclosed because the bright-line applies per beneficiary.

*Disclosure obligations for distributions made to Mark*

Mark received non-cash distributions of the use of trust property (staying in the bach for a weekend each month during the year). Since the market value of the use of this trust property (the rent not paid) is less than $100,000, it does not need to be disclosed.

*Disclosure obligations for distributions made to Jeff*

The $120,000 market value for the two paintings distributed to Jeff must be disclosed. Although each painting is less than the $100,000 threshold, the bright-line applies to the aggregate value of non-cash distributions received by Jeff.

2025/09-085

# Non-deductibility of GST flat-rate credit

*Section DB 2(1)(ab) of the Income Tax Act 2007*

## Summary of amendment

The amendment prevents operators of electronic marketplaces and listing intermediaries from being able to deduct payments of the flat-rate credit to underlying suppliers as expenditure for income tax purposes.

## Effective date

The amendment took effect on 1 April 2024.

## Background

The GST rules for the platform economy require operators of electronic marketplaces and, in some circumstances listing intermediaries,[46] to pay a flat-rate credit to hosts, drivers, and deliverers (underlying suppliers) who are not registered for GST and who provide accommodation and transportation services through an electronic marketplace. The purpose of the flat-rate credit is to ensure services provided through electronic marketplaces by underlying suppliers who are not registered for GST are not over-taxed.

Operators of electronic marketplaces and listing intermediaries are required to deduct the flat-rate credit as input tax if underlying suppliers are not registered for GST at the time of supply of the relevant services made through the electronic marketplace. Because the flat-rate credit is deducted from output tax that would be payable by marketplace operators (or listing intermediaries, if applicable) it is funded through the GST system. It would therefore be inappropriate for operators of electronic marketplaces and listing intermediaries to get an income tax deduction for payments of the flat-rate credit they make to underlying suppliers because it is not an economic cost borne by them.

## Detailed analysis

New section DB 2(1)(ab) of the Income Tax Act 2007 denies a deduction for a flat-rate credit, as defined in section 2(1) of the Goods and Services Tax Act 1985. The effect of this is that the payment of a flat-rate credit by the operator of an electronic marketplace or listing intermediary to an underlying supplier does not give rise to a deduction for income tax purposes.

46 A listing intermediary is essentially a property manager or other similar person interposed between an accommodation host and an electronic marketplace.

2025/09-086

# Maintenance amendments

## Summary of amendments

The amendments in Table 2 are minor technical maintenance items and correct any of the following:

- ambiguities
- compilation issues
- cross-references
- drafting consistency, including readers' aids – for example, the defined terms lists
- grammar
- consequential amendments arising from substantive rewrite amendments, and
- inconsistent use of terminology and definitions.

## Effective date

The amendments take effect on the dates outlined in the table.

**Table 2: Maintenance amendments**

| Section | Act | Amendment | Effective Date |
|---|---|---|---|
| CB 23B | ITA 07[47] | Inserting cross heading | 30 March 2025 |
| CD 43(2)(c) | ITA 07 | Correcting cross-references | 1 April 2008 |
| CQ 5(1)(c)(viib) | ITA 07 | Inserting cross-reference | 1 April 2008 |
| CQ 5(1)(c)(ix), (x) | ITA 07 | Removing redundant references | 30 March 2025 |
| CQ 5(1)(c)(xiva) | ITA 07 | Inserting cross-reference | 1 April 2014 |
| CQ 5 (list of defined terms) | ITA 07 | Adding defined term | 1 April 2014 |
| CW 52B | ITA 07 | Updating name of Ministry | 1 December 2024 |
| CW 55BAB(2) | ITA 07 | Inserting subsection heading | 30 March 2025 |
| CX 63B | ITA 07 | Including reference within subpart CX | 1 April 2011 |
| CX 65 | ITA 07 | Including reference within subpart CX | 1 April 2008 |
| CZ 25D(1)(d)(ii) | ITA 07 | Correcting cross-reference | 1 April 2022 |
| CZ 29B(7) | ITA 07 | Including secondary legislation reference | 8 January 2023 |
| DN 6(1)(c)(viib) | ITA 07 | Inserting cross-reference | 1 April 2008 |
| DN 6(1)(c)(ix), (x) | ITA 07 | Removing redundant references | 30 March 2025 |
| DN 6(1)(c)(xiva) | ITA 07 | Inserting cross-reference | 1 April 2014 |
| DN 6 (list of defined terms) | ITA 07 | Adding defined term | 1 April 2014 |
| EX 20B(3)(a)(vi) | ITA 07 | Removing redundant provision | 30 March 2025 |
| EX 48(1)(b) | ITA 07 | Inserting cross-reference | 1 July 2018 |
| EX 63(1) (heading) | ITA 07 | Correcting terminology | 30 March 2025 |
| EX 63(1)(b) | ITA 07 | Removing redundant terminology | 30 March 2025 |

47 Income Tax Act 2007

| Section | Act | Amendment | Effective Date |
|---|---|---|---|
| EX 63 (list of defined terms) | ITA 07 | Removing defined term | 30 March 2025 |
| EX 72(1)(b) | ITA 07 | Correcting cross-reference | 18 March 2019 |
| FB 3A(3) | ITA 07 | Correcting terminology | 30 March 2025 |
| FD 1(1)(a) | ITA 07 | Ensuring drafting consistency | 30 March 2025 |
| HC 8B | ITA 07 | Correcting terminology | 1 April 2024 |
| HC 14(2B) | ITA 07 | Correcting cross heading | 30 March 2025 |
| HC 33(1B)(c)(ii) | ITA 07 | Correcting terminology | 1 April 2023 |
| HR 12(3)(a)(ii) | ITA 07 | Correcting terminology | 1 April 2024 |
| IA 7(6) | ITA 07 | Removing redundant provision | 30 March 2025 |
| IE 4(1)(c) | ITA 07 | Removing redundant provision | 30 March 2025 |
| IE 5(b), (c) | ITA 07 | Removing redundant provision | 30 March 2025 |
| IQ 6(5)(b) | ITA 07 | Removing redundant provision | 30 March 2025 |
| IQ 7(2)(b) | ITA 07 | Removing redundant provision | 30 March 2025 |
| LE 4B(1) | ITA 07 | Correcting terminology | 30 March 2025 |
| LY 9 | ITA 07 | Correcting terminology | 27 November 2023 |
| LY 10 | ITA 07 | Correcting terminology | 27 November 2023 |
| RA 15(3)(b) | ITA 07 | Correcting cross-reference | 1 April 2008 |
| RF 15(2) | ITA 07 | Correcting cross-reference | 1 April 2008 |
| YA 1 (ancillary tax) | ITA 07 | Correcting cross-reference | 1 April 2008 |
| YA 1 (building) | ITA 07 | Ensuring drafting consistency | 30 March 2025 |
| YA 1 (business premises) | ITA 07 | Ensuring drafting consistency | 30 March 2025 |
| YA 1 (employer) | ITA 07 | Correcting cross-references | 1 April 2015 |
| YA 1 (non-listed horticultural plant) | ITA 07 | Correcting cross-reference | 1 April 2008 |
| YA 1 (qualifying resident foreign trustee) | ITA 07 | Removing redundant terminology | 30 March 2025 |
| YB 1(3)(jb) | ITA 07 | Inserting cross-reference | 1 April 2011 |
| YB 1 (list of defined terms) | ITA 07 | Adding and removing defined terms | 30 March 2025 |
| YB 2(4), (5) | ITA 07 | Correcting cross-references | 30 March 2025 |
| YB 3(3), (4) | ITA 07 | Correcting cross-references | 30 March 2025 |
| YB 12(3), (4) | ITA 07 | Correcting cross-references | 30 March 2025 |
| YB 12 (list of defined terms) | ITA 07 | Adding defined terms | 30 March 2025 |
| YB 13(3), (4) | ITA 07 | Correcting cross-references | 30 March 2025 |
| YB 13 (list of defined terms) | ITA 07 | Adding a defined term | 30 March 2025 |
| YB 14(4) | ITA 07 | Correcting cross-reference | 1 April 2010 |
| YC 4(4) | ITA 07 | Correcting a minor fault of expression | 1 April 2008 |
| sch 1, part A, cl 6B | ITA 07 | Correcting terminology | 1 April 2024 |
| sch 25 | ITA 07 | Correcting shoulder references | 30 March 2025 |

| Section | Act | Amendment | Effective Date |
|---|---|---|---|
| 22C(3)(d) | TAA[48] | Correcting cross-reference | 30 March 2025 |
| 41(6) | TAA | Correcting terminology | 30 March 2025 |
| 46C(3B) | TAA | Removing redundant provision | 30 March 2025 |
| 139AB(1)(a) | TAA | Correcting cross-reference | 18 March 2019 |
| 157(10) (amount payable) | TAA | Removing redundant provision | 30 March 2025 |
| 185S | TAA | Correcting fault of expression | 1 January 2024 |
| 2(1) | GSTA[49] | Removing redundant terminology | 1 April 2023 |
| 5(11GA) | GSTA | Correcting cross-reference | 1 December 2019 |
| 5(15) | GSTA | Correcting terminology | 30 March 2025 |
| 8(4G) | GSTA | Reinstating rule inadvertently repealed | 1 April 2023 |
| 11A(7) | GSTA | Correcting cross-reference | 1 April 2023 |
| 19K(9)(b) | GSTA | Correcting faults of expression | 1 April 2023 |
| 20(4C) | GSTA | Correcting cross-reference | 1 April 2023 |
| 25(1) | GSTA | Correcting terminology | 1 April 2023 |
| 25AA(1)(a)(v) | GSTA | Correcting cross-reference | 1 April 2023 |
| 43(1) (amount payable) | GSTA | Removing redundant provisions | 30 March 2025 |
| 55(1AK) | GSTA | Updating cross-reference | 30 March 2022 |
| 55(1AO)(b)(i) | GSTA | Correcting cross-reference | 1 April 2023 |
| 75(8) | GSTA | Removing redundant provision | 1 April 2023 |
| 12B (gaming machine operator) | GDA[50] | Removing redundant reference | 30 March 2025 |
| 12FA(b) | GDA | Removing redundant provision | 30 March 2025 |
| 12G(1) | GDA | Removing redundant reference | 30 March 2025 |
| 12R (heading) | GDA | Correcting terminology | 30 March 2025 |
| 12R(bb) | GDA | Correcting terminology cross-reference | 20 December 1991 |
| 12R(e) | GDA | Removing redundant provision | 30 March 2025 |
| 276(2) | CSA[51] | Updating references | 30 March 2025 |
| sch 9, cl 6 | LGA[52] | Updating cross-references | 30 March 2025 |

48 Tax Administration Act 1994
49 Goods and Services Tax Act 1985
50 Gaming Duties Act 1971
51 Child Support Act 1991
52 Local Government Act 2002

## About this document

Act commentary is published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. For reference purposes, each commentary item has a unique identifier above the title, which includes the Act year, Act number and item number.

# Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2025

**SL 2025/64**

Issued: May 2025

This Order in Council commentary provides information on a decrease to the fringe benefit tax prescribed rate of interest for low-interest employment-related loans from 8.41% to 7.38%, effective from 1 April 2025.



## Order

*Section RA 21(3) and (4) of the Income Tax Act 2007*

The Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2025 was made on 7 April 2025. The Order in Council decreases the fringe benefit tax (FBT) prescribed rate of interest for low-interest employment-related loans from 8.41% to 7.38%.

## Background

The FBT rules tax non-cash benefits provided to employees. Included in the definition of "fringe benefit" is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable.

A prescribed rate set by regulations is used as a proxy for the market rate of interest to save employers the compliance costs associated with determining the market rate relevant to loans they have provided to their employees.

Section RA 21(3) of the Income Tax Act 2007 permits the making of regulations by Order in Council to set a prescribed rate of interest for calculating FBT on low-interest loans. Once a rate is set, it remains the prescribed rate until changed by a subsequent Order in Council.

By administrative convention, the FBT prescribed rate of interest is based on the "floating first mortgage new customer housing rate" series published by the Reserve Bank (RBNZ) each month. It is updated when there has been an increase or decrease in the RBNZ rate of 20 or more basis points since the FBT rate was last set. The RBNZ rate for January 2025 was 7.38%. This is down from 8.41%, the rate for May 2023, when the FBT prescribed rate of interest was last set. The FBT prescribed rate of interest is being lowered accordingly.

## Effective date

The new prescribed rate of 7.38% applies for the quarter beginning 1 April 2025 and subsequent quarters.

## Further information

The new Order in Council can be found at:

**Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2025**

# Taxation (Use of Money Interest Rates) Amendment Regulations 2025

**SL 2025/65**

Issued: May 2025



Changes have been made by Order in Council to the use of money interest rates on underpayments or overpayments of tax in line with recent changes in market interest rates.

## Order

*Sections 120E and 120H of the Tax Administration Act 1994*

The Taxation (Use of Money Interest Rates) Amendment Regulations 2025 was made on 7 April 2025. The Order in Council changes the use of money interest (UOMI) rate on underpayments and overpayments of taxes and duties in line with market interest rates.

The new underpayment rate is 9.89% (previously 10.88%). The new overpayment rate is 3.27% (previously 4.30%).

## Background

The UOMI underpayment rate is charged to taxpayers on underpayments of tax to Inland Revenue, while the UOMI overpayment rate is paid to taxpayers on money paid to Inland Revenue exceeding their tax liability.

Section 120H(1)(b) of the Tax Administration Act 1994 permits the making of regulations by Order in Council to set the UOMI underpayment and overpayment rates. Once a rate is set, it remains at that rate until changed by a subsequent Order in Council.

The UOMI underpayment rate is based on the "floating first mortgage new customer housing rate" series published by the Reserve Bank (RBNZ) each month, while the UOMI overpayment rate is based on RBNZ's "90-day bank bill rate" series each month. The UOMI rates are both adjusted if either the RBNZ's 90-day bank bill rate or the floating first mortgage new customer housing rate moves by 1% or more, or if one of these indexes moves by 0.2% or more and the UOMI rates have not been adjusted in the last 12 months.

The UOMI rates are adjusted as required to ensure they are in line with market interest rates. The new UOMI underpayment and overpayment rates are consistent with the floating first mortgage new customer housing rate and the 90-day bank bill rate.

## Effective date

The new UOMI underpayment and overpayment rates apply on and after 8 May 2025.

## Further information

The new Order in Council can be found at:

**Taxation (Use of Money Interest Rates) Amendment Regulations 2025**

# OPERATIONAL STATEMENT

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

## OS 25/03: Authority to Act for Tax Agents, Representatives and Nominated Persons: Access to a Client's Inland Revenue Information

Issued | Tukuna: 17 April 2025

This statement prescribes how a tax agent, or a representative can obtain the authority to act from their clients and the process for a person to get another person to act for them in relation to their tax affairs and/or their social policy entitlements and obligations. In these guidelines these people will collectively be referred to as "tax agents", "representatives", "nominated persons" or "agents" as the context may require.

All legislative references in this Statement are to the Tax Administration Act 1994, unless specified otherwise.

**START DATE - END DATE | RĀ TĪMATA - RĀ MUTUNGA**

This statement will apply from the date it is signed. To the extent that Agents may need update some of the authorities to act from existing clients, immediate compliance with this Statement is not required. Inland Revenue will accept that new authorities to act may be obtained as agents engage with their clients over the following 2–3-year period.

**REPLACES | WHAKAKAPIA**

- **OS 22/03**: Authority to Act for Tax Agents and other Intermediaries and Nominated Person, issued on 6 July 2022.

## Part 1 General Discussion | Matapaki

### Verifying the identity of the person giving authority

1. The identity of the person providing the authority to act must be established to a high degree of certainty to ensure that they are entitled to provide that authority. That is, the agent must be satisfied that the information they are authorised to access belongs to that person or that the person can authorise access of information on behalf of a non-individual (for example a director or other appropriately delegated person of a company).
2. Many agents will be members of groups or bodies which, as a condition of membership, have rules require certain customer due diligence practices to be followed. Where those rules include a robust verification process that would meet the Anti-Money Laundering and Countering Foreign Act 2009 (AML-CFT Act) Inland Revenue will not require a further verification process to be applied.
3. It would be prudent practice for an agent to check that they have been properly appointed. At the time an agent is first linked to a client the agent should verify a signatory's authority as part of the identity verification process. This may include viewing a copy of the trustee resolution that gives authority to a particular trustee to act on behalf of the other trustees, or, where necessary, sighting an authority for a parent/guardian to act on behalf of a minor or incapacitated person. That authority to act remains in place until such time as the taxpayer elects to end the relationship with the agent.

## Who can give an Authority to Act

### Individuals

4. An authority to act must be obtained from the person to whom the information belongs.
5. An authority to act for an individual does not extend to that person's related entities, for example, a company of which the client is a director. If agents are acting for their client's personal tax affairs as well as the affairs of their related entities and obtaining authorities to act at the same time, they may use a single authority to act for all entities. All the entities and their respective IRD numbers that the authority is intended to apply to must be clearly listed in the authority to act. If it is not clearly listed, then separate authorities to act will be required for each entity.

### Non-individuals

6. An authority to act for a non-individual must be provided by a person or persons with the requisite authority to bind that non-individual.
   - **Companies:** A person or persons who hold(s) the authority to bind the company to an agreement must provide the authority to act. This would normally be a director or a manager, or a person with delegated authority.
   - **Ordinary partnerships:** The authority to act must be signed by a partner or by a person who has the delegated authority to bind the partnership.
   - **Limited partnerships:** The authority to act must be signed by a general partner or a person who has the delegated authority to bind the limited partnership.
   - **Trusts:** The authority to act must be signed by all trustees, or by the trustee or trustees who have been authorised by the other trustees to act on all of their behalf.
   - **All other entities:** A person or persons with the requisite authority must sign the authority to act.
7. The rules governing the particular entity will determine how many persons need to sign the authority to act. For example, if one person holds the delegated authority to sign on behalf of the other members of the non-individual then only that person needs to sign. The person signing the authority to act must ensure that they are authorised by the non-individual to appoint the agent.
8. Where an authorised person who signed an authority to act leaves that entity, it is not necessary to get a new authority to act. Where there has been a change to the ownership of a non-individual entity such that the person who provided the original authority can no longer bind that entity a new authority to act will be required.
9. A company can change a director without changing ownership. Although where there has been a change in the ownership or control the new owners may need to consider whether a new authority to act may be required. e.g. the incoming owners decide to change tax agents.

### Children under 16

10. Children under the age of 16 need a parent or guardian to complete the authority to act on their behalf. When a child of an existing client turns 16 and they become a client, the child will need to complete their own authority to act.

### Incapacitated persons

11. Incapacitated or cognitively impaired customers, including children, receiving income (for example: from ACC to employ carers) will have tax obligations. If the incapacitated customer is unable to meet these obligations themselves, they can be met by a parent or guardian who has been given the appropriate authority to act.
12. However, if that representative (which may be a nominated person) dies or is otherwise incapacitated, or is unable to continue to assist the incapacitated customer, the process for providing an alternative authorised person with the necessary authority to act may not always be straight-forward. This will be the case where the incapacitated customer may lack the legal capacity to nominate another person under section 124F.
13. Often the death or incapacity of an authorised parent or guardian will result in a different guardian being appointed for the incapacitated customer with whom Inland Revenue can liaise with regarding the customer's tax affairs (or who may affirm the continuing role of a nominated agent). However, in limited circumstances this will not occur.
14. To the extent there is a period between the ending death or incapacity of a sole guardian and the appointment of another guardian for the incapacitated customer Inland Revenue should liaise with the person taking responsibility for the day-to-day care of the incapacitated person. This would not breach the confidentiality obligations on Inland Revenue.

15. There may be a gap between the death or incapacity of a parent or guardian and the appointment of a new guardian. For example, where:
    - there is a sole parent or guardian who dies without naming a testamentary guardian; or where both parents/guardians die at the same time or in close proximity; or
    - where the parent/guardian is incapacitated to such an extent they can no longer fulfil their obligations, and it is assumed the guardian has not prepared an enduring power of attorney dealing with the guardianship and the testamentary guardian does not take the role.
16. In such situations the court will appoint a guardian or become the guardian itself (using an agent of the court). However, this does not happen automatically without the intervention of the court and the process may take some time. In the meantime, the customer will continue to have tax obligations to meet.
17. Upon getting an application for guardianship, the court may make an order for an interim agent of the court to act on its behalf in guardianship matters in order that the court can then consider a more permanent solution. That person or agency will be a de facto guardian until guardianship can be legally resolved. For Inland Revenue this means that there is a person to deal with in respect of the incapacitated person's tax affairs.
18. This means that in the limited circumstances:
    - where a sole guardian dies, or is incapacitated or otherwise unable to continue as guardian; and
    - there is no 'replacement guardian' (appointed as testamentary guardian or under an enduring power of attorney); and
    - the Court has not yet appointed a guardian or an agent of the Court (where the court itself is the guardian); then
    - Inland Revenue will adopt a pragmatic approach and deal with the person who is fulfilling the duties of a de facto guardian and parent.
19. In the above circumstances, Inland Revenue is prepared to recognise the practical realities of the circumstances and recognise that the person is acting with apparent authority in a situation where no other person has actual authority. This will mean getting that person to deal with the tax issues or to appoint or affirm a nominated person Inland Revenue can deal with. Because Inland Revenue is liaising with the de facto guardian to carry into effect the revenue law, this would be a permitted disclosure of sensitive revenue information under s 18D.

**Deceased persons**

20. If a client passes away, the agent must obtain a new authority to act to file both the return to date of death and any subsequent returns for the estate. That authority needs to come from an appropriately authorised person, such as the executor or administrator of the estate.

**Deceased Agent / Representative**

21. If an agent who holds an authority to act on behalf of a client passes away, that authority to act will end with the agent's death if the authority is given to a specified agent. This means that the authority to act given to the deceased agent does not pass through to that agent's executor or other partners.
22. On the other hand, where the authority to act is given to an agent's business or partnership, which will continue after the death of one of the agents, it is likely that the existing authority to act will continue.

## Information needed on the authority to act

23. For Inland Revenue to be satisfied that sufficient authority to act has been obtained, the following must be clearly addressed in the authority:
    - The client's full name and IRD number.
    - The authority to act must be dated and signed by the client.
    - Where the client is a non-individual entity, the name, and the position of each signatory in the non-individual entity must be clearly stated.
    - The full name of the agent.
    - Where the agent is in the name of an individual, the authority should also include the words "and staff or contractors", as applicable.

- The tax accounts the agent will be acting on behalf of the client for or state "ALL" if the client gives authority to act for ALL tax accounts. **Note**: a tax account can include student loan and social policy entitlements. However, an agent cannot link to Child Support, Paid Parental Leave or KiwiSaver accounts.
- Authorise the agent to obtain the client's information from Inland Revenue through all channels, including Inland Revenue's online services.

24. If applicable, the authority to act should also:
    - Authorise the agent to sign tax returns on behalf of the client.
    - Specify the time for which the authority to act endures. If no timeframe is specified, then the authority will apply until it is terminated.
    - Specify how and when the authority to act can be terminated by either party.
    - Where necessary, state that authority is given for any refunds and other credits to be released to the agent's trust account.
    - Where necessary, authorise the agent to outsource part of their work to a third party (either within New Zealand or offshore) and authorise the agent to allow access to the client's information from Inland Revenue to that third party to the extent necessary for the completion of the agreed services. This would include identifying any client information that the third-party may need to access. **Note:** Inland Revenue will not accept responsibility for any improper use of a client's information because of the client agreeing to the agent outsourcing work to a third party.
25. If a client has been delinked (other than accidently by the agent) or the nature of an existing authority changes for any reason, a new authority to act needs to be obtained before the agent can re-link and access the client's information. **Note:** if the accidental delinking is due to an Inland Revenue error a new authority to act will not be required.
26. Examples of circumstances a new authority to act is required for existing clients are:
    - The client requires the agent to act for a tax type that the agent was not originally authorised for.
    - The client engages the services of another agent and unknowingly ceases the previous agent's authority.
27. An agent should ensure that their clients understand that linking to a tax account will allow that agent to have full access to the information held by Inland Revenue relating to the tax types or entities that the authority to act specifies, and the agent will have the ability to modify client details, relating to the tax accounts they are linked to.

    **Note for tax agents only:** A tax agent can have authority across the whole customer account and is able to do certain things at the IRD number level (referred to as the 'Customer Master link'). This includes receiving correspondence that contains content about multiple tax accounts. This does not mean necessarily the tax agent is filing for all the tax accounts.
28. A client's agreement to the agent's terms and conditions or contract may not necessarily mean the client has given authority to act for Inland Revenue's purposes. The authority to act clauses must be explicit in the agreement or agreed to separately.

## Related taxpayers

29. Where a group of related taxpayers (who are not already recognised by Inland Revenue as a Group under other provisions) are onboarded at the same time, Inland Revenue will only accept one authority to act for all related taxpayers, where the following additional requirements are complied with:
    - The name and IRD number of the individual and/or entities are clearly listed in the authority to act.
    - The authority to act is signed by all applicable individuals and persons with the requisite authority to bind the non-individual entities.
    - The positions of the signatories in the non-individual entities must be clearly stated.
30. Any new related entities or individuals that the agent will act for in the future will require a new authority to act and cannot be retrospectively added to an existing authority.

## Requirement to keep a record of the client's authority to act and identity document

31. The agent must keep a copy of the client's authority to act. It would also be prudent to retain a copy of any identity document provided in case the clients' identity becomes an issue at some point in the future.
32. Client authorities to act that are obtained electronically must be kept in a manner that allows Inland Revenue to readily access and review that authority and the identification documents of the person who provided the authority.
33. Please refer to Standard Practice Statement **SPS 21/02:** ***Retention of business records in electronic format, application to store records offshore and application to keep records in languages other than English or Te reo Māori*** (or any subsequent replacement) for the standards to which records must be kept.

## Consequence of not obtaining sufficient authority to act

34. The authority received by the agent must be adequate for them to act for the client's tax affairs and social policy entitlements and to access information held by Inland Revenue.
35. Not obtaining sufficient authority to act means that the agent is unable to receive the client's information from Inland Revenue.
36. Accessing a client's information without authority or in breach of the authority could result in the removal of the agent from the list of tax agents or the cancellation of the agent's representative status.

## Inland Revenue may audit authority to act documents

37. To ensure the requirements set out in these guidelines are met, from time to time, Inland Revenue will ask to view a random sample of the authorities to act from an agent.
38. Part of this review may include viewing samples of the identity documents held and to ensure that reasonable checks have been undertaken to establish the identity of the person giving authority, as well as checking if an electronic signature had been submitted in accordance with these guidelines.
39. If an authority to act is held by an agent but does not meet the requirements of these guidelines, adequate time will be given to the agent to correct this.
40. If no authority to act is held for a client at all, that client will be delinked.

**Note:** At the end of this Statement is a template of an authority to act. As there is no scripted authority form, this is an example only.

## Nominated Persons

41. Section 124F allows a person to nominate another person (a nominated person) to act on their behalf with Inland Revenue in relation to their tax affairs and/or their social policy entitlements and obligations.
42. To nominate a person to act on their behalf, the nominating person must notify the Commissioner of that by completing form IR597, or by following the process set out on the Inland Revenue website: Let someone act on your behalf (ird.govt.nz)
43. A nominated person will be able to engage with Inland Revenue for all of the nominating person's tax affairs or social policy entitlements and obligations unless the nomination is clear that the nomination is only for some of those matters.
44. The nominated person will have access to the nominating person's tax information to the extent that the nomination provides. That access will remain in place until an agreed end date passes, or Inland Revenue is advised that the nominating person no longer requires another person to act with Inland Revenue on their behalf.

## Refusal, Removal, or Disallowance of status as Tax Agent, Representative or Nominated Person

45. Notwithstanding a customer's right to choose who they wish as their representative to deal with Inland Revenue, the Commissioner has a role in deciding whether a tax agent, representative or a nominated person poses a risk to the integrity of the tax system.

Inland Revenue may refuse to allow a person to be a tax agent, representative or a nominated person where they do not meet the eligibility requirements in the TAA, or if by allowing the person to act for others it may adversely affect the integrity of the tax system. Inland Revenue recognise that it is a serious step and refusal or removal will only happen once all relevant and material risks are weighed up and considered.

## Part 2 – onboarding electronically

Onboarding electronically means signing up clients via the agent's website rather than meeting these clients face-to-face. There is usually little to no contact between the agent and the client, except for the process involved providing information and in filing a return on behalf of the client. **Note:** receiving an email consent from your client is not considered onboarding your client electronically.

46. With many businesses conducting more of their services online, onboarding clients electronically, is becoming more prevalent.
47. The information requirements for an authority to act in [23]-[24] may be met electronically, for example by using an online electronic platform, so long as all the required information is clearly set out in the electronic authority to act and that the authority to act is readily accessible for review when requested by Inland Revenue.
48. It is important that new clients are aware and understand what they are authorising the agent to do. To that end, an agent should adopt a "tick box" approach to ensure that the clauses of the authorisation are read and explicitly agreed to.
49. As a minimum all the following points for Inland Revenue are to be satisfied that sufficient authority to act has been obtained.
50. The authority to act must:
    - authorise the agent to obtain the client's information from Inland Revenue through all channels, including Inland Revenue's online services.
    - state the name of the tax agency and/or individual agent's name, plus whether staff or contractors may be acting on behalf of the client.
    - state what tax accounts the agent will have access to on behalf of the client (the online agent may wish to specify "ALL" tax accounts to ensure a full understanding of the client's tax position).
    - state to the client that linking allows the agent to have full access to information held by Inland Revenue and have the ability to modify client details relating to the tax accounts they are linked for.
    - state where correspondence for linked tax accounts will be directed, either to the online agent or the client.
    - specify the time for which the authority to act will endure and how and when the authority to act can be terminated by either party.
    - state that authority is given for any refund credits to be transferred to the agency's trust account prior to refund to the client (if applicable).
    - authorise the online agent to prepare, submit and sign tax returns on behalf of the client (if applicable).
51. Where necessary, each point above should have its own "tick box" so the client is fully aware of the agreement they are entering into when authorising authority to act to the agent. The authority to act points must be agreed to separately from the online agent's terms and conditions or contract agreement.
52. A copy of the client's authority to act must be held along with the verification of identity.

### Electronic signature

53. Inland Revenue will accept an electronic signature on an authority to act if the electronic signature meets the following requirements:
    - the electronic signature must adequately identify the signatory and adequately indicates the agreement to the authority to act.
    - the means of creating the electronic signature must be linked to the signatory and to no other person.
    - the means of creating the electronic signature was under the control of the signatory and of no other person; and
    - any alteration to the authority to act or to the electronic signature after the time of signing must be detectable.
54. Electronic signatures can be used in circumstances beyond electronic onboarding. For further information refer to **Standard for the use of a valid electronic signature on documents provided to the Commissioner (ird.govt.nz)**

### Requirement to verify the identity of the person giving authority when onboarding via the internet/website

55. For NZ based clients, when electronically onboarding via the internet/website, it is important that the process of verifying the identity of the person giving authority is robust. Inland Revenue must be satisfied that the information to be accessed belongs to the person giving the authority, and that the person granting authority to the agent to access information on behalf of a non-individual (for example, a director of a company) has the power to do that.
56. When onboarding overseas based clients, agents must have a robust procedure to verify the client's identity. This may require asking for certified copies of some form of photographic identity, such as an overseas passport or overseas driver's licence.
57. Inland Revenue acknowledges that many of the agents will already have customer due diligence processes in place to verify the identity of new clients. Inland Revenue will accept the identity of the person providing the authority will have been established to a high degree of certainty.

    Where an agent does not have due diligence processes or obligations under the AML-CFT Act notwithstanding the requirements in [56]-[57] above they must follow the process set out below in [59]–[65] to verify the identity of their client.

    - If the agent is a member of a professional body, they are not required to follow the process set out in [59]-[65] where that body's rules are sufficiently robust under the AML-CFT Act and so provide the agent with assurance that they have properly verified the identity of the client and that the person giving authority has the authority to do so.
    - If the agent is not a member of any professional body, then they must follow the process set out in [59]-[65].
    - Payments made by an employer to reimburse an employee for that employee's private expenditure are generally taxable as income of the employee. This is because these payments reduce the need for the employee to incur those costs themselves.

### Use of an online identity verification provider – (Only verifies NZ Resident clients)

58. Where an agent is unable to confirm the identity of their client they may need to get certified copies of photographic identity documents. Alternatively, they may consider the use of an electronic identity verification provider. The identity verification provider must be reliable and independent and compliant with the AML-CFT Act identity verification requirements.

| Driver's licence | NZ Passport |
|---|---|
| First name | First name |
| Middle name (if given) | Middle name (if given) |
| Last name | Last name |
| Driver's licence number | Passport number |
| Version number | Expiry date |

59. For the identity to be accepted as verified, all five points must match. The identity verifier provider is required to send the agent a confirmation report advising whether verification has been successful. The confirmation report must state accepted or rejected next to each key point and include the name of the third-party verifier, and the time and date the verification report was requested and completed.
60. The confirmation report is to be held on file by the agent as verification of the client's identity. The agent must be able to provide a copy of the verification report at the request of the Commissioner.
61. As the agent does not receive an actual copy of the client's photo identification using this process, a bank account match must also be completed. The client must provide the agent with a bank account under the name submitted as part of the identity verification. Joint bank accounts are acceptable, where the joint account name includes that provided during the verification process. Details of bank account name and number must be held on file alongside the verification report of client identity. The process of bank account matching reduces the risk of identity fraud.
62. Where a confirmation report comes back as unsuccessful, a second attempt may be made. If in the second instance a confirmation report comes back as unsuccessful, the agent must then request and keep a copy of the client's photo ID.

63. The following are acceptable forms of photo ID:
    - New Zealand passport.
    - New Zealand driver's licence.
    - Overseas passport issued by a foreign government.
    - New Zealand certificate of identity (issued by Ministry of Business, Innovation and Employment or Department of Internal Affairs).
    - New Zealand firearms licence or dealer's licence.
    - New Zealand 18+ card or Kiwi Access card.
    - International Drivers' Permit (issued by a member country of the UN Convention on Road Traffic).
64. If the client is a child under 16 years of age, the child's parent or guardian is required to provide the following documentation:

    Proof of their own identity as parent or guardian by providing one legible copy of an identity document which must contain a photo as listed in [64], plus, either
    - The child's New Zealand birth certificate or overseas birth certificate, or
    - A legible copy of a document which shows the relationship between them and the child, such as adoption papers or Court Order.

**This Statement was signed on 17 April 2025**

**Rob Falk**
**Technical Specialist, Technical Standards, Legal Services**

**Example of an authority to act:**

## Authority to act

Authority is given to (*insert name of business here*) ........................................................................ and staff and contractors (if applicable) to act on behalf of the entities listed below to obtain information from Inland Revenue about (tick one):

☐ ALL tax types *or*

☐ The following tax types: (*list tax types here*) ____________________

This includes authority to obtain information from Inland Revenue through all channels (including electronic)

☐ For tax agents only – authority is given for overall permission across my tax information

☐ Authority is given to redirect any refunds to the agents trust account for the entries listed below

☐ Authority is given to sign on behalf of the entities listed below

**Individual:**

| Full name | IRD# | Signature | Date |
|---|---|---|---|
| | | | |
| | | | |

- *An adult is able to sign on behalf of a child under 16, when the child turns 16, they are required to sign an A2A themselves*

**Non-Individual:**

| Entity's name | Entity's IRD# | Representative's name | Representative's position | Signature | Date |
|---|---|---|---|---|---|
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# INTERPRETATION STATEMENTS

This section of the *TIB* contains interpretation statements issued by the Commissioner of Inland Revenue.

These statements set out the Commissioner's view on how the law applies to a particular set of circumstances when it is either not possible or not appropriate to issue a binding public ruling.

In most cases Inland Revenue will assess taxpayers in line with the following interpretation statements. However, our statutory duty is to make correct assessments, so we may not necessarily assess taxpayers on the basis of earlier advice if at the time of the assessment we consider that the earlier advice is not consistent with the law.

Some interpretation statements may be accompanied by a fact sheet summarising and explaining the main points. Any fact sheet should be read alongside its corresponding interpretation statement to completely understand the guidance. Fact sheets are not binding on the Commissioner. Check **taxtechnical.ird.govt.nz/publications** for any fact sheets accompanying an interpretation statement.

## IS 25/14: Income tax – arrangements involving tax losses carried forward under the business continuity rules

Issued | Tukuna: 5 May 2025

This interpretation statement sets out the Commissioner's view on the potential application of the specific anti-avoidance rules in ss GB 3BA, GB 3BAB and GB 3BAC when a company carries a tax loss forward under the business continuity rules.

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

**RELATED ITEM**

- **IS 22/06**: Loss carry-forward – continuity of business activities *Tax Information Bulletin* Vol 34, No 11 (December 2022): 23

### Summary | Whakarāpopoto

1. The business continuity rules in subpart IB allow a company that has breached continuity of ownership to carry a tax loss forward in specified circumstances.
2. This statement discusses the potential application of ss GB 3BA, GB 3BAB and GB 3BAC. Those sections contain specific anti-avoidance rules designed to counteract the trading of losses carried forward under the business continuity rules.

### Section GB 3BAB

3. Section GB 3BAB counteracts arrangements under which income is injected into a loss company enabling another person to enjoy the benefit of the company's losses when they would otherwise have been prohibited from doing so by the ownership commonality requirements of the loss grouping provisions.
4. Section GB 3BAB applies if the following requirements in s GB 3BAB(1) are present:
   - Tax loss components of a company are carried forward under the business continuity rule in s IB 3(2). Broadly, a company is entitled to carry its tax loss forward under s IB 3(2) if there has not been a major change in the nature of the company's business activities during an applicable business continuity period, other than a change permitted under s IB 3(5).
   - An arrangement exists between two people, person A and person B. The term "arrangement" is defined in s YA 1. The definition embraces all kinds of concerted action by which people may arrange their affairs for a particular purpose or to produce a particular effect.
   - Person A and person B are associated persons at the time they enter into the arrangement.
   - An effect of the arrangement is the company derives an amount of income and it is either certain, very likely or likely another person would have derived the income had the arrangement not been entered into.

- The arrangement has a sole or main purpose of tax avoidance. Under this requirement it is necessary to determine whether the arrangement has an objective purpose of tax avoidance. This involves applying the parliamentary contemplation test set out by the Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR*.[1]
- An arrangement's main purpose is its chief, principal, pre-eminent, leading or most important purpose. To work out whether tax avoidance is an arrangement's main purpose, the arrangement's non-tax purpose or purposes must be weighed against its tax avoidance purpose to see which is the main purpose. If the arrangement's specific features are mainly explicable by tax purposes, this suggests the main purpose is tax avoidance. If the specific features are mainly explicable by non-tax purposes, this suggests the arrangement's main purpose is not tax avoidance.

5. If all the requirements of s GB 3BAB(1) are present, the amount of income the loss company derives under the arrangement is treated as schedular income. The loss company must calculate an income tax liability for that income separate from the income tax liability it calculates for its non-schedular income. When calculating its schedular income tax liability, the loss company is prohibited from taking its tax loss into account.

## Section GB 3BAC

6. Section GB 3BAC counteracts arrangements under which expenses are shifted away from a loss company enabling another person to enjoy the benefit of the company's losses when they would otherwise have been prohibited from doing so by the ownership commonality requirements of the loss grouping provisions.
7. Section GB 3BAC applies if the requirements of s GB 3BAC(1) are present. All but one of those requirements are the same as the requirements that apply under s GB 3BAB. The exception is the fourth requirement. Under s GB 3BAC, that requirement is that an effect of the arrangement is a person other than the company is allowed a deduction for an amount of expenditure or loss and it is either certain, very likely or likely the expenditure or loss would have been incurred by the company had the arrangement not been entered into.
8. If all the requirements of s GB 3BAC(1) are present, the expenditure or loss incurred by the other person is treated as not having been incurred. This means they are denied a deduction for the expenditure or loss under the general permission in s DA 1. The expenditure or loss is also treated as having been incurred by the loss company in the course of carrying on a business for the purpose of deriving assessable income. This means the loss company is entitled to a deduction for the expenditure or loss under s DA 1(1)(b).
9. Where a loss company is acquired, the acquiring company or group may enter into a service arrangement with the loss company. A key consideration in determining whether the arrangement has a sole or main purpose of tax avoidance for the purposes of the cost shifting rule in s GB 3BAC will be the existence of intra-group recharges for expenditure shifted out of the loss company and the level of any such recharge. In general, the Commissioner considers that a level of recharge that at least recovers the cost of the performance of the function by the associated company will not be uncommercial. Where an apportionment is required, the method chosen should be appropriate in the circumstances and result in a fair and reasonable allocation of costs to the loss company.

## Section GB 3BA

10. Section GB 3BA is intended to prevent pre-emptive changes to business activities that enable a loss company to satisfy the business continuity rule where it otherwise would not.
11. Section GB 3BA applies if the following requirements in s GB 3BA(1) are present:
    - A share in a company known as the "loss company" or a share in another company is subject to an arrangement. A share is subject to an arrangement if the share or the rights attached to the share are the subject matter of the arrangement.
    - The arrangement is entered into within the 2 years immediately preceding a breach of the continuity of ownership requirements in s IA 5.
    - The arrangement allows (that is, permits or enables) the loss company to meet the requirements of s IB 3(2) for carrying a tax loss forward despite the breach of the continuity of ownership requirements in s IA 5.
    - A purpose of the arrangement is to defeat the intent and application of s IB 3. The intent and application of s IB 3 will be defeated by an arrangement that allows a company to carry a loss balance forward after a breach of continuity of ownership if the arrangement, when viewed in terms of its commercial and economic reality, involves the company carrying on a business after the breach that is not the same business it carried on before the breach.

1 *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289.

12. If all the requirements of s GB 3BA(1) are present, the loss company is treated as not meeting the requirements of s IB 3(2). Therefore, the company is prohibited from carrying its tax loss forward.

### Relationship with section BG 1

13. Section BG 1 may equally apply to an arrangement that is the same, similar or close to an arrangement covered by ss GB 3BA, GB 3BAB or GB 3BAC. Section BG 1 may also apply to arrangements that avoid tax in a way that is different from the way tax is avoided under arrangements caught by those provisions.

## Introduction | Whakataki

14. The business continuity rules were introduced to help stimulate growth and innovation in the economy by loosening the loss continuity rules.[2] The rules allow a company that has breached continuity of ownership to carry a tax loss forward if there has not been a major change in the nature of the business activities the company carries on during an applicable continuity period (other than a permitted major change).
15. The business continuity rules are set out in ss IB 1, IB 2, IB 2B, and IB 3 to IB 5. Associated targeted anti-avoidance rules are set out in ss GB 3BA, GB 3BAB and GB 3BAC.
16. The anti-avoidance rules are designed to counteract the trading of losses carried forward under the business continuity rules. Sections GB 3BAB and GB 3BAC achieve this by acting as a buttress to the loss grouping provisions in subpart IC that prescribe the circumstances under which a company may make a tax loss available to another company. Section GB 3BA prevents pre-emptive changes to business activities that enable a loss company to satisfy the business continuity rule where it otherwise would not.
17. The Commissioner's view on the application of ss IB 1, IB 2, IB 2A, and IB 3 to IB 5 is set out in interpretation statement **IS 22/06**.[3] This current statement sets out the Commissioner's view on the potential application of the targeted anti-avoidance provisions in ss GB 3BA, GB 3BAB and GB 3BAC. The following analysis considers those provisions and is in two parts. The first part (from [18]) considers ss GB 3BAB and GB 3BAC together, and the second part (from [114]) considers s GB 3BA.

INTERPRETATION STATEMENTS

2 Supplementary Order Paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill (March 2021): 24.

3 IS 22/06: Loss carry-forward – continuity of business activities *Tax Information Bulletin* Vol 34, No 11 (December 2022): 23 (IS 22/06 was issued 28 October 2022 before being published in the *Tax Information Bulletin*).

## Analysis | Tātari – ss GB 3BAB and GB 3BAC

18. Sections GB 3BAB ad GB 3BAC contain similar criteria so are considered together.

19. Section GB 3BAB provides as follows:

> **GB 3BAB Arrangements to inject income into companies carrying forward loss balances**
>
> *When this section applies*
>
> (1) This section applies when—
>
> (a) a person (**person A**) enters into an arrangement with another person (**person B**); and
>
> (b) person A and person B are associated persons at the time they enter into the arrangement; and
>
> (c) an effect of the arrangement is that a company derives an amount of assessable income for an income year that, but for the arrangement, a person other than the company—
>
> (i) would have derived; or
>
> (ii) would in all likelihood have derived; or
>
> (iii) might be expected to have derived; and
>
> (d) tax loss components of the company are carried forward under section IB 3(2) (When tax loss components of companies carried forward despite ownership continuity breach) to the tax year corresponding to the income year; and
>
> (e) the arrangement has tax avoidance as its sole or main purpose.
>
> *Treatment of injected income*
>
> (2) The amount is schedular income of the company for the tax year corresponding to the income year.

20. In summary, s GB 3BAB counteracts arrangements under which a person associated with a company carrying losses forward under the business continuity rule injects income into that company and an effect of the arrangement is that the person enjoys the benefit of those losses when they would otherwise have been prohibited from doing so by the ownership commonality requirements of the loss grouping provisions.

21. Section GB 3BAB has the following requirements:

- Tax loss components of a company are carried forward under the business continuity rule in s IB 3(2).
- An arrangement exists between two people, person A and person B.
- Person A and person B are associated persons at the time they enter into the arrangement.
- An effect of the arrangement is that the company derives an amount of income that, but for the arrangement, another person would have derived, would in all likelihood have derived or might be expected to have derived.
- The arrangement has a sole or main purpose of tax avoidance.

22. If the above five requirements are present, the amount of income the company derives is treated as schedular income.

23. Section GB 3BAC provides as follows:

> **GB 3BAC Arrangements to shift expenditure from companies carrying forward loss balances**
>
> *When this section applies*
>
> (1) This section applies when—
>
> (a) tax loss components of a company are carried forward under section IB 3(2) (When tax loss components of companies carried forward despite ownership continuity breach) to a tax year; and
>
> (b) a person (**person A**) enters into an arrangement with another person (**person B**); and
>
> (c) person A and person B are associated persons at the time they enter into the arrangement; and
>
> (d) an effect of the arrangement is that, in the absence of this section, a person other than the company is allowed a deduction for an amount of expenditure or loss the person incurs that, but for the arrangement, the company—
>
> (i) would have incurred in the income year corresponding to the tax year; or
>
> (ii) would in all likelihood have incurred in the income year corresponding to the tax year; or
>
> (iii) might be expected to have incurred in the income year corresponding to the tax year; and
>
> (e) the arrangement has tax avoidance as its sole or main purpose.
>
> *Treatment of company*
>
> (2) The company is treated as having incurred the amount of expenditure or loss—
>
> (2) in the course of carrying on a business for the purpose of deriving assessable income; and
>
> (b) in the income year corresponding to the tax year.
>
> *Treatment of other person*
>
> (3) The person referred to in subsection (1)(d) that is not the company is treated as not having incurred the amount of expenditure or loss.

24. In summary, s GB 3BAC counteracts arrangements under which a person associated with a company carrying losses forward under the business continuity rule shifts expenses away from that company and an effect of the arrangement is that a person other than the company enjoys the benefit of those losses when they would otherwise have been prohibited from doing so by the ownership commonality requirements of the loss grouping provisions.

25. The requirements of s GB 3BAC are the same as those for s GB 3BAB except for the fourth requirement which in the case of s GB 3BAC is that an effect of the arrangement is that a person other than the company is allowed a deduction for an amount of expenditure or loss that, but for the arrangement, the company would have incurred, would in all likelihood have incurred or might be expected to have incurred.

26. If the five requirements of s GB 3BAC are present, the company is treated as having incurred the expenditure or loss in the course of a business carried on for the purpose of deriving assessable income and the other person is treated as not having incurred the expenditure or loss.

27. Each of the five requirements that must be met for ss GB 3BAB and GB 3BAC to apply are discussed next. This is followed by a discussion of the tax consequences that result when those sections apply.

## Tax loss components of the company are carried forward under the business continuity rule in s IB 3(2)

28. The first requirement of ss GB 3BAB and GB 3BAC is that tax loss components of a company are carried forward under the business continuity rule in s IB 3(2).

29. Tax loss components are amounts included in a person's tax loss for a tax year. Tax loss components include current year net losses and unused net losses from previous years. A company carries tax loss components forward in a loss balance.[4] A company may do this only if it meets the minimum continuity of voting interest threshold in s IA 5.[5] Broadly, the requirement is that a group of persons holds at least 49% of the voting interests in a company over an applicable continuity period.[6] The continuity period for a tax loss component is the period from the beginning of the income year in which it first arises to the end of the income year in which it is used.[7]

30. The business continuity rule provides an exception to this. Broadly, if a loss company does not maintain continuity under s IA 5, it will, nevertheless, be entitled to carry a tax loss component forward if:
    - it does not cease to carry on business activities during an applicable business continuity period; and
    - there has not been a major change in the nature of the business activities carried on by the company during the business continuity period, other than a change permitted under s IB 3(5).

31. The business continuity period is typically the period starting immediately before an ownership continuity breach and ending on the earlier of the last day of the income year in which the:
    - tax loss component in question is used; or
    - fifth anniversary of the ownership continuity breach falls.[8]

32. The application of the business continuity rule is illustrated in Example | Tauira 1.

**Example | Tauira 1 – Application of the business continuity rule**

Loss Co carries on a business repairing and servicing stringed instruments. In recent years, Adrian, the owner of Loss Co, has neglected the business. This has resulted in Loss Co incurring successive losses that it is now carrying forward as a loss balance.

Janine buys all of Loss Co's shares from Adrian. After the sale, Janine continues to carry on Loss Co's business using the same assets and servicing the same market as before. At the end of her first year of ownership (the 2022 income year), Janine's hard work and good management have returned Loss Co to profit. Consequently, Loss Co has an amount of net income.

The sale of Loss Co's shares results in Loss Co failing to meet the 49% continuity of ownership requirement in s IA 5 for carrying its loss balance forward. However, Loss Co meets the requirements of the business continuity rule in s IB 3(2) because there has not been a major change in Loss Co's business activities. This means Loss Co is entitled to offset its loss balance against its net income in the 2022 income year.

## Meaning of "arrangement"

33. The second requirement of ss GB 3BAB and GB 3BAC is that an "arrangement" exists between person A and person B. The term arrangement is defined in s YA 1 as follows:

    > **arrangement** means an agreement, contract, plan, or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect

4 Section IA 3(4).

5 If a market value circumstance exists, the group of persons must also hold at least 49% of the market value interests in the company (s IA 5(3)).

6 Section IA 5(2). For more information on the continuity of voting interest threshold and the other rules in subpart IA see: IS 22/07 Company losses – ownership continuity, sharing and measurement *Tax Information Bulletin* Vol 34, No 11 (December 2022): 53.

7 Section IA 5(6).

8 The five-year cap does not apply to companies that come within s IB 4(1)(a). Broadly, that section applies to companies that have a carried forward loss balance that, at least to the extent of 50%, arose from bad debt deductions.

34. The definition of arrangement provides for varying degrees of formality and enforceability. For example, an arrangement may be:
    - a legally binding contract;
    - an agreement or plan that may or may not be legally binding;
    - an understanding that may or may not be legally binding; or
    - a contract that is not enforceable at law due to public policy, contractual incapacity or illegality.
35. The courts have considered the predecessor definitions of arrangement to that in s YA 1, particularly in the context of the general anti-avoidance provision. They described an arrangement as embracing all kinds of concerted action by which persons may arrange their affairs for a particular purpose or to produce a particular effect.[9]

### Arrangement may involve more than one transaction or document

36. An arrangement may involve more than one transaction or document. Whether two or more transactions or documents together constitute an arrangement is a matter of fact.[10]
37. In determining whether transactions or documents (or both) are part of an arrangement, the courts ask whether:
    - the transactions or documents are sufficiently interrelated or interdependent;
    - an overall plan exists;
    - there is prior planned linking or sequencing (or both).
38. This requires consideration of the nature and extent of the relationship between the transactions or documents.
39. In *CIR v Europa Oil (NZ) Ltd*, the Privy Council considered that six agreements constituted a single agreement because they were "far too close, and far too carefully worked out" to isolate and treat as "a series of independent bargains".[11] The Privy Council considered an interdependence existed between the agreements because:
    - they were made on the same date and some of them contained references to the other agreements;
    - they indicated that one party never intended to bind itself without entering into the other agreements; and
    - the effect of one of the agreements was to enable one party to sue for any breach of the other agreements.
40. In *AMP Life v CIR*, the High Court held that four transactions did not constitute an arrangement because they were only "a mere sequence of events, each with knock-on causative consequences".[12] As mentioned, an arrangement requires an overall plan or some prior planned linking or sequencing (or both) of transactions or documents.

### Arrangement includes "all steps and transactions by which it is carried into effect"

41. An arrangement, as defined, includes "all steps and transactions by which it is carried into effect". The words "including all steps and transactions by which it is carried into effect" reflect that an "agreement, contract, plan, or understanding" may not describe all the practical steps and transactions needed to carry out an arrangement.
42. Therefore, the definition makes clear that an arrangement includes the various actions undertaken to carry the arrangement into effect even if the actions are not themselves an "agreement, contract, plan, or understanding".
43. This interpretation is consistent with *CIR v Penny* where Randerson J stated:[13]

> [78] I am satisfied that an "arrangement" is not limited to a specific transaction or agreement but may embrace a series of decisions and steps taken which together evidence and constitute an agreement, plan or understanding. Any such arrangement may be continued in each of the income years in question or may be varied from year to year.



9 *CIR v BNZ Investments Ltd* [2002] 1 NZLR 450 at [45].
10 *Peterson v CIR* [2005] UKPC 5 at [33].
11 *CIR v Europa Oil (NZ) Ltd* [1971] NZLR 641 at [651] (PC).
12 *AMP Life v CIR* (2000) 19 NZTC 15,940 (HC) at [125].
13 *CIR v Penny* [2010] NZCA 2,310.

### Other aspects of an arrangement

44. Other aspects of an arrangement include the following:
    - An arrangement is defined to include a "plan", which could involve a single person.[14]
    - An arrangement does not require a consensus or a meeting of minds of two or more persons, so a taxpayer could be party to an "arrangement" even if they are not consciously involved in or aware of its details.[15]
    - An arrangement may consist of more than one agreement, contract, plan or understanding, so an agreement, contract, plan or understanding may be part of a wider arrangement as well as being part of a separate narrower arrangement.
    - An arrangement includes steps and transactions that are entered into or carried out outside New Zealand.[16]

## Person A and person B are associated persons

45. The third requirement of ss GB 3BAB and GB 3BAC is that person A and person B are associated persons at the time they enter into their arrangement. To determine whether two people are associated, the general associated persons rules in subpart YB apply. In summary, those rules treat two people as being associated where they are:
    - two companies, if either a group of persons holds total voting interests in each company of 50% or more or the group of persons controls both companies by any other means (s YB 2);
    - a company and a person (other than a company) if the person has a voting interest in the company of 25% or more (s YB 3);
    - relatives (s YB 4);
    - a trustee of a trust and:
        - a beneficiary of the trust (s YB 6);
        - the settlor of the trust (s YB 8);
        - a person who is related to a beneficiary of the trust (s YB 5);
        - a trustee of another trust with the same settlor (s YB 7); or
        - a person with the power to appoint or remove the trustee (s YB 11);
    - a settlor of a trust and a beneficiary of the trust (s YB 9);
    - a partnership and a partner (excluding limited partnerships, which are treated as companies) (s YB 12);
    - a look-through company and a look through owner who is a director or employee (s YB 13); or
    - each associated with a third person (s YB 14).

## Income would have been derived by another person

46. The fourth requirement for s GB 3BAB is in subparas (i)–(iii) of s GB 3BAB(1)(c). They require that an arrangement has the effect of a company deriving an amount of assessable income that, but for the arrangement, another person:
    - would have derived (s GB 3BAB(1)(c)(i));
    - would in all likelihood have derived (s GB 3BAB(1)(c)(ii)); or
    - might be expected to have derived (s GB 3BAB(1)(c)(iii)).
47. The requirements in subparas (i)–(iii) are in descending order of certainty. At the highest level, subpara (i) requires that a person would have derived an amount of income. Consequently, to satisfy subpara (i) it must be certain that the income would have been derived by the person had an arrangement not been entered into.
48. Subparagraph (ii) applies if the income would "in all likelihood" have been derived by another person. The term "in all likelihood" is defined in the *Shorter Oxford English Dictionary* (6th ed, New York, Oxford University Press) to mean "in all probability, very probably". The word "probability" is defined to mean "degree of likelihood" and "probably" to mean "most likely". Therefore, on the ordinary meaning of these terms the requirements of subpara (ii) will be met if it is very likely another person would have derived the income had an arrangement not been entered into.

14 *Russell v CIR (No 2)* (2010) 24 NZTC 24,463 (HC) (footnote 33 at [101]) and *Russell v CIR* [2012] NZCA 128 at [54].

15 *Peterson v CIR* [2005] UKPC 5 (PC) at [34].

16 *BNZ Investments Ltd v CIR* (2000) 19 NZTC 15,732 (HC) at [123].

49. Subparagraph (iii) requires that the income "might be expected" to have been derived by another person. The *Shorter Oxford English Dictionary* defines the word "might" to mean "have the possibility, opportunity, or suitable conditions to; and the word "expect" to mean "regard as about or likely to happen". Therefore, on the ordinary meaning of these terms the requirements of subpara (iii) will be met if it is possible to regard it as likely another person would have derived the income had the arrangement not been entered into.
50. In summary, to satisfy the requirements of s GB 3BAB(1)(c) a mere possibility that income would have been derived by another person is not enough. Instead, it must be shown that it is either certain, very likely or likely the income would have been derived by another person had the arrangement not been entered into. These requirements are illustrated in Example | Tauira 2 in the context of s GB 3BAC.
51. Example | Tauira 3 demonstrates an arrangement that does not meet the requirements of s GB 3BAB(1)(c) because the arrangement does not have the effect of a company deriving an amount of income.

## Another person would have been allowed a deduction

52. The fourth requirement for s GB 3BAC is in subparas (i)–(iii) of s GB 3BAC(1)(d). They require that an arrangement has the effect of a person other than the company being allowed a deduction for an expenditure or loss the person incurs that, but for the arrangement, the company:
    - would have incurred (s GB 3BAC(1)(d)(i));
    - would in all likelihood have incurred (s GB 3BAC(1)(d)(ii)); or
    - might be expected to have incurred (s GB 3BAC(1)(d)(iii)).
53. The Commissioner considers that s GB 3BAC relates to expenditure a company was incurring before a breach of continuity of ownership occurs. This is because s GB 3BAC is directed at arrangements that allow expenditure existing at that time to be shifted out of a loss company. This does not mean that the expenditure must be identical to expenditure incurred by the loss company before the breach of continuity of ownership, but that the expenditure must be of the same type or nature and have the same or a similar purpose. This is illustrated in Example | Tauira 3.
54. Subparagraphs (i)–(iii) of s GB 3BAC(1)(d) use the same wording that is used in subparas (i)–(iii) of s GB 3BAB(1)(c) when expressing the degree of uncertainty allowed under each subparagraph. Therefore, to satisfy the requirements of s GB 3BAC(1)(d) a mere possibility that the company would have incurred the expenditure or loss is not enough. Instead, it must be shown that it is either certain, very likely or likely the expenditure or loss would have been incurred by the company had an arrangement not been entered into. These requirements are illustrated in Example | Tauira 2.

**Example | Tauira 2 – Shifting costs out of target company**

**Facts**

Loss Co incurs rent (leasing business premises), salaries (paying staff) and marketing expenditure (promoting its business). Profit Co acquires Loss Co and after the acquisition Profit Co and Loss Co enter into an agreement under which Profit Co agrees to provide business premises, staff and marketing services to Loss Co. This arrangement involves Loss Co assigning its existing lease to Profit Co, terminating employee contracts and ending its marketing functions, and Profit Co incurring deductible expenditure providing those services to Loss Co.

**Application of s GB 3BAC**

The service agreement is not a major change in the nature of Loss Co's business activities as it only affects the way in which Loss Co meets its need for staff, premises and marketing functions. The agreement does not affect matters such as the assets used in the business (Loss Co uses the same premises and the same staff as before), the type of services provided, the scale of the business or the markets the business serves. Consequently, Loss Co is entitled to carry its loss forward under s IB 3(2).

Section GB 3BAC(1)(d)(i) applies to the rent. If the arrangement had not been entered into, it is certain Loss Co would have incurred the rent as Loss Co would have continued to be the lessee under the lease, so liable to pay the rent.

Section GB 3BAC(1)(d)(ii) applies to the salary expenditure. Although staffing requirements can fluctuate within a business, the implementation of the arrangement does not affect Loss Co's need for staff. Therefore, it is very likely Loss Co would have incurred the salary expenditure had the arrangement not been entered into.

Section GB 3BAC(1)(d)(iii) applies to the marketing expenditure. Marketing expenditure is discretionary expenditure that can vary from year to year and in some years may be nil. However, it is likely Loss Co would have incurred marketing expenditure if the arrangement had not been entered into, because Loss Co typically incurs marketing expenditure each year.

**Example | Tauira 3 – Financing arrangement to acquire new business**

**Facts**

Loss Co owns a furniture retail business. Loss Co has accumulated losses that it is carrying forward in a loss balance.

Aroha acquires Loss Co through a holding company, Hold Co. After 18 months, Aroha decides to expand her business acquiring another furniture retail business from a third party, Vendor Co. The business is profitable and of the same type as Loss Co's existing business. The new business is purchased by Loss Co and merged with Loss Co's existing business. Loss Co funds the purchase using money provided by Hold Co in an exchange for shares. Hold Co acquired the funds under a bank loan and Hold Co is entitled to deduct the interest that it pays to the bank.

**Application of s GB 3BAB**

When Loss Co acquires the new business there is a change in the nature of its business activities as the acquisition expands Loss Co's business. As the change is caused by an increase in the scale of the business, the change will be permitted under s IB 3(5)(c) to the extent that it is a major change.

Loss Co's agreement to issue shares to Hold Co in exchange for cash is an arrangement between two associated persons. The arrangement provides Loss Co with funds to purchase the new business. After acquisition, Loss Co derives income from the business. However, this is not an effect of the arrangement, it is an effect of the sale agreement between Loss Co and Vendor Co as Loss Co obtains ownership of the income producing assets of the new business under the sale agreement. As the arrangement does not have an effect of Loss Co deriving an amount of income, s GB 3BAB cannot apply.

**Application of s GB 3BAC**

Hold Co incurs deductible interest on the funds that it borrowed and provided to Loss Co. As Loss Co was not incurring the same interest expenditure before it was acquired by Hold Co, the interest cannot come within s GB 3BAC(1)(d). As is noted at [53] above, s GB 3BAC(1)(d) can only apply to expenditure that is of the same type or nature and has the same or a similar purpose as expenditure Loss Co incurred before being acquired. Therefore, even if it could be concluded that Loss Co would have borrowed the money and incurred the interest had the arrangement not been entered into, s GB 3BAC would not apply.

**Interest free loan**

The same outcomes would arise under ss GB 3BAB and GB 3BAC if instead of providing money in exchange for shares, Hold Co funded Loss Co by providing an interest free loan.

## Arrangement has a sole or main purpose of tax avoidance

55. If an arrangement exists between associated persons and the requirements of s GB 3BAB(1)(c) or s GB 3BAC(1)(d) are present, it is necessary to determine, under the fifth and final requirement, whether "the arrangement has tax avoidance as its sole or main purpose". This question may be divided into two steps:
    - Determine whether the arrangement has a tax avoidance purpose.
    - If it does, determine whether the tax avoidance purpose is the arrangement's sole or main purpose.

### Whether the arrangement has a tax avoidance purpose

56. The question of whether an arrangement has a tax avoidance purpose also arises under the general anti-avoidance provision, s BG 1. For this reason, it is considered that the approach to applying s BG 1 is relevant when applying ss GB 3BAB and GB 3BAC.
57. Section BG 1(1) provides that a "tax avoidance arrangement is void as against the Commissioner for income tax purposes". The term "tax avoidance arrangement" is relevantly defined in s YA 1 to mean:

> an arrangement … that **has tax avoidance as its purpose or effect** … or has tax avoidance as 1 of its purposes or effects … if the tax avoidance purpose or effect is not merely incidental. [Emphasis added]

58. It is well established that the test of whether an arrangement has a tax avoidance purpose or effect under s BG 1 is objective.[17] This means the subjective motives and purposes of the parties who enter into an arrangement are not relevant when applying the test. Instead, the courts treat the phrase "purpose or effect" as a composite term that requires an arrangement's objective purpose to be determined by working backwards from the arrangement's effect; that is, what the arrangement actually achieves.[18] The objective nature of the test also means the arrangement's effect must be ascertained from its terms.[19] Consequently, if the terms of an arrangement show it has a tax avoidance effect, then it has a tax avoidance purpose.
59. Similarly, it is considered that when applying ss GB 3BAB and GB 3BAC the issue of whether an arrangement has a tax avoidance purpose is also objective. This is evident from the words of those sections, which require that it is "the arrangement" that has a sole or main purpose of tax avoidance.
60. Therefore, the initial question that must be answered under ss GB 3BAB and GB 3BAC is the same as the one that must be answered under s BG 1; that is, does the arrangement have an objective purpose of tax avoidance? Consequently, the approach that applies when determining whether an arrangement has a tax avoidance purpose under ss GB 3BAB and GB 3BAC is the same as the approach that applies under s BG 1.

**Parliamentary contemplation test**

61. Although s YA 1 contains a definition of the term "tax avoidance", the courts typically decide whether tax avoidance exists without any detailed analysis of the statutory definition or the term's ordinary meaning. At times, the courts have not referred to the definition at all.
62. The leading authority on whether an arrangement has a tax avoidance purpose or effect under s BG 1 is the decision of the Supreme Court in *Ben Nevis*. *Ben Nevis* sets out the Parliamentary contemplation test. The Parliamentary contemplation test is applied to determine whether an arrangement has a tax avoidance purpose. The test is whether the arrangement, viewed in a commercially and economically realistic way, makes use of or circumvents a specific provision in a manner that is consistent with Parliament's purpose.
63. Detailed guidance on the Commissioner's approach when applying s BG 1 and the Parliamentary contemplation test is set out in interpretation statement **IS 23/01**.[20] Broadly, that approach involves the following steps:
    - Identify and understand the arrangement.
    - Identify and understand Parliament's purpose for the specific provisions that are relevant.
    - Understand the commercial and economic reality of the arrangement as a whole.
    - Consider whether the arrangement makes use of or circumvents the specific provisions in a manner consistent with Parliament's purpose.
    - Decide whether there is a tax avoidance purpose or effect.

**Identify and understand the arrangement**

64. This step involves understanding the legal form of an arrangement by identifying and understanding:
    - all of the steps and transactions that make up the arrangement (see [33] to [44] about what is an "arrangement");
    - the commercial or private purposes of the arrangement;
    - the arrangement's tax effects and how they have been achieved by the arrangement based on the legal rights and obligations created, which requires identifying and understanding:
        - the specific provisions that apply to the arrangement and why they apply; and
        - any relevant provisions that do not apply and why they do not apply.
65. The specific provisions that ss GB 3BAB and GB 3BAC are intended to buttress are relevant under this step.



17 *Newton v Commissioner of Taxation* [1958] AC 450 (PC) and *Ashton v CIR* [1975] 2 NZLR 717 (PC) at 721–722.

18 *Glenharrow Holdings Ltd v CIR* [2008] 2 NZLR 359 (SC) at [38].

19 *Ashton* at 722.

20 IS 23/01: Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 Tax Information Bulletin Vol 35, No 2 (March 2023): 8.

66. Under the loss grouping provisions, a loss company may make its tax loss available to another company to subtract from its income if the requirements of s IC 5(1) are present.[21] The loss company does this by giving notice to the Commissioner or by agreeing that the profit company will bear the tax loss, or take a share in it, in return for a payment from the profit company.[22] Payments of this nature are known as subvention payments. A profit company that makes a subvention payment must deduct the payment from its net income.[23]
67. Section IC 5(1) contains an ownership commonality requirement that must be met before a loss company can make its tax loss available to a profit company. The requirement is that there must be a group of persons who hold common voting interests of at least 66% in both companies during the applicable commonality period. The commonality period is the period that begins at the start of the income year in which the loss company has a tax loss component included in the tax loss, and finishes at the end of the income year in which the profit company subtracts the tax loss component from its net income.[24]
68. Sections GB 3BAB and GB 3BAC apply when a company carries a loss forward under the business continuity rule and there is an arrangement that has a tax avoidance purpose. The arrangement must involve the injection of income into the company or deductible expenditure being shifted out of the company with the consequence that another person effectively enjoys the benefit of the company's loss.
69. In these circumstances, ss GB 3BAB and GB 3BAC counteract the tax benefit by imposing a tax liability on the income or by shifting the expenditure back to the loss company.

**Identify and understand Parliament's purpose for the specific provisions that are relevant**

70. This step involves identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by an arrangement. Parliament's purpose is ascertained from the text of the provisions, the statutory context (including the statutory scheme relevant to the provision), case law and any relevant extrinsic material.
71. Section IB 1(a) is also relevant when considering Parliament's purpose. It provides that the purpose of subpart IB and ss GB 3BA, GB 3BAB and GB 3BAC is to enable companies to carry forward tax loss components despite not meeting the requirements for continuity of ownership in s IA 5 in order to reduce impediments to:
    - innovation and economic growth:
    - corporate reorganisations:
    - changes in the direct or indirect ownership of companies:
    - companies accessing new sources of share capital:
    - companies adapting their business activities in order to grow or be resilient.
72. However, s IB 1(b) also provides that subpart IB 1 and ss GB 3BA, GB 3BAB and GB 3BAC have a purpose of not encouraging tax avoidance arrangements that involve the acquisition of ownership interests in companies (that is, loss trading).
73. The purpose of not encouraging tax avoidance arrangements involving the acquisition of interests in companies was explained in the commentary to the Supplementary Order Paper that introduced the business continuity rules (SOP Commentary), as follows (at p25):[25]

    > To support the test and ensure it is not manipulated to enable loss trading the following measures are proposed:
    >
    > - A purpose provision setting out the objective of the test (that is, permit capital raising while preventing loss trading).
    > - Exclusion of companies where the scale of activities in its business have reduced to nothing or almost nothing (dormant or "zombie" companies) from the rules.
    > - **Anti-injection rules to prevent schemes that would permit the purchaser of a company to use up losses by diverting income into the company or by reducing expenditure of the company.**
    > - A rule to stop pre-emptive changes to the business being made before the change in ownership to defeat the purpose of the business continuity test.



21 Section IC 5(1).
22 Section IC 5(2)(a) and (b).
23 Section IC 5(3).
24 Sections IC 5(1)(a), IC 2(2), IC 3 and IC 6.
25 Supplementary Order Paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill; Commentary on the proposed amendments to: extend the residential property bright-line test, and loosen the loss continuity rules.

- **Maintaining the current approach to loss grouping. Companies acquired as part of a corporate group may continue to offset losses within that group, however, a company cannot be purchased and have its losses made available within a new group.** [Emphasis added]

74. And further (at p35):

> **The proposal leaves the commonality requirements unchanged.** Companies in the original group that are acquired together would meet the group test (for example, they were 100% commonly owned when the loss was made and remain 100% commonly owned when the loss is to be offset). **The acquired group will also form a new group with the acquiring company/group, however, because the commonality rules would fail to allow offsetting within the "new" group the pre-acquisition losses cannot be offset with other companies in that "new" group.** [Emphasis added]

75. This confirms that the ownership commonality rules within the loss grouping provisions in subpart IC are intended to apply unchanged to losses carried forward under the business continuity test.[26] It follows that the purpose of the ownership commonality rules is also relevant when considering Parliament's purpose as ss GB 3BAB and GB 3BAC are intended to buttress those provisions.

76. At the time they were introduced, the requirements of the loss carry forward and grouping rules were explained by the then Minister of Revenue:[27]

> The new rules are designed to tighten the criteria under which companies can carry forward and offset losses against the profits of other companies. **The intention of the new rules includes that of preventing the commercial trafficking of company tax losses to the detriment of revenue. Those rules follow a determination made by the Government that losses should not be tradable property.** In that determination the treatment parallels that received by individuals. It is notable that trading in tax losses is not provided for in other countries. There is also a recognition problem, which has given people a considerable advantage.
>
> The decision does not represent a new policy for Parliament. Loss-trafficking has never been allowed, but the rules as they were in place did not have the effect of stopping it from happening in the corporate sector. **The current restrictions on the ability of companies to carry forward and group losses have proved to be inadequate and losses have been carried forward and offset in circumstances in which those individuals who have gained the benefit of the tax losses are not the same as the persons who have borne the losses.** The losses are negative income, and, like positive income, they should not be able to be traded between individuals. [Emphasis added]

77. A policy document released at the time the loss carry forward and loss grouping provisions rules were introduced provides:[28]

> The Government announced in the Budget a number of measures to change the tax rules that apply to the carry-forward and offset of company losses. These changes are aimed at:
>
> a providing rules that are more clear and certain as to the circumstances in which a company can either carry forward its tax losses into future income years for offset against its future income ("loss carry-forward") or offset its losses against the assessable income of other companies ("loss offset")
>
> **b limiting the carry-forward or offset of losses so that, as far as practicable, only the individuals who directly incur the initial economic burden of those losses are able to take advantage of them for tax purposes. The new rules in relation to company loss-carry-forward and offset seek to treat companies in a similar manner to individuals**
>
> c enabling profit companies that are eligible to offset their profits against the losses of one or more loss companies in a group to do so with minimum complexity. [Emphasis added]

78. In *Case Z19*, Judge Barber stated:[29]

> [180] … When the [loss continuity and grouping] rules were implemented the then Ministry of Finance Honourable Ruth Richardson stated in this 1991 Budget at page 41:
>
> > "[a]s far as practicable, only the individuals who directly incur the economic burden of those losses are able to take advantage of them for tax purposes. These rules in effect seek to treat companies in a manner similar to individuals."
>
> [181] Unrestricted transfer of losses is not found in any jurisdiction because Revenue authorities have a concern with protecting their tax bases. …

26 For more information on the loss grouping provisions see: IS 22/07 Company losses – ownership continuity, sharing and measurement *Tax Information Bulletin* Vol 34, No 11 (December 2022): 53.

27 Hansard Parliamentary Debates (5 August 1991) 518 NZPD 3861–3863.

28 *Taxation Policy: Business Tax Policy 1991 – a statement* on *government taxation policy* (Minister of Finance and Minister for Revenue, 30 July 1991) at 82.

29 *Case Z19* (2009) 24 NZTC 14,217 (TRA).

79. Similarly, in *Concepts 124 Ltd v CIR* Clifford J stated:[30]

> The continuity provisions have the policy intent of ensuring that the future benefit of tax losses is enjoyed by the economic owners of the company at the time the underlying economic losses were incurred.

80. On the basis of the above, the Commissioner considers Parliament's purpose in enacting the loss grouping provisions was to:
    - prevent loss trading; and
    - ensure the owners of a profit company who receive the benefit of a loss carried forward by another company are, at least to the extent of 66%, the same people who suffered the economic burden of the loss when it was incurred.

**Understand the commercial and economic reality of the arrangement as a whole**

81. The next step is to understand the commercial and economic reality of the arrangement as a whole. The Supreme Court in *Ben Nevis* identified factors that are helpful to consider in this context. These factors include the:
    - manner in which the arrangement is carried out;
    - role of all relevant parties and their relationships;
    - economic and commercial effect of documents and transactions;
    - nature and extent of the financial consequences; and
    - duration of the arrangement.
82. In addition, the court stated that a classic indicator of a use that is outside Parliamentary contemplation is the structuring of an arrangement so the taxpayer gains the benefit of the specific provision in an artificial or contrived way.[31] The courts have also used the term "pretence". For instance, the Supreme Court in *Ben Nevis* observed that pretence will often be highly relevant to whether there is a tax avoidance arrangement.[32]
83. Artificiality, contrivance or pretence must be considered in the context of the arrangement as a whole. Artificiality is something that in commercial and economic reality (as objectively determined):
    - is not commercially realistic;
    - would not happen in that particular way or would not happen at all in commercial or private dealings, independent of the tax advantages;
    - has no commercial or private purpose;
    - has a commercial or private purpose, but that purpose has no commercial or private rationale or logic, independent of the tax advantages; or
    - distorts the application or non-application of specific provisions.
84. In other cases, the courts have found factors to be significant that include whether:
    - there is circularity in the arrangement;
    - there is inflated expenditure or reduced levels of income in the arrangement;
    - the parties to the arrangement have undertaken limited or no real commercial or economic risks; and
    - the arrangement is pre-tax negative.



30 *Concepts 124 Ltd v CIR* [2014] NZHC 2,140 at [71].

31 At [108], where the Supreme Court referred to artificiality or contrivance (in the alternative) but then found the insurance aspect of the arrangement in the case was both artificial and contrived (at [148]). While different, because they often appear together in this way, in this statement "artificiality or contrivance" is treated as a single factor.

32 At [97].

**Consider whether the arrangement makes use of or circumvents the specific provisions in a manner consistent with Parliament's purpose**

85. Under this step, the implications of the preceding analysis are considered. Bearing in mind Parliament's purposes for ss GB 3BAB and GB 3BAC are to buttress the ownership commonality rules within the loss grouping provisions and the further purposes set out in s IB 1, the analysis is likely to highlight interrelated matters, including those concerning:
    - the presence (or absence) of artificiality, contrivance or pretence;
    - the veracity of the arrangement's commercial or private purposes (in contrast to the clarity or otherwise of the arrangement's tax advantages); and
    - whether or not the use or circumvention of the relevant specific provisions is consistent with Parliament's purposes for the provisions.
86. The preceding analysis of the arrangement may highlight that tax advantages have been obtained by artificiality or contrivance. Artificiality or contrivance is a significant factor because the courts have confirmed that using or circumventing specific provisions to obtain tax advantages in artificial or contrived ways is outside Parliament's contemplation for those specific provisions. The related concept of pretence is also highly relevant.
87. The preceding analysis may show the arrangement's apparent commercial or private purposes may not be consistent with its commercial or economic reality. Arrangements are likely to be outside Parliament's purpose for the specific provision where:
    - the arrangement has no commercial or private purpose;
    - a step in the arrangement has no commercial or private purpose and the step uses or circumvents the specific provision;
    - the arrangement (or a step) has a commercial purpose but that purpose has no commercial rationale or viability independent of the tax advantage; or
    - the arrangement (or a step) is structured in a manner where the commercial or private purposes are dependent on a tax advantage being achieved.
88. Understanding the commercial and economic reality of the arrangement as a whole may indicate the arrangement uses or circumvents a specific provision in a manner that is not consistent with Parliament's purpose. This is because such understanding may raise doubts as to whether Parliament would have contemplated permissible tax advantages arising under the specific provision in those circumstances.

**Decide whether a tax avoidance purpose exists**

89. This step involves taking into account all of the matters considered above to answer the ultimate question: does the arrangement, viewed in a commercially and economically realistic way, use or circumvent the specific provisions in a manner that is consistent with Parliament's purpose?
90. The answer must be a reasonable inference that is open on the evidence, is able to be drawn from the facts, and is logical and convincing. It cannot be the result of mere speculation or subjective intuitive impression.
91. The application of the of the Parliamentary contemplation test is illustrated in Example | Tauira 6 and Example | Tauira 7.

### Whether tax avoidance is the sole or main purpose of the arrangement

92. If, after applying the Parliamentary contemplation test, it is found that an arrangement has a tax avoidance purpose, it is necessary to determine whether that purpose is the arrangement's sole or main purpose. The word "sole" is defined in the *Shorter Oxford English Dictionary* to mean "[o]ne and only, single: only". Therefore, if the arrangement has tax avoidance as its only purpose, s GB 3BAB or s GB 3BAC (as the case may be) will apply.
93. If the arrangement has a tax avoidance purpose and one or more other non-tax purposes, ss GB 3BAB and GB 3BAC will apply only if the arrangement "has tax avoidance as its … main purpose". The word "main" is defined in the *Shorter Oxford English Dictionary* to mean "[c]hief or principal in size or extent" and "[g]reater or more important than others of the same kind: pre-eminent: leading". Therefore, an arrangement's main purpose will be its chief, principal, pre-eminent, leading or most important purpose.
94. To work out whether tax avoidance is an arrangement's main purpose, the arrangement's non-tax purpose or purposes must be identified and weighed against the tax avoidance purpose to see which is the main purpose.

95. Purposes are identified and weighed in the context of the specific structure of the arrangement. As the test is to establish the main purpose of the arrangement, purposes will be relevant if they explain the specific structure of the arrangement. The fact that non-tax purposes may be able to be achieved by other structures does not in itself make them irrelevant. The point is: can the particular way the arrangement has been put together be explained by a non-tax purpose or purposes? If the specific features of the arrangement are mainly explicable by the tax purposes, then this suggests the main purpose is tax avoidance. If the specific features of the arrangement are mainly explicable by the non-tax purposes, then this suggests the main purpose of the arrangement is not tax avoidance.

96. In practice, the factual indicators likely to be relevant in determining whether the main purpose of an arrangement is tax avoidance may be the same factors that indicate a tax avoidance arrangement exists. However, the factors have to be considered again in the context of the different standard required under a main purpose test. In other words, it is necessary to consider whether the factors support the conclusion that the main purpose of the arrangement is tax avoidance.

97. This approach is consistent with the approach the courts have taken in relation to s 141D(7) of the Tax Administration Act 1994. Section 141D(7) contains a test of whether an arrangement has a dominant purpose of avoiding tax that applies when determining whether a person is liable to pay an abusive tax position penalty. This test is similar to the main purpose test in ss GB 3BAB(1)(e) and GB 3BAC(1)(e). Case law on the application of s 141D(7) has also weighed the tax purposes of an arrangement against its non-tax purposes: *Accent Management v CIR*[33] (upheld in *Ben Nevis*), *Case Z23*[34] and *Krukziener v CIR*.[35]

98. In summary, an arrangement's main purpose is its chief, principal, pre-eminent, leading or most important purpose. In determining whether tax avoidance is an arrangement's main purpose, its non-tax purpose or purposes must be weighed against its tax avoidance purpose. This involves determining whether a purpose explains the structure of the arrangement. If the specific features of the arrangement are mainly explicable by tax purposes, this suggests the main purpose is tax avoidance. In practice, the factual indicators likely to be relevant in determining whether the main purpose of an arrangement is tax avoidance may be the same factors that indicate there is a tax avoidance arrangement such as the presence of artificiality and contrivance.

99. These concepts are illustrated by the application of the Parliamentary contemplation test in Example | Tauira 6 and Example | Tauira 7.

### Intra-group recharging

100. A key consideration in determining whether an arrangement has a sole or main purpose of tax avoidance for the purposes of the cost shifting rule in s GB 3BAC will be the existence or otherwise of intra-group recharges for expenditure shifted out of the loss company and the level of any such recharge.

101. Where a loss company is acquired, the acquiring company or group may seek to obtain efficiencies by having duplicated functions performed by an associated company rather than the loss company. This would commonly include functions such as payroll, accounting, sales and marketing, but could be any function. Such an arrangement will typically result in the associated company being allowed a deduction for expenditure that the loss company would otherwise have been likely to incur, and so it will be necessary to determine whether the arrangement has tax avoidance as a sole or main purpose.

102. The presence of artificiality or contrivance is important in this respect. As set out from [82], artificiality may be present in an arrangement where something is not commercially realistic or where there is inflated expenditure or reduced levels of income. In the Commissioner's view, the absence of an intra-group recharge or an uncommercial level of recharge for functions performed by an associated company will indicate that artificiality is present in an arrangement. This, in turn, may suggest that the arrangement has tax avoidance as a sole or main purpose.

103. This is consistent with the SOP Commentary which states that the cost-shifting rule in s GB 3BAC "would not apply where, for example, employment contracts are shifted to a group member and there is a recharge to the loss company….".[36] It is also consistent with Example 20 in the SOP Commentary which demonstrates the rule applying to an arrangement under which there is no recharge.[37]

33 *Accent Management v CIR* (2005) 22 NZTC 19,027 (HC) at [370].

34 *Case Z23* (2010) 24 NZTC 14,334 (TRA) at [125].

35 *Krukziener v CIR* (2010) 24 NZTC 24,563 (HC) at [71].

36 At p37.

37 At p38.

104. Whether or not the level of recharge is uncommercial is a question of fact and will depend on the particular circumstances. In general, the Commissioner considers that a level of recharge that at least recovers the cost of the performance of the function by the associated company will not be uncommercial. Where the associated company performs the same function for more than one company within a group of companies, some form of apportionment of the cost between those companies will be required. The most appropriate way of determining any apportionment will depend on the context and should result in a fair and reasonable allocation to the loss company.

105. As discussed earlier, the cost-shifting rule only applies to existing costs. If the loss company received services under a service agreement with a member of its previous group and was not charged a fee, there will not for those services be any costs that the cost shifting rule could apply to.

106. This is illustrated in Example | Tauira 6.

## Treatment of income under s GB 3BAB

107. If the five requirements of s GB 3BAB(1)(a)–(e) are present, the income derived by the loss company under the arrangement is treated as schedular income (s GB 3BAB(2)).

108. A person who has schedular income must calculate a separate income tax liability for each kind of schedular income they have and an income tax liability for their non-schedular income. The person adds the results of these calculations together to obtain their final income tax liability.[38]

109. Section IA 8(1)(f) prohibits a company from taking a tax loss into account when calculating a schedular income tax liability if the income for which the calculation is being performed is schedular income under s GB 3BAB(2). Therefore, if a company derives income under an arrangement that is caught by s GB 3BAB, the company is prohibited from offsetting the loss it carried forward under the business continuity rule against that income.

110. Example | Tauira 4 illustrates the application of s GB 3BAB(2) to an amount of income derived under an arrangement in which the five requirements of s GB 3BAB(1)(a)–(e) are present. The application of s GB 3BAB(2) is also illustrated in Example | Tauira 7.

**Example | Tauira 4 – Treatment of income under s GB 3BAB(2)**

Loss Co carries on a business and has a carried forward loss balance of $20,000 that it incurred in the 2021 tax year. At the start of the 2022 year, Loss Co's shares are sold, resulting in a breach of continuity of ownership. The new owner continues to carry on Loss Co's business and there is no major change in the nature of Loss Co's business activities. This means Loss Co is entitled to carry its loss balance forward under the business continuity rule. At the end of the 2022 year, Loss Co has assessable income of $50,000 and deductible expenditure of $30,000.

However, Loss Co is party to an arrangement in which the five requirements of s GB 3BAB(1)(a)–(e) are present. The arrangement involves an income assignment under which Loss Co, as assignee, derived $10,000 of its assessable income. Accordingly, s GB 3BAB(2) requires Loss Co to treat that income as schedular income.

Consequently, Loss Co must calculate a schedular income tax liability and an income tax liability for its non-schedular income. Loss Co has schedular income of $10,000. As Loss Co is prohibited from offsetting its loss balance against this amount, it must pay tax on the income at the company rate of 28%. Therefore, Loss Co has a schedular income tax liability of $2,800.

Loss Co's non-schedular net income is $40,000 less $30,000, which equals $10,000. Loss Co is entitled to offset its loss balance against this amount. Therefore, Loss Co does not have any further income tax to pay and has a $10,000 remaining loss balance to carry forward.



38 Section BC 7(1)–(3).

## Treatment of expenditure under s GB 3BAC

111. If the five requirements of s GB 3BAC(1)(a)–(e) are present, the expenditure or loss mentioned in s GB 3BAC(1)(d) incurred by a person other than the loss company is treated as not having been incurred by the person (s GB 3BAC(3)). The consequence is that the person is denied a deduction for the expenditure or loss under the general permission in s DA 1. The expenditure or loss is also treated as having been incurred by the loss company in the course of carrying on a business for the purpose of deriving assessable income. The consequence is that the loss company is entitled to a deduction for the expenditure or loss under s DA 1(1)(b) of the general permission.

112. Example | Tauira 5 illustrates the application of s GB 3BAC(3) to an amount of expenditure incurred under an arrangement in which the five requirements of s GB 3BAC(1)(a)–(e) are present. The application of s GB 3BAC(3) is also illustrated in Example | Tauira 6.

**Example | Tauira 5 – Treatment of expenditure under s GB 3BAC(2)**

Loss Co carries on a business and has a carried forward loss balance of $250,000 that it incurred in the 2021 tax year. At the start of the 2022 tax year, Jasmine, Loss Co's owner, sells her shares in Loss Co, resulting in a breach of continuity of ownership. Joshua, Loss Co's new owner, continues to carry on Loss Co's business after the share sale. This does not result in any change in Loss Co's business activities that would constitute a major change under the business continuity rule in s IB 3(2). Consequently, Loss Co is entitled to carry its loss balance forward.

Joshua owns another company, Profit Co, that carries on a separate business. In the 2022 tax year Profit Co has net income of $100,000. Profit Co's net income is made up of $200,000 of assessable income and $100,000 of deductible expenditure. In the same year, Loss Co has net income of $5,000, that amount being made up of assessable income of $50,000 and deductible expenditure of $45,000.

However, Loss Co and Profit Co are parties to an arrangement in which the five requirements of s GB 3BAC(1)(a)–(e) are present. Under the arrangement, $50,000 of Profit Co's deductible expenditure is expenditure that, but for the arrangement, Loss Co would have incurred. Accordingly, s GB 3BAC(2) requires that this expenditure is treated as not having been incurred by Profit Co and is treated as having been incurred by Loss Co in the course of carrying on a business for the purpose of deriving assessable income. This results in Profit Co's net income increasing by $50,000 to $150,000 and Loss Co's net income decreasing from $5,000 to a net loss of $45,000.

## Examples | Tauira

113. The following two examples illustrate the concepts discussed above.

**Example | Tauira 6 – Arrangement involving shifting of costs**

**Facts**

Transport Group carries on business providing transport services through two profitable trading companies, Trade Co 1 and Trade Co 2. Hold Co, the group's holding company, owns each of the trading companies.

Hold Co employs a team of people who provide human resources (HR), marketing and accounting services to the trading companies. The applicable service agreements provide for a service fee to be charged on a cost recovery basis. Hold Co calculates the fees by allocating to each company a share of Hold Co's expenditure that is proportionate to the amount of group revenue each company generates.

Loss Co is an unprofitable company that provides transport services and has a carried forward loss balance. Hold Co acquires Loss Co as it wishes to expand its business. The acquisition occurs at the start of the 2022 income year. Under Hold Co's direction, Loss Co continues to carry on the same business activities following its acquisition.

Before the acquisition, Loss Co incurred $300,000 of annual expenditure on its HR, marketing and accounting functions. Following the acquisition, Hold Co enters into a service agreement with Loss Co on the same terms as those that apply between Hold Co and the other trading companies.

In the 2022 income year, Transport Group has total revenue of $5 million. Of this, 20% was generated by Loss Co. In the same year, Hold Co incurs $1 million of expenditure providing services to the trading companies, including Loss Co. Therefore, Hold Co charges Loss Co a fee of $200,000.

At the end of the 2022 income year, Loss Co has an amount of net income that it offsets against its loss balance leaving a tax loss of $500,000. Trade Co 1 and Trade Co 2 both have taxable income on which they pay tax, and Hold Co has no taxable income as its assessable income equals its deductible expenditure.

**Application of s GB 3BAC**

***Tax loss components are carried forward under s IB 3(2)***

Hold Co's acquisition of Loss Co results in a breach of continuity under subpart IA. Despite this, Loss Co is entitled to carry its loss forward under s IB 3(2) if there has not been a major change in the nature of its business activities (other than a permitted major change). This requirement is met as the only change that has occurred is the service agreement with Hold Co. This change is not significant enough to qualify as a major change as it only affects the way in which Loss Co meets its need for HR, marketing and accounting functions and does not affect matters such as the assets used in the business, the type of services provided, the scale of the business or the markets the business serves.

***Arrangement exists between person A and person B***

The agreement under which Hold Co provides services to Loss Co is an arrangement.

***Persons A and B are associated persons when they enter into the arrangement***

Hold Co and Loss Co are associated persons because the same group of people own all of the voting interests in each company.[39]

39 Under the look through rule in s YC 4, the owners of Hold Co are treated as owning all the voting interests in Loss Co, and Hold Co is treated as not owning those interests.

***Arrangement's effect is that a person other than Loss Co is allowed a deduction for expenditure that, but for the arrangement, Loss Co would have, would in all likelihood have, or might be expected to have incurred***

In the 2022 income year, Hold Co incurs expenditure providing services to the trading companies, including Loss Co. Hold Co is entitled to a deduction for the expenditure as Hold Co incurs the expenditure deriving service fee income. Prior to the acquisition Loss Co incurred expenditure on the functions now being carried out by Hold Co under the service agreement. In view of this, it is likely that if the arrangement had not been entered into Loss Co would have continued to incur expenditure on those functions in the 2022 income year.

***Arrangement has a purpose of tax avoidance***

*Identify and understand the arrangement*

The arrangement has a commercial purpose of reducing costs through the removal of duplication by moving Loss Co's HR, marketing and accounting functions to Hold Co.

The relevant tax effects for the 2022 income year are as follows:

- Loss Co is prohibited from making its $500,000 tax loss available to the profitable trading companies because the 66% commonality of ownership requirement in s IC 5 is not met.
- Loss Co no longer deducts $300,000 of expenditure incurred on HR, marketing and accounting functions.
- Hold Co is entitled to deduct the expenditure it incurs providing services to Loss Co.
- Hold Co includes the $200,000 service fee received from Loss Co in its assessable income.
- Loss Co is entitled to deduct the $200,000 service fee it pays to Profit Co.

*Identify Parliament's purpose for the specific provisions that are relevant*

Parliament's purposes for the commonality rules are to prevent loss trading and to achieve this by requiring that the owners of a profit company who receive the benefit of another company's loss are, at least to the extent of 66%, the same people who suffered the economic burden of the loss.

*Understand the commercial and economic reality of the arrangement as a whole*

Under the arrangement, Loss Co's HR, marketing and accounting functions are taken over by the group servicing entity, Hold Co. In the 2022 income year this results in Loss Co's direct expenditure on these matters reducing by $300,000 to zero and being replaced by a $200,000 service fee. The service fee is commercially realistic because it is priced at a level that reimburses Hold Co for the expenditure it incurs providing those services and the apportionment appears fair and reasonable. The arrangement also achieves a commercial purpose of reducing costs within Transport Group by removing duplication by a net amount of $100,000. The reduction in costs results in a genuine increase in Loss Co's profitability. These circumstances suggest no artificiality or contrivance exists in the arrangement.

*Consider whether the arrangement makes use of or circumvents the specific provisions in a manner consistent with Parliament's purpose*

Loss Co has a tax loss and the trading companies are both in profit. Loss Co is prohibited from sharing its tax loss with the other group companies because the 66% commonality threshold in s IA 5 is not met.

Under the arrangement, Hold Co incurs $200,000 of expenditure providing services to Loss Co in the 2022 income year. This has the effect of increasing Hold Co's deductible expenditure by $200,000 and decreasing Loss Co's deductible expenditure by $300,000. Therefore, deductible costs shift from Loss Co to Hold Co. However, the tax effect of the increase in Hold Co's deductible expenditure is offset by the $200,000 service fee that Loss Co pays to Hold Co as the service fee is assessable income of Hold Co. The difference of $100,000 represents genuine cost savings achieved by removing duplication. For this reason, the arrangement cannot be characterised as one under which Loss Co's loss is effectively enjoyed by the other group companies. Therefore, the arrangement does not avoid the application of the ownership commonality rules that prohibit Loss Co from sharing its loss with Hold Co and the profit companies.

*Decide whether a tax avoidance purpose exists*

The arrangement does not have a tax avoidance purpose.

**Alternative facts**

Instead of paying a fee to Hold Co on a cost recovery basis, Loss Co pays no fee.

In this case, the pricing under the arrangement is not commercially realistic as Hold Co incurs $200,000 of expenditure providing services to Loss Co but receives no payment in return. This is indicative of artificiality and contrivance in the arrangement.

The expenditure Hold Co incurs providing services to Loss Co results in a $200,000 deduction for Hold Co and increases Loss Co's net income by the same amount, enabling it to utilise a proportion of its carried forward losses. As the expenditure in Hold Co is no longer offset by a service fee, the overall tax effect is the same as would have applied had Hold Co made a $200,000 subvention payment to Loss Co. Therefore, the arrangement achieves a tax advantage (the sharing of Loss Co's loss) otherwise denied under the ownership commonality rules because Loss Co and the other group companies do not meet the commonality requirements of those rules.

The arrangement is able to achieve this outcome only because it contains artificial and contrived features (ie, the lack of a service fee). The effect of this is that, contrary to Parliament's purpose, the group companies who obtain the benefit of Loss Co's loss are not, at least to the extent of 66%, the same people who suffered the economic burden of the loss. This shows that the arrangement avoids the application of the ownership commonality rules in a manner that is outside Parliament's contemplation.

***Determine whether the tax avoidance purpose is the arrangement's sole or main purpose***

Transport Group claims the purpose of the arrangement is reducing costs through the removal of duplication. However, this broad purpose does not explain the particular way in which the arrangement is carried out – in particular, the lack of a service fee. The pricing (that is, the lack of a service fee) under the arrangement is artificial. The pricing has the effect of shifting costs from Loss Co to Hold Co so that Loss Co's taxable income increases, enabling it to utilise a proportion of its losses carried forward that it otherwise would not have been able to. The tax advantage obtained from this is significant. These factors indicate that the main purpose of the arrangement is tax avoidance.

***Reconstruction***

As all the requirements of s GB 3BAC(1) are present, s GB 3BAC(2) and (3) apply with effect that in the 2022 income year:

- Hold Co is denied a deduction for the $200,000 of costs it incurs and which, but for the arrangement, Loss Co would have incurred.
- Loss Co is treated as having incurred those costs in the course of a business carried on with a purpose of deriving income, so is entitled to deduct them under the general permission in s DA 1.

**Example | Tauira 7 – Arrangement involving injection of income**

**Facts**

Anna owns Profit Co, a profitable company that carries on a popular and successful restaurant business with a loyal customer base.

Cheryl owns Loss Co, an unprofitable company that also carries on a restaurant business from a different area in the same city as Profit Co's business. Unlike Profit Co's restaurant, Loss Co's is unpopular, poorly run and unprofitable, and the company has poor relationships with its suppliers and lenders. Loss Co has also dealt with a number of employment issues and there is a risk of future legal disputes.

As a result of the problems it has had, Loss Co has accumulated losses that it is carrying forward in a loss balance.

Frustrated by her inability to make Loss Co profitable, Cheryl agrees to sell Loss Co to Anna who sees the acquisition as an opportunity to expand her business. Anna acquires Loss Co through Profit Co so Loss Co becomes a wholly owned subsidiary of Profit Co.

After the acquisition, Profit Co transfers its entire business down to Loss Co and the companies switch names. From that time, the company formerly known as Loss Co operates a single business consisting of two restaurants that now trade under the Profit Co name.

As a consequence of its acquisition of Profit Co's business, Loss Co's turnover increases by 200% and Loss Co has net income for assessment purposes. The acquisition does not, however, result in any efficiency gains for the newly merged business. Nor were there any compelling commercial reasons to transfer Profit Co's business to Loss Co.

**Application of s GB 3BAB**

***Tax loss components are carried forward under s IB 3(2)***

Profit Co's acquisition of Loss Co results in a breach of continuity under subpart IA. Despite this, Loss Co is entitled to carry its loss balance forward if there has not been a major change in the nature of its business activities or, if there has, it is a permitted major change under s IB 3(5).

The transfer of Profit Co's business assets to Loss Co does not result in any change to Loss Co's business processes or the type of products it sells. However, there has been a change in the assets that Loss Co uses to derive its income. Loss Co has acquired Profit Co's restaurant business and trades under a new name and has obtained new customers. Loss Co also employs more staff. These changes result in increased sales. Loss Co's 200% increase in turnover shows that these changes are substantial and suggest a major change has occurred in the nature of Loss Co's business activities. However, the change is caused by an increase in the scale of Loss Co's business. This means the change qualifies as a permitted major change under s IB 3(5)(c). Consequently, Loss Co is entitled to carry its loss balance forward under s IB 3(2).

***Arrangement exists between persons A and B***

The agreements under which Profit Co acquires Loss Co and transfers its business to Loss Co together constitute an arrangement.

***Persons A and B are associated persons when they enter into the arrangement***

Profit Co and Loss Co are associated persons because Anna owns all of the voting interests in both companies.[40]



40 Under the look through rule in s YC 4, Anna is treated as owning all the voting interests in Loss Co and Profit Co is treated as not owning those interests.

***Arrangement's effect is that a company derives an amount of income that, but for the arrangement, a person other than the company would have, would in all likelihood have, or might be expected to have derived***

Under the arrangement, Loss Co acquires Profit Co's business. This has the effect of Loss Co deriving the income from that business. If Profit Co's business had not been transferred to Loss Co, it is likely Profit Co would have derived the income.

***Arrangement has a purpose of tax avoidance***

*Identify and understand the arrangement*

The arrangement has a commercial purpose of business expansion.

The relevant tax effects are as follows:

- Loss Co is prohibited from making its loss balance available to Profit Co as the 66% commonality requirement in s IC 5 is not met.
- Loss Co derives additional assessable income as a result of Profit Co transferring its business assets to Loss Co.
- Loss Co offsets its net income against its carried forward loss balance.

*Identify Parliament's purpose for the specific provisions that are relevant*

Parliament's purposes for the commonality rules are to prevent loss trading and to achieve this by requiring that the owners of a profit company who receive the benefit of another company's loss are, at least to the extent of 66%, the same people who suffered the economic burden of the loss.

*Understand the commercial and economic reality of the arrangement as a whole*

When Anna acquired Loss Co she had a commercial purpose of expanding her business into a new geographical area. The arrangement achieved this purpose.

However, the manner in which the arrangement was carried out was commercially unusual. While the commercial purpose was to expand Anna's existing business, under the arrangement Profit Co transferred its business down to Loss Co and thereafter Loss Co adopted Profit Co's name and carried the combined business on.

The structuring of the arrangement in this way is at variance with usual commercial practice. Unless there are compelling commercial reasons, valuable assets are usually transferred out of a troubled company in order to ring-fence them from operational risk. In the current instance, a valuable business was transferred into Loss Co, a troubled company at risk of future legal disputes. Further, the merging of the two businesses did not achieve any efficiency gains and there were no compelling commercial reasons to transfer Profit Co's business to Loss Co. These circumstances are indicative of artificiality and contrivance in the arrangement.

*Consider whether the arrangement makes use of or circumvents the specific provisions in a manner consistent with Parliament's purpose*

Loss Co is prohibited from sharing its loss with Profit Co because Loss Co and Profit Co do not meet the requirements of the ownership commonality rules.

Under the arrangement, Profit Co's business is transferred to Loss Co. This results in Loss Co's loss being available for offset against the income generated by the transferred business assets. This is the same tax result that would arise when a loss company shares its loss with a profit company under the grouping rules. In effect, Profit Co received the benefit of Loss Co's loss but did not to any extent suffer the burden of that loss when it was incurred.

While the transfer of the assets achieved Anna's purpose of expanding her business into a new geographical area, that purpose does not explain the way in which the arrangement was structured. The structuring of the arrangement was at variance with usual commercial practice, so is indicative of artificiality and contrivance.

It follows that the arrangement avoids the application of the commonality rules in a manner that is inconsistent with Parliament's purpose for those rules.

*Decide whether there is a tax avoidance purpose*

The arrangement has a tax avoidance purpose because it avoids the application of the ownership commonality rules in a manner that is outside Parliament's contemplation for those rules.

***Determine whether the tax avoidance purpose is the arrangement's sole or main purpose***

While the arrangement had a non-tax purpose of expanding Anna's business into a new location, this does not explain the specific way the arrangement was structured. The structuring of the arrangement was artificial, which indicates that tax avoidance was the arrangement's main purpose.

***Reconstruction***

As s GB 3BAC applies, the income from the transferred business assets is treated as schedular income of Loss Co. This means Loss Co must calculate a separate income tax liability for the income. In calculating the liability, Loss Co deducts allowable deductions from the income generated by the transferred business. As the income is schedular income, Loss Co is prohibited from offsetting its loss against any positive balance remaining after the deductions. Consequently, Loss Co must pay tax on the balance.

## Analysis | Tātari – s GB 3BA

114. Section GB 3BA provides as follows:

> **GB 3BA Arrangements for carrying forward loss balances: companies' business activities**
>
> *When this section applies*
>
> (1) This section applies when—
>
> (a) a share in a company (the **loss company**) or another company has been subject to an arrangement, including an arrangement—
>
> (i) directly or indirectly altering rights attached to the shares:
>
> (ii) to change the nature of business activities carried on by the loss company; and
>
> (b) the arrangement is entered into within the 2 years immediately preceding a breach of the requirements for continuity of ownership of section IA 5 (Restrictions on companies' loss balances carried forward: continuity of ownership) that, if they had been met, would have enabled a tax loss component of the loss company to be carried forward to a tax year in a loss balance; and
>
> (c) the arrangement allows the loss company to meet the requirements of section IB 3(2) (When tax loss components of companies carried forward despite ownership continuity breach) for the carrying forward of the tax loss component to the tax year; and
>
> (d) a purpose of the arrangement is to defeat the intent and application of section IB 3.
>
> *Company treated as not meeting requirements*
>
> (2) The loss company is treated as not meeting the requirements of section IB 3(2) in relation to the tax loss component.

115. In summary, s GB 3BA is intended to prevent pre-emptive changes to business activities that enable a loss company to satisfy the business continuity rule where it otherwise would not. Section GB 3BA has the following requirements:

- A share in a company known as the "loss company" or a share in another company is subject to an arrangement.
- The arrangement is entered into within the 2 years immediately preceding a breach of the continuity of ownership requirements in s IA 5.
- The arrangement allows the loss company to meet the requirements of s IB 3(2).
- A purpose of the arrangement is to defeat the intent and application of s IB 3.

116. If the above requirements are present, the loss company is treated as not meeting the requirements of s IB 3(2) in relation to the tax loss component.

117. Each of the requirements that must be present for s GB 3BA to apply are discussed next.

### Shares are subject to an arrangement

118. The first requirement of s GB 3BA(1) is that a share in a company known as the "loss company" or a share in another company is subject to an "arrangement". The meaning of the term "arrangement" is discussed at [33] to [44] above.

119. A share will be subject to an arrangement if the share is the subject matter of the arrangement, meaning that the agreement, contract, plan or understanding concerns the share or the rights attached to the share.

120. Section GB 3BA(1)(a) includes "an arrangement directly or indirectly altering rights attached to the shares" and an arrangement "to change the nature of business activities carried on by the loss company" as types of arrangement that may be caught by the provision. However, as this definition is non-exhaustive, other types of arrangements concerning shares may also be subject to the section.

### Time of commencement of the arrangement

121. As set out at [29] above, a company may only carry a tax loss component forward if it meets the 49% continuity of voting interest threshold in s IA 5 during an applicable continuity period. Section GB 3BA(1)(b) requires that an arrangement must have been entered into within the 2 years immediately preceding a breach of this requirement and that the loss company would have been entitled to carry a tax loss component forward if that requirement had been met.

## Arrangement allows a loss company to meet the requirements of section IB 3(2)

122. A company that does not maintain the continuity of ownership required by s IA 5 will, despite this, be entitled to carry a tax loss component forward if it meets the requirements of the business continuity rule in s IB 3(2). Therefore, s GB 3BA(1)(c) requires that the arrangement must allow (that is, permit or enable) the loss company to meet the requirements of s IB 3(2). The business continuity rule is discussed at [30] above.

## A purpose of the arrangement is to defeat the intent and application of s IB 3

### Purpose does not have to be the main purpose

123. Section GB 3BA(1)(d) requires that an arrangement has a purpose of defeating the intent and application of s IB 3. The section does not require that the purpose to defeat the intent and application of s IB 3 is a dominant or main purpose, so any such purpose will suffice. However, a purpose of the arrangement must be to defeat the intent and application of s IB 3.

124. As set out at [58] above, the courts have held that when applying s BG 1 the "purpose or effect" of an arrangement is determined objectively and the motives or intentions of the parties are not relevant. While the relevant cases relate to the general anti-avoidance provisions, the Commissioner considers that the same principles apply to s GB 3BA. This means that if the effect of an arrangement, determined objectively, is to defeat the intent and application of s IB 3, that will be the purpose of the arrangement.

### Defeat the intent and application

125. The courts considered the meaning of provisions with similar wording to s GB 3BA(1)(d) in *Auckland Harbour Board v CIR*, *Ch'elle Properties (NZ) Ltd v CIR* (HC), *Ch'elle Properties (NZ) Ltd v CIR* (CA) and *Glenharrow*.[41]

126. *Auckland Harbour Board* concerned the application of s 64J(1) of the Income Tax Act 1976 (now s GB 21). Section 64J(1) gave the Commissioner the power to adjust the consideration on the issue or transfer of a financial arrangement if he was of the opinion the parties to the transaction were dealing with each other in a manner that had the effect of defeating the intent and application of various provisions in the financial arrangement rules.

127. In *Auckland Harbour Board*, Lord Hoffmann made the following comments in relation to s 64J(1) of the Income Tax Act 1976:

> [11] … The section appears to their Lordships to contemplate that the circumstances which justify its application will be specific to a particular transaction, arising out of the relationship between the parties and other relevant circumstances. In this respect it is similar to other anti-avoidance provisions such as s 99. Their Lordships do not of course suggest that the two sections necessarily cover the same ground, but what they have in common is that they are **generally speaking aimed at transactions which in commercial terms fall within the charge to tax but have been, intentionally or otherwise, structured in such a way that on a purely juristic analysis they do not**. This is what is meant by defeating the intention and application of the statute. [Emphasis added]

128. In summary, Lord Hoffmann considered s 64J(1) of the Income Tax Act 1976 to be in the nature of an anti-avoidance provision, which applied where a transaction fell within the charge to tax in commercial terms but had been structured in such a way that on a purely juristic analysis it did not.

129. *Ch'elle* (HC and CA) was concerned with s 76 of the Goods and Services Tax Act 1985 (GST Act) as it applied before 10 October 2000. Section 76 provided that where the Commissioner was satisfied an arrangement had been entered into to defeat the intent and application of the GST Act or any of its provisions, the Commissioner was required to treat the arrangement as void and adjust the tax payable by any registered person affected by the arrangement.

130. In *Ch'elle* (HC), Rodney Hansen J made the following comments in relation to s 76 of the GST Act at [39]:

> Section 76 calls for a more broadly based enquiry than is required to establish technical compliance. It is whether the arrangement has been entered into "to defeat the intent and application of the Act". I agree with Ms Ellis that this goes beyond the technical legality of the constituent parts of the arrangement. It requires the arrangement to be assessed by reference to the principles which underly the Act.

131. In *Ch'elle* (CA), Robertson J upheld the High Court's judgment and confirmed at [31] that "[i]n order to assess whether s 76 [of the GST Act] is triggered it is necessary to assess the scheme and purpose of the GST Act". He also stated:

> [29] … As with all general anti-avoidance provisions, its purpose is to strike down arrangements that frustrate the taxing regime, despite the arrangement's technical compliance with substantive taxing provisions.

41 *Auckland Harbour Board v CIR* (2001) 20 NZTC 17,008 (PC); *Ch'elle Properties (NZ) Ltd v CIR* (2004) 21 NZTC 18,618 (HC), *Ch'elle Properties (NZ) Ltd v CIR* (2007) 23 NZTC 21,442 (CA) and *Glenharrow Holdings Ltd v CIR* [2008] 2 NZLR 359 (SC).

132. *Glenharrow* also concerned s 76 of the GST Act as it applied before 10 October 2000. In the Supreme Court decision, Blanchard J stated:

> **The operation of s 76**
>
> …
>
> [34] In order for the Commissioner to be able to invoke s 76 he must be satisfied that the arrangement which he wishes to treat as void has been "entered into between persons to defeat the intent and application" of the GST Act or of any provision of the Act. Consistent with the approach to interpretation of General Anti-Avoidance Rules (GAARs) in the income tax context, and as foreshadowed in the preceding paragraph, **this determination requires an assessment that goes beyond the technical legality of the constituent parts of the arrangement**. The onus is on the taxpayer to show that the Commissioner could not properly have been satisfied in terms of the section.
>
> …
>
> **The intent and application of the Act**
>
> [40] The application to an arrangement of tax legislation such as s 76 of the GST Act is concerned with the "aim or end in view" of the arrangement. It is to be objectively assessed. And the assessment **will principally be a matter of inference from the arrangement and its effect**. The purpose of an arrangement will be deduced from the arrangement itself and its effect. **The intention of the Act will be defeated if an arrangement has been structured to enable the avoidance of output tax, or the obtaining of an input deduction in circumstances where that consequence is outside the purpose and contemplation of the relevant statutory provisions**. Lord Hoffmann in *C of IR v Auckland Harbour Board* (2001) 20 NZTC 17,008 (PC) commented that, generally speaking, GAARs were:
>
>> "aimed at transactions which in commercial terms fall within the charge to tax but have been, intentionally or otherwise, structured in such a way that on a purely juristic analysis they do not. This is what is meant by defeating the intention and application of the statute. An arrangement of this kind is not in accordance with the overall purpose of the Act because it produces a 'tax advantage' not within the contemplation of the statute." [Emphasis added]

133. Having regard to principles identified in *Auckland Harbour Board*, *Ch'elle* and *Glenharrow*, the Commissioner considers the test as to whether an arrangement "defeats the intent and application" of a particular provision is in effect the same test as the Parliamentary contemplation test under the general anti-avoidance provision (s BG 1). Both tests are aimed at transactions and arrangements that in juristic or legal terms (that is, in legal substance) satisfy the requirements of the particular provision but, when viewed in terms of their commercial and economic reality, make use of (or circumvent) the provision in a manner that is inconsistent with the purpose of that provision.

134. This means that when applying ss GB 3BA it is necessary to consider:
- the purpose of s IB 3; and
- whether the facts of the arrangement have the consequence (effect) that the arrangement's purpose is inconsistent with the purpose of s IB 3.

135. As discussed at [30]–[31], s IB 3 allows a loss company that has breached continuity of ownership to carry its loss balance forward if there has not been a major change in the nature of the business activities the company carries on during an applicable business continuity period (other than a permitted major change). The requirement for business continuity shows that Parliament's specific purpose for s IB 3 is to allow a company to carry a loss balance forward despite a continuity of ownership breach if the business the company carried on before the breach is the same business the company carries on after the breach, subject to any variations that are allowed under s IB 3.

136. Therefore, the intent and application of s IB 3 will be defeated by an arrangement that allows a company to carry a loss balance forward after a breach of continuity of ownership if the arrangement, when viewed in terms of its commercial and economic reality, involves the company carrying on a business after the breach that is not the same business it carried on before the breach after allowing for any permitted changes.

## Reconstruction

137. If a share in a loss company is subject to an arrangement in respect of which s GB 3BA applies, s GB 3BA(2) provides that the loss company is treated as not meeting the requirements of s IB 3(2) in relation to the tax loss component the arrangement allowed the company to carry forward.

138. The following example illustrates the concepts discussed above.

**Example | Tauira 8 – Arrangement involving pre-emptive change to business activities**

**Facts**

Amy owns Loss Co, a company through which she carried on a property development business. The business was not a success and Amy ceased the business leaving Loss Co with no assets and a loss balance of $250,000 at the start of the 2023 tax year.

Jenny recently started a business as a sole trader leasing office equipment. She has entered into a small number of leases, but intends to significantly grow the business.

On 1 May 2022, Amy and Jenny agree Amy will sell her shares in Loss Co to Jenny for $25,000 and that before the sale Loss Co will acquire the equipment leases Jenny has entered into. They also agree that Jenny will manage the leases pending the share sale. The transfer of the leases is duly completed and 1 month later, on 1 June 2022, the share sale settles. From that time, Jenny carries her leasing business on through Loss Co.

**Share in a loss company is subject to an arrangement, including an arrangement to change the nature of the business activities carried on**

The shares in Loss Co are subject to an arrangement because they are the subject matter of the share sale agreement between Amy and Jenny. Further, as the arrangement involves both an agreement for the sale of shares and the transfer of Jenny's leases to Loss Co, it is both an agreement to alter rights attached to shares and an arrangement to alter a loss company's business activities.

**Arrangement is entered into within 2 years preceding a breach of continuity of ownership under s IA 5 that, if met, would have enabled a tax loss component to be carried forward**

Under the share sale, all of Amy's voting interests in Loss Co were transferred to Jenny. Therefore, the share sale resulted in a breach of the requirement in s IA 5 that there is a group of persons whose minimum voting interests in Loss Co add up to 49% during an applicable continuity period. The breach occurred when the share sale settled on 1 June 2022 and the arrangement was entered into on 1 May 2022. Therefore, the arrangement was entered into within the 2-year period that immediately precedes the continuity breach.

**Arrangement allows the loss company to carry a loss forward under s IB 3(2)**

Despite the continuity breach, Loss Co is broadly entitled to carry its loss forward under s IB 3(2) if, during the business continuity period that applies to Loss Co, there has not been a major change in the nature of its business activities (other than a permitted major change), and none of the prohibitions in s IB 3(3) apply.

For Loss Co, the business continuity period starts immediately before the continuity of ownership breach on 1 June 2022. At that time, Loss Co had obtained a sufficient number of leases from Jenny to meet the threshold for carrying on a leasing business. As the nature of that business has not changed s IB 3(2) is satisfied. Further, the cessation rule in s IB 3(3)(a) does not apply as the acquisition of the leases revived Loss Co's business activities. Therefore, the arrangement allowed Loss Co to carry its loss forward under s IB 3(2).

**Purpose of the arrangement is to defeat the intent and application of s IB 3**

Under the arrangement, Jenny paid $25,000 for the shares in Loss Co. The sale of the shares was not commercial as Loss Co had no value for Jenny aside from the potential future tax savings represented by Loss Co's carried forward loss balance.

The arrangement also involved Loss Co acquiring Jenny's leases. This appears commercially unnecessary as it was not directed at attaining any identifiable commercial purpose. Amy, the owner of Loss Co, did not acquire the leases with a purpose of carrying on a leasing business and making a profit from it, and she did not obtain an economic interest in the leasing operation as under the arrangement it was agreed that Loss Co's shares would be transferred to Jenny.

This shows that in commercial and economic reality the leasing business continued to be Jenny's and not Loss Co's. Further, the lack of any commercial rationale for the share sale and the lease transfers shows the arrangement was contrived for the purpose of making Loss Co's loss balance available for offset against the income from Jenny's business. In short, the arrangement was a loss trading transaction.

In conclusion, these circumstances show the arrangement is inconsistent with Parliament's purpose for s IB 3 because Parliament:

- intends that a loss will be carried forward under s IB 3 only if the business a loss company carries on before a breach of continuity is in commercial and economic reality the same as the business it carries on after the breach; and
- does not intend that a loss will be carried forward under s IB 3 as part of a loss trading transaction.

**Reconstruction**

As s GB 3BA(1)(a)–(d) apply, s GB 3BA(2) treats Loss Co as not meeting the requirements of s IB 3(2) in relation to the tax loss components the arrangement allowed Loss Co to carry forward. Consequently, Loss Co is prohibited from carrying forward its $250,000 loss balance to the 2023 year.

Additionally, the Commissioner may seek to apply ss BG 1 and GA 1 to prevent any income derived by Loss Co from the leases during May 2022 from being offset against the loss balance on a part-year basis.

## Relationship with s BG 1

139. In *Penny v CIR* the Supreme Court said that, unless a specific anti-avoidance rule is plainly intended to cover the field in relation to the use of particular provisions or plainly excludes the use of s BG 1 in a certain situation, the Commissioner may rely on s BG 1 to counter a tax avoidance arrangement.[42]

140. The Commissioner considers that there is no clear indication Parliament intended to exclude s BG 1 from applying to the types of arrangements or the types of tax avoidance ss GB 3BA, GB 3BAB and GB 3BAC are intended to cover. There is no targeted anti-avoidance provision in the Act that explicitly excludes s BG 1 and there is no extrinsic material that indicates Parliament had this intention when enacting ss GB 3BA, GB 3BAB and GB 3BAC.

141. Consequently, the Commissioner considers that s BG 1 may equally apply to an arrangement that is the same, similar or close to an arrangement covered by ss GB 3BA, GB 3BAB or s GB 3BAC. Further, the Commissioner considers that s BG 1 may apply to arrangements that avoid tax in a way that is different from the way tax is avoided under arrangements caught by those provisions.

142. Examples of the type of arrangement s BG 1 could potentially apply to include cost-shifting or income injection arrangements that circumvent the specific non-tax avoidance requirements set out in the anti-avoidance rules. For instance, the requirement in ss GB 3BAB and s GB 3BAC that an arrangement must be between persons who are associated with each other at the time the arrangement is entered into.

42 *Penny v CIR* [2011] NZSC 95, [2012] 1 NZLR 433 (SC) at [48].

## Appendix – Legislation | Āpititanga – Whakature

**GB 3BA Arrangements for carrying forward loss balances: companies' business activities**

*When this section applies*

(1) This section applies when—

(a) a share in a company (the **loss company**) or another company has been subject to an arrangement, including an arrangement—

(i) directly or indirectly altering rights attached to the shares:

(ii) to change the nature of business activities carried on by the loss company; and

(b) the arrangement is entered into within the 2 years immediately preceding a breach of the requirements for continuity of ownership of section IA 5 (Restrictions on companies' loss balances carried forward: continuity of ownership) that, if they had been met, would have enabled a tax loss component of the loss company to be carried forward to a tax year in a loss balance; and

(c) the arrangement allows the loss company to meet the requirements of section IB 3(2) (When tax loss components of companies carried forward despite ownership continuity breach) for the carrying forward of the tax loss component to the tax year; and

(d) a purpose of the arrangement is to defeat the intent and application of section IB 3.

*Company treated as not meeting requirements*

(2) The loss company is treated as not meeting the requirements of section IB 3(2) in relation to the tax loss component.

**GB 3BAB Arrangements to inject income into companies carrying forward loss balances**

*When this section applies*

(1) This section applies when—

(a) a person (**person A**) enters into an arrangement with another person (**person B**); and

(b) person A and person B are associated persons at the time they enter into the arrangement; and

(c) an effect of the arrangement is that a company derives an amount of assessable income for an income year that, but for the arrangement, a person other than the company—

(i) would have derived; or

(ii) would in all likelihood have derived; or

(iii) might be expected to have derived; and

(d) tax loss components of the company are carried forward under section IB 3(2) (When tax loss components of companies carried forward despite ownership continuity breach) to the tax year corresponding to the income year; and

(e) the arrangement has tax avoidance as its sole or main purpose.

*Treatment of injected income*

(2) The amount is schedular income of the company for the tax year corresponding to the income year.

**GB 3BAC Arrangements to shift expenditure from companies carrying forward loss balances**

*When this section applies*

(1) This section applies when—

(a) tax loss components of a company are carried forward under section IB 3(2) (When tax loss components of companies carried forward despite ownership continuity breach) to a tax year; and

(b) a person (**person A**) enters into an arrangement with another person (**person B**); and

(c) person A and person B are associated persons at the time they enter into the arrangement; and

(d) an effect of the arrangement is that, in the absence of this section, a person other than the company is allowed a deduction for an amount of expenditure or loss the person incurs that, but for the arrangement, the company—

(i) would have incurred in the income year corresponding to the tax year; or

(ii) would in all likelihood have incurred in the income year corresponding to the tax year; or

(iii) might be expected to have incurred in the income year corresponding to the tax year; and

(e) the arrangement has tax avoidance as its sole or main purpose.

*Treatment of company*

(1) The company is treated as having incurred the amount of expenditure or loss—

(a) in the course of carrying on a business for the purpose of deriving assessable income; and

(b) in the income year corresponding to the tax year.

*Treatment of other person*

(2) The person referred to in subsection (1)(d) that is not the company is treated as not having incurred the amount of expenditure or loss.

# References | Tohutoro

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Goods and Service Tax Act 1985, s 76

Income Tax Act 1976, s 64J(1)

Income Tax Act 2007, ss BC 7, BG 1, DA 1, GB 3BA, GB 3BAB, GB 3BAC, GB 21, subpart IA, subpart 1B, subpart IC, YA 1 ("arrangement", "tax avoidance", "tax avoidance arrangement"), subpart YB, YC 4

Tax Administration Act 1994, s 141D

## Case references | Tohutoro kēhi

*Accent Management v CIR* (2005) 22 NZTC 19,027 (HC)

*AMP Life v CIR* (2000) 19 NZTC 15,940 (HC)

*Ashton v CIR* [1975] 2 NZLR 717 (PC)

*Auckland Harbour Board v CIR* (2001) 20 NZTC 17,008 (PC)

*Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289

*BNZ Investments Ltd v CIR* (2000) 19 NZTC 15,732 (HC)

*Case Z19* (2009) 24 NZTC 14,217 (TRA)

*Case Z23* (2010) 24 NZTC 14,334 (TRA)

*Ch'elle Properties (NZ) Ltd v CIR* (2004) 21 NZTC 18,618 (HC)

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*CIR v BNZ Investments Ltd* [2002] 1 NZLR 450 (CA)

*CIR v Europa Oil (NZ) Ltd* [1971] NZLR 641 (PC)

*CIR v Penny* [2010] NZCA 2,310

*Concepts 124 Ltd v CIR* [2014] NZHC 2,140

*Glenharrow Holdings Ltd v CIR* [2008] 2 NZLR 359 (SC)

*Krukziener v CIR* (2010) 24 NZTC 24,563 (HC)

*Newton v Commissioner of Taxation* [1958] AC 450 (PC)

*Penny v CIR* [2011] NZSC 95, [2012] 1 NZLR 433 (SC)

*Peterson v CIR* [2005] UKPC 5

*Russell v CIR (No 2)* (2010) 24 NZTC 24,463 (HC)

*Russell v CIR* [2012] NZCA 128

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**TIB Volume 35 No 2 March 2023**

IS 22/07: Company losses – ownership continuity, sharing and measurement *Tax Information Bulletin* Vol 34, No 11 (December 2022): 53

**Tax Information Bulletin Volume 34 No 11 December 2022**

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Hansard Parliamentary Debates (5 August 1991) 518 NZPD 205

**Hansard Parliamentary Debates (5 August 1991) 518**

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**Taxation policy - business tax policy 1991 (July 1991)**

Supplementary Order Paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill (March 2021): 24

**Supplementary Order Paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill – Commentary**

*Shorter Oxford English Dictionary* (6th ed, New York, Oxford University Press)

# IS 25/15: Look-through companies and disposal of residential land under the bright-line test

Issued | Tukuna: 12 May 2025

This interpretation statement explains how the bright-line rules (including the main home exclusion and rollover relief) apply in various situations involving residential land and transfers involving a look-through company. This interpretation statement applies only to transfers on or after 1 July 2024.

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

## Glossary

**Bright-line end date** is the date that triggers the application of the bright-line test in s CB 6A. This can vary, but it is usually the date the person enters into an agreement for the disposal of the residential land.

**Bright-line period** is the period beginning with the bright-line start date for the land and ending with the bright-line end date for the land.

**Bright-line start date** is the date that the bright-line period starts. This can also vary, but it will often be the date on which the instrument to transfer the land to the person was registered under the Land Transfer Act 2017. This is not necessarily the same as the date that the land is acquired. This can also be modified for a person by the rollover relief provisions.

**Capacity** is about how a person is recognised for tax purposes. In some cases, a person can have more than one capacity. A person who holds property as a look-through company (LTC) owner is treated as having certain characteristics of the LTC, but only in their capacity as an LTC owner. An LTC owner's characteristics from their separate capacity can also be relevant in determining their liabilities with respect to the activities of the LTC.

**Excluded income** is an amount of income that is not included in a person's assessable income.

**LTC owner** is a term used generally to describe a person who has a look-through interest for the look-through company. This means they own shares in the LTC.

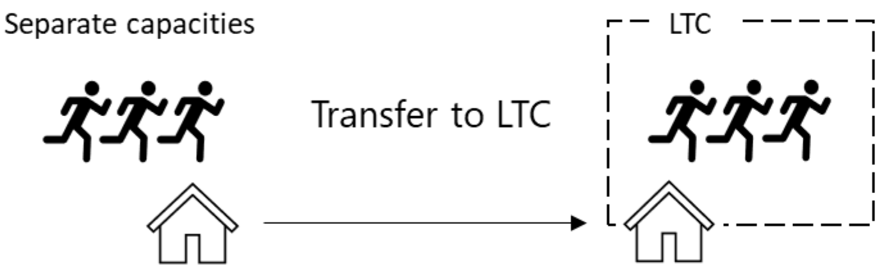
**Rollover relief** is a term used generally to describe various kinds of relief that may be available under the bright-line rules where there is a disposal of residential land. Despite being referred to as "relief", it will not always be favourable. One form of rollover relief is the treatment of a transfer as being made at cost (for both the transferor and the transferee), which prevents any profit or loss on the transfer. Another form of rollover relief allows a person who acquires residential land to have the same bright-line start date as the person who transferred the land to them. Finally, a transferor's use of the residential land (including use as a main home) can be attributed to a transferee.

**Transfer** is used in the bright-line rules in a general sense. The word transfer does not necessarily mean the registration of an instrument to transfer the land under the Land Transfer Act 2017.

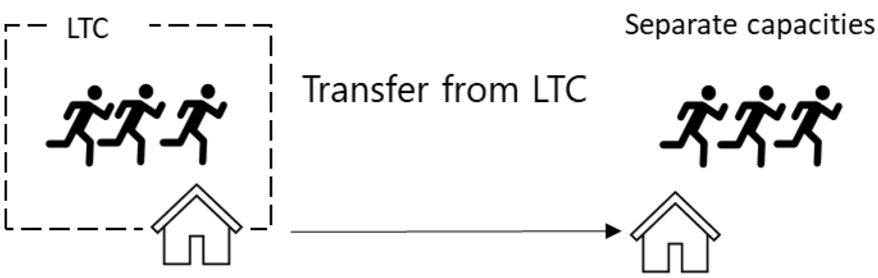
## Introduction | Whakataki

1. A look-through company (LTC) is a company that is treated as being transparent for most income tax purposes under the ITA 2007. Among other things, transparency means that LTC owners are treated as holding property that the company holds. Transparency results in LTC owners, rather than the LTC, deriving income from a transaction involving LTC property. This includes income under the bright-line test in s CB 6A.
2. The owners of a company can elect for the company to be an LTC if eligibility requirements are met. One of the requirements is that the company must have five or fewer "look-through counted owners". LTCs are sometimes used by families or other small groups of people to hold residential land.
3. The bright-line test in s CB 6A may apply to an amount derived by a person from the disposal of residential land if the land is disposed of within two years of the person's "bright-line start date" for the land. However, the bright-line test will not apply if the main home exclusion in s CB 16A applies. Further, rollover relief under subpart FD may apply in some circumstances. Relief may also be provided by the LTC safe harbour rule in s HB 5 where an LTC owner transfers shares in an LTC.

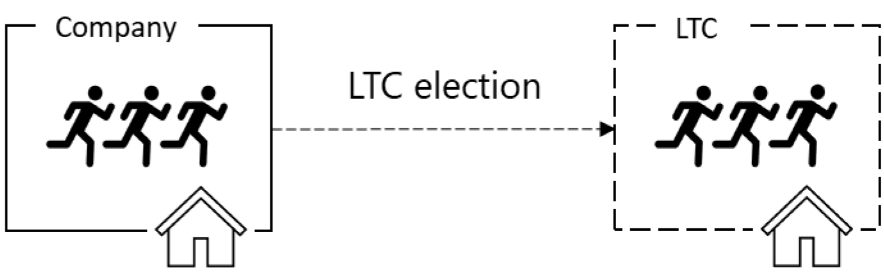
4. An amount derived from disposing of residential land outside of the 2-year period may still be income under another taxing provision, for example, s CB 6 (Disposal: land acquired for purpose or with intention of disposal).
5. Indeed, if the amount derived from the disposal of the residential land is income under one or more of the other land sale rules in ss CB 6 to CB 12, then the bright-line test in s CB 6A will not apply. This is regardless of whether the land is disposed of within two years of the person's bright-line start date.
6. This interpretation statement discusses five situations involving LTCs, and for each situation provides guidance on:
   - whether there is a disposal of residential land;
   - whether the main home exclusion applies; and
   - whether rollover relief under s FD 1 applies (including rollover relief relating to the value of the transfer, the bright-line start date and the attribution of the transferor's use of land).
7. For the fifth situation, the application of the safe harbour test in s HB 5 is also discussed.
8. This interpretation statement applies only to transfers on or after 1 July 2024. This is due to amendments to the bright-line rules that have effect from that date. However, some of the analysis, for example on whether there is a disposal of residential land in the above situations, may also be relevant to transfers made before 1 July 2024.
9. The five situations involving LTCs are as follows:
   - A person or persons transfer an interest in residential land to an LTC of which they are LTC owners.



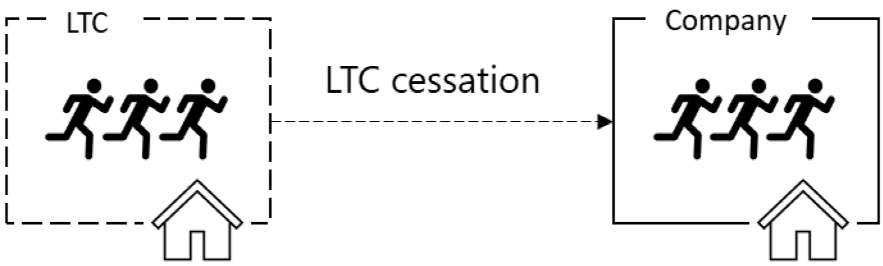

   - An LTC transfers an interest in residential land to one or more LTC owners in their separate capacities.



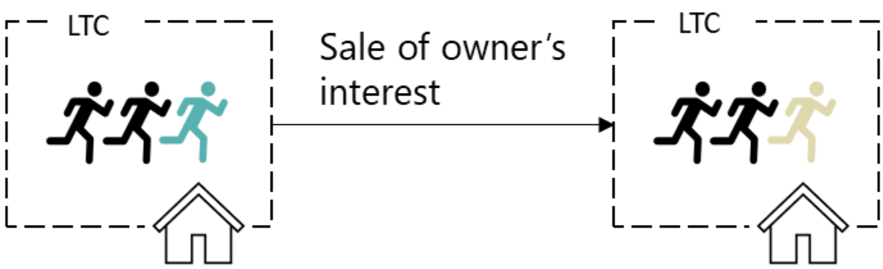

   - A company that owns residential land becomes an LTC.



- An LTC that owns residential land ceases to be an LTC.



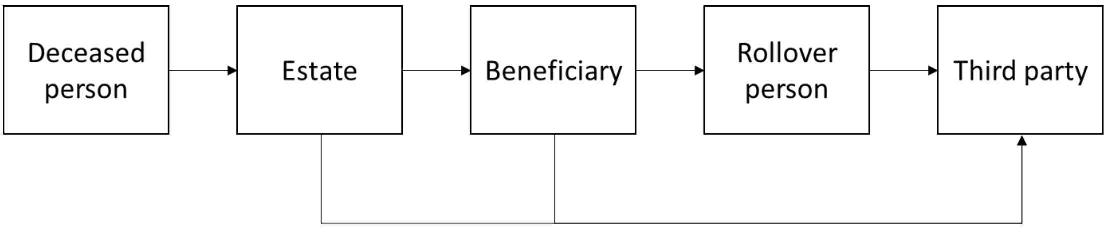

- An LTC owner disposes of some or all of their owner's interests in an LTC that owns residential land, for example by selling some of their shares in the LTC.



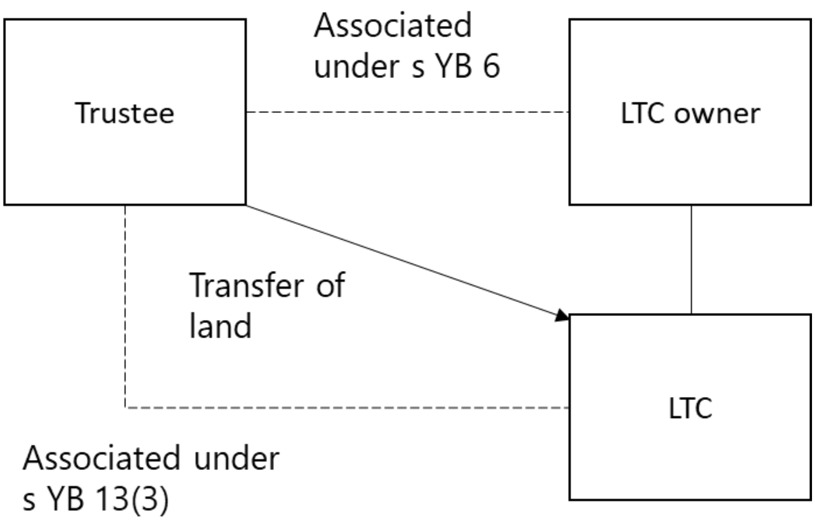

10. Table | Tūtohi 1 summarises the guidance for the situations in [9].

11. This interpretation statement also briefly discusses some miscellaneous transfers including:

- transfers of residential land following death of a person;




- transfers of residential land from a trustee of a trust to an LTC; and

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- transfers of residential land from a company to an LTC.

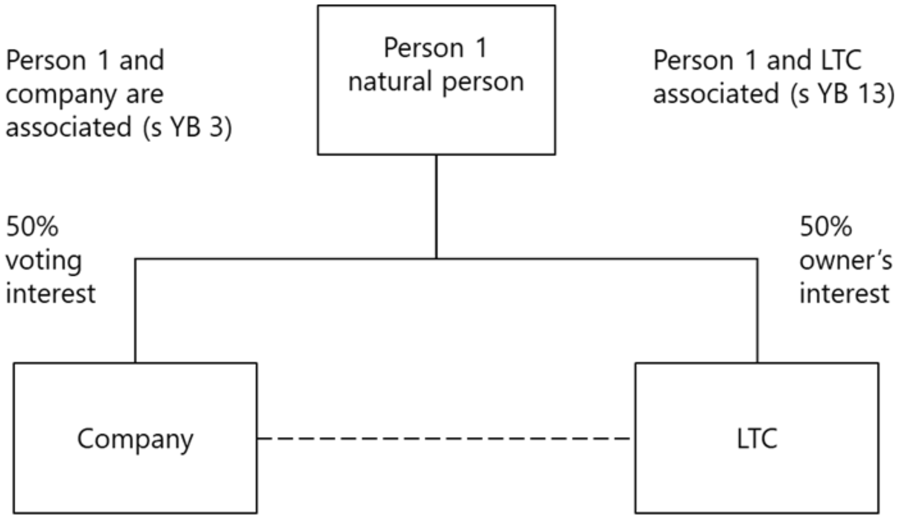



**Table | Tūtohi 1 – Summary of tax treatment**

| Where a person (in their separate capacity) transfers residential land to an LTC of which they are an LTC owner | | | |
|---|---|---|---|
| ***Disposal of land?*** *Yes*<br>***Rollover relief*** *will apply if the LTC and the LTC owner were associated at the date of transfer and for the previous two years (normally, the LTC will be new, in which case rollover relief will not be available)* | | | |
| **Does rollover relief apply?** | **Tax treatment** | | |
| | **Value of transfer** | **Bright-line start date for transferee** | **Transferor's use of land attributed to transferee?** |
| **Yes** | Transferor's cost (s FD 1(2)) | Transferor's bright-line start date (s FD 1(3)) | Yes (s FD 1(5)) |
| **No** | Actual consideration for transfer, or market value if s GC 1 applies | Determined under s CB 6A(2) | No |

| Where an LTC transfers residential land to an LTC owner (in their separate capacity) | | | |
|---|---|---|---|
| ***Disposal of land?*** *Yes*<br>***Rollover relief*** *will apply if the LTC and the LTC owner were associated at the date of transfer and for the previous two years* | | | |
| **Does rollover relief apply?** | **Tax treatment** | | |
| | **Value of transfer** | **Bright-line start date for transferee** | **Transferor's use of land attributed to transferee?** |
| **Yes** | Transferor's cost (s FD 1(2)) | Transferor's bright-line start date (s FD 1(3)) | Yes (s FD 1(5)) |
| **No** | Actual consideration for transfer, or market value if s GC 1 applies | Determined under s CB 6A(2) | No |

**Where a company that owns residential land becomes an LTC**

***Disposal of land?*** *No*

***Rollover relief?*** *No (because there is no disposal), but a similar result follows from ss HB 13(6) and HB 1*

| | Tax treatment | | |
|---|---|---|---|
| | **Cost base for LTC owner** | **Bright-line start date for LTC owner** | **Company's use of land attributed to LTC owner?** |
| | Share of company's cost base (ss HB 13(6) and HB 1) | Company's bright-line start date (ss HB 13(6) and HB 1) | Yes (ss HB 13(6) and HB 1) |

**Where a company that owns residential land ceases to be an LTC**

***Disposal of land?*** *Yes, under s HB 4(6)*

***Rollover relief?*** *No, because the disposal is to a notional third party (s HB 4(6)), not an associated person*

| | Tax treatment | | |
|---|---|---|---|
| | **Value of transfer** | **Bright-line start date for transferee** | **Transferor's use of land attributed to transferee?** |
| | Market value (s HB 4(6)) | Date of cessation | No |

**Where an LTC owner (exiting owner) disposes of some or all of their owner's interests in an LTC that owns residential land to an associated person (entering owner)**

***Disposal of land?*** *Yes*

***Safe harbour rule*** *could apply if the amount paid for the shares is close to the gross tax value of the LTC's assets less liabilities as measured by s HB 5(1)*

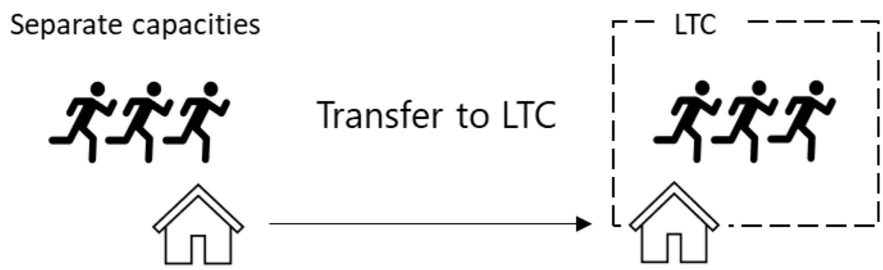
***Rollover relief*** *could apply if exiting and entering owners were associated at the date of transfer and for the previous two years, or if the transfer is to a trustee in circumstances described in s FD 1(1)(b)*

| Does the safe harbour rule or rollover relief apply? | Tax treatment | | |
|---|---|---|---|
| | **Value of transfer** | **Bright-line start date for transferee** | **Transferor's use of land attributed to transferee?** |
| **Safe harbour rule applies** | Disposal payment is excluded income to the exiting owner and the entering owner has exiting owner's cost (s HB 5) | Exiting owner's bright-line start date | Yes, as a result of the safe harbour rule in s HB 5. |
| **Safe harbour does not apply, but rollover relief applies** | Exiting owner's cost (s FD 1(2)) | Exiting owner's bright-line start date (s FD 1(3)) | Yes (s FD 1(5)) |
| **Neither applies** | Actual consideration for transfer, or market value if s GC 1 applies | Determined under s CB 6A(2) | No |

# Analysis | Tātari

## Where a person transfers residential land to an LTC

12. This section considers the situation where one or more persons transfer an interest in residential land to an LTC they own shares in.




### Whether there is a disposal

13. For the bright-line test in s CB 6A to apply, there must be a disposal of residential land.
14. The Commissioner considers there is a disposal of residential land in this situation.
15. The ordinary meaning of "dispose" applies in this context.[1] Under the ordinary meaning, a disposal of property involves the total alienation of the property.[2] A disposal also includes acts by which some new interest in property is created and vested in another person. The new interest can be a legal or an equitable interest.[3]
16. For a more detailed discussion of the ordinary meaning of "dispose", see **IS 22/03: Income tax – Application of the land sale rules to co-ownership changes and changes of trustees**[4] from [35].
17. In determining whether there is a disposal when a person transfers an interest in land to an LTC, it is relevant to ask whether the property that they have before and after the transfer is the same. If they have a different interest in property after the transfer, then they may have disposed of their original interest in property and replaced it with a new interest in property.
18. Therefore, it is relevant to consider the nature of an LTC owner's interest in property that the LTC owns and to compare this with the interest in property that a person has where they hold property directly.
19. The nature of an LTC owner's interest in property has two dimensions:
    - the nature of the interests LTC owners have for non-tax law purposes; and
    - the effect of s HB 1 (LTCs are transparent).

#### For non-tax law purposes

20. For non-tax purposes, an LTC owner does not own land that the LTC owns. An LTC is a normal company – an entity that is separate from its owners. An LTC owner is merely a shareholder of the company. A company's assets do not belong to the shareholders. Shareholders are not entitled to anything except for the ownership interest given by their shares. These ownership interests might include the right to a share on the distribution of the surplus assets of the company if it is liquidated or wound up. However, this interest is quite different from an interest that a person holds where they own land directly.
21. Therefore, for non-tax purposes, when a person transfers land to an LTC there is a total alienation of the interest in land that they held before the transfer and, therefore, there is a disposal of the land.



1 "Dispose" is defined in the Act for the purposes of s CB 6A, but the definition is an inclusive one, such that it extends the meaning of the word, rather than providing a general meaning.

2 *Henty House Pty Ltd v FCT* (1953) 88 CLR 141 (HCA); *FCT v Cooling* 90 ATC 4,472 (FC).

3 *Carter v Carter* [1896] 1 Ch 62; *Case Q57* (1993) 15 NZTC 5,325.

4 *Tax Information Bulletin* Vol 34, No 7 (August 2022).

**The effect of s HB 1 (LTCs are transparent)**

22. It might be argued that the transparent tax treatment under s HB 1 prevents the existence of a disposal on the basis that an LTC owner owns, or is treated by s HB 1 as owning, the property before and after the transfer.
23. The Commissioner's view is that transparency under s HB 1 does not apply to this situation, so transparency does not prevent the existence of a disposal.
24. Under s HB 1, LTCs are treated as being transparent for some income tax purposes. Section HB 1 relevantly states:

> **HB 1 Look-through companies are transparent**
>
> *When this section applies*
>
> (1) **This section applies** for the purposes of this Act, other than the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, and the RSCT rules, **for a person in their capacity of owner** of an effective look-through interest for a look-through company (the LTC), for an income year, …
>
> …
>
> *Look-through for effective look-through interest*
>
> (4) For a person, **unless the context requires otherwise**,—
>
> (a) the person is treated as carrying on an activity carried on by the LTC, and having a status, intention, and purpose of the LTC, and the LTC is treated as not carrying on the activity or having the status, intention, or purpose:
>
> (b) the person is treated as holding property that the LTC holds, in proportion to the person's effective look-through interest, and the LTC is treated as not holding the property:
>
> (c) the person is treated as being party to an arrangement to which the LTC is a party, in proportion to the person's effective look-through interest, and the LTC is treated as not being a party to the arrangement:
>
> (d) the person is treated as doing a thing and being entitled to a thing that the LTC does or is entitled to, in proportion to the person's effective look-through interest, and the LTC is treated as not doing the thing or being entitled to the thing. [Emphasis added]

25. Among other things, s HB 1 treats a person who is an LTC owner as holding property that the LTC holds and as doing a thing the LTC does. Also, it treats the LTC as not holding the property or doing the thing.
26. If s HB 1 applied in this situation (where persons transfer land to an LTC they own), it might be argued that there is no disposal of the land on the basis that a person would be treated as holding the same interest in land before and after the disposal, first in their separate capacity and then in their capacity as LTC owner.
27. However, s HB 1 does not apply in all cases. First, it applies for a person only if they are an LTC owner and only in their capacity as an LTC owner. Second, it does not apply if the context requires otherwise. Section HB 1 is also a deeming provision that creates statutory fictions. In interpreting a deeming provision that creates a statutory fiction, it is necessary to understand the purpose of the provision. The fiction is then only taken as far as is necessary to achieve the purpose of the provision, and no further.[5]
28. Because of these limits to its application, s HB 1 does not apply in a scenario where a section (such as s CB 6A) is being applied to a person who is not an LTC owner or who is not acting in their capacity as an LTC owner. This is the case even if an LTC is the other party to a transaction to which the section is being applied.
29. When a person transfers an interest in land to an LTC, the person (who is potentially the subject of s CB 6A) is not acting in their capacity as an LTC owner – they are acting in their separate capacity. Therefore, in any consideration of whether there is a disposal giving rise to income under s CB 6A for the person, s HB 1 does not apply. Because s HB 1 does not apply, the LTC is not treated as transparent for the purposes of the transfer, so the LTC owner is not treated as acquiring or holding the land in this context. As a result, under s HB 1, the land is not treated as owned by the same persons before and after the transfer. Therefore, s HB 1 does not invite a conclusion that there is no disposal. The transfer is a transfer from persons to a separate entity, so is a disposal by the persons.

5 *Re Levy , ex parte Walton* (1881) 17 Ch D 746 at 756; [1881 – 85] All ER Rep 548. This principle, as expressed in *Re Levy*, has been approved in New Zealand in *Tobin v Dorman* [1937] NZLR 937 (HC) at 942 and *Picton Borough v Marlin Motels (1971) Ltd* [1975] 1 NZLR 65 (HC) at 70 The principle is also discussed in Burrows and Carter *Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 451 and in *Bennion on Statutory Interpretation* (7th ed, LexisNexis, London, 2017) at 850.

30. This interpretation of s HB 1 is consistent with the interpretation of the similar provision, s HG 2 (partnerships are transparent), in **QB 17/09: Is there a full or partial disposal when an asset is contributed to a partnership as a capital contribution?**[6]
31. Further, the Commissioner considers that to apply the statutory fictions in s HB 1 in this situation would be going further than is necessary to achieve the purpose of s HB 1. The general purpose of s HB 1 is to provide transparent income tax treatment for electing closely held companies.[7] This is reflected in the heading of s HB 1(4): "Look-through for effective look-through interest". The commentary also refers to look-through income tax treatment.[8] The main goals of the look-through income tax treatment are to pass income, expenses, tax credits, rebates, gains and losses through to owners and to tax the owners at the level of the owners.
32. The situation considered here involves a transaction between an LTC and an owner of the LTC. It involves a transition from holding property directly to using an entity to hold property – it is not a situation concerning the look-through treatment of income and other amounts. There is no indication of any intention that the income tax treatments s HB 1 provides for were to apply to a context such as this. This is a further reason for concluding that there is a disposal when a person transfers an interest in land to an LTC.
33. The view that there is a disposal is also consistent with the former sections s CB 6AB and ss FC 9B and FC 9C. These sections assumed the existence of a disposal where persons transfer residential land to themselves in different capacities. Section CB 6AB and ss FC 9B and FC 9C have now been repealed, but as legislative history they still provide some support for the view that there is a disposal.

## Whether the main home exclusion applies

34. If the disposal is made within two years of the person's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.
35. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.

### Used predominantly, for most of the bright-line period

36. For the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, for most of the bright-line period, for a dwelling that was the main home of the person.[9]
37. Land is used "predominantly" for the person's main home if more than 50% of the area of the land has been used for the home. The test is based on a person's actual use of the property, not the person's intended use.
38. The person must also use the land as their main home for most of the bright-line period. This requires the person to use the land as their main home for more than 50% of the bright-line period. However, the person does not need to have used the land as their main home without interruption.
39. The "bright-line period" is the period beginning with the bright-line start date for the land and ending with the bright-line end date for the land. This period can be modified by the rollover relief provisions (discussed from [41]). This means the bright-line period can pre-date the period the land is held in the LTC. In the situation considered in this section, the bright-line period for the LTC owners may be a period beginning with the bright-line start date of the transferor in their non-LTC capacity before the land was transferred to the LTC. If so, the use of the land for this extended period must be considered.
40. The main home exclusion is discussed further at [64] in relation to the rollover relief provided by s FD 1(5). This rollover relief can affect whether the main home exclusion is available to a transferee if the transferee subsequently disposes of the land.



6 *Tax Information Bulletin* Vol 30, No 1 (February 2018) at 10.

7 New look-through company rules (special report, Policy Advice Division of Inland Revenue, 23 December 2010) at 1.

8 New look-through company rules.

9 Or the main home of a beneficiary of a trust if the requirements of section CB 16A(1)(b) are satisfied.

### Whether rollover relief applies

41. The next question is whether rollover relief under s FD 1 applies. There are different types of rollover relief, including relief relating to the value of the transfer, the bright-line start date and the attribution of the use of land. The different types of rollover relief are discussed from [56], but the requirements for the application of rollover relief are discussed first.

42. There are two alternative tests for the application of rollover relief under s FD 1:

    - Under the first test in s FD 1(1)(a), rollover relief applies if residential land is disposed of between persons associated under any of ss YB 2 to YB 13 at the date of disposal and for at least two years before that date.[10]
    - The second test in s FD 1(1)(b) involves a disposal to a trustee of a trust. This test is not relevant in the situation considered in this section, which involves a disposal to an LTC.

#### Association between an LTC and an LTC owner

43. Rollover relief under s FD 1(1)(a) applies to disposals between persons associated under any of sections YB 2 to YB 13 at the date of disposal and for at least two years before that date.[11]

44. For this LTC situation, the relevant associated person test is s YB 13 (Look-through companies and owners of interests). This is because for the purposes of the association requirement in s FD 1(1)(a) and a disposal between an LTC owner and the LTC, s HB 1 (Look-through companies are transparent) is ignored and association is determined under s YB 13.[12] Ignoring transparency in this context means that where there is a disposal of residential land between a person and an LTC in which they own shares, the land is treated as being disposed of between the person and the LTC, not the person and themselves in different capacities.

45. Under s YB 13(1), an LTC and an LTC owner are associated if the owner is a director or employee for the LTC.

46. Under s YB 13(2), an LTC and a person are associated if the person has effective look-through interests of 25% or more in a right, obligation, or other property status, or thing of the LTC.

47. An aggregation rule (in s YB 13(3)) applies for the purposes of determining whether a person has effective look-through interests of 25% or more under s YB 13(2). This rule treats a person (person A) as holding anything held by another person (person B), if persons A and B are associated under any of ss YB 2 to YB 11 and YB 14. This can result in one or more LTC owners satisfying the 25% threshold when they otherwise would not. It can also result in a non-owner being associated with the LTC by being treated as having effective look-through interests of 25% or more. This last point means that rollover relief can apply where the transferor is not an LTC owner but is nevertheless associated with the LTC under the aggregation rule.

48. Example | Tauira 1 provides a simple example of rollover relief applying based on association between an LTC and an LTC owner.

INTERPRETATION STATEMENTS

10 Rollover relief can also apply in a case where residential land is transferred to a trustee, but this is not applicable in the context of this situation. Rollover relief is discussed more generally in **QB 25/15: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?**

11 Sections YB 2 to YB 13 contain all the associated person rules in subpart YB, except the tripartite relationship rule contained in s YB 14.

12 Section FD 1(6).

**Example | Tauira 1 – Rollover relief based on association between LTC and LTC owner**

**Facts**

On 24 June 2023, a married couple, persons 1 and 2, acquired residential land as a holiday home.

On 1 August 2024, persons 1 and 2 transferred the residential land to an LTC, wholly owned by person 1 since 1 April 2020. At the time of transfer, the LTC was dormant and had no property. At the time of transfer, shares were issued to person 2 to give person 1 and 2 equal shares in the LTC.

Persons 1 and 2 have been married since 14 February 2022.

**Bright-line test applies**

The transfer of the land to the LTC on 1 August 2024 is within two years of person 1 and 2's bright-line start date for the land of 24 June 2023, and the main home exclusion does not apply. Therefore, the bright-line test applies to the amounts derived by persons 1 and 2 from the transfer of the land.

**Rollover relief applies**

However, rollover relief applies for both persons 1 and 2.

Person 1 and the LTC were associated at the date of disposal and for the two years before that date.

Person 2 was also associated with the LTC at the date of disposal and for the two years before that date. Under the aggregation rule in s YB 13(3), person 2 is treated as having held person 1's effective look-through interests in the LTC from at least 14 February 2022 (when they married person 1) and potentially earlier if they were in a de facto relationship before that date.

49. Rollover relief under s FD 1(1)(a) applies if the disposal is between persons associated at the date of disposal and for at least two years before that date. The 2-year period before the date of disposal would, for example, include 1 July 2022 if the date of disposal was 1 July 2024.

50. An effective look-through interest can in some cases be calculated based on average daily look-through interests during an income year. If so, in the context of s FD 1, this means that for each income year that falls within the two-year period (there will usually be three such income years), the average daily interest must be 25% or more. This means that the look-through interest could be lower than 25% at times during the income years (but not zero because the person must be an LTC owner at all times during the two-year period).

**Rollover relief not available for disposal to newly incorporated LTC**

51. The requirement to be associated for two years before the disposal date means that rollover relief will not be available in the scenario where a person owning residential land in their own name wishes to dispose of the land into a newly incorporated LTC that they own. This is illustrated in Example | Tauira 2.

**Example | Tauira 2 – Rollover relief not available for disposal to new company**

In August 2024, persons 1 and 2 purchase a house together as a residential rental property. The purchase price is $1 million. The instrument to transfer the land to persons 1 and 2 is registered on 20 August 2024.

On 18 September 2025, they ask their lawyer about disposing of the property to an LTC (which they would incorporate and elect to be an LTC). By this date the value of the property has increased to $1.1 million.

Their lawyer advises them to wait, if possible, until 21 August 2026 to dispose of the property to an LTC so that the bright-line test will not apply to the disposal.

Their lawyer advises them that if they dispose of the property to the LTC before 21 August 2026 they could be subject to the bright-line test.

**Rollover relief is not dependent on the bright-line test applying to the transferor**

52. Rollover relief under s FD 1 applies for a disposal regardless of whether the bright-line test in s CB 6A applies to the transferor. The relief provided by s FD 1 may be relevant to subsequent disposals made by the transferee.

53. This is illustrated in Example | Tauira 3.

**Example | Tauira 3 – Rollover relief applies for a transfer regardless of whether the bright-line test applies to the transferor**

On 16 April 2024, person 1 purchases residential land for $1 million.

Three years later, on 16 April 2027, person 1 transfers the land to an LTC that they have owned for several years for the market value of $1.1 million.

The LTC holds the land for one year and then, on 16 April 2028, transfers it to a third party for $1.2 million.

**Transfer to the LTC**

The bright-line test does not apply to the disposal of the land to the LTC because the disposal is not within two years of person 1's bright-line start date for the land.

Nevertheless, rollover relief applies to the transfer. This has no impact on person 1 as transferor because they are not taxed on the transfer. However, person 1 as transferee and in their capacity as LTC owner, is treated as acquiring the residential land at the transferor's cost ($1 million) and with the transferor's bright-line start date (16 April 2024).

**Transfer to the third party**

The transfer to the third party on 16 April 2028 is treated, by virtue of s HB 1, as a transfer of an interest in the land by person 1 in their capacity as LTC owner.

The land is not transferred within two years of the bright-line start date of 16 April 2024, so the transfer is not subject to the bright-line test.

**Two-year stand down period for subsequent use of rollover relief**

54. Rollover relief under s FD 1 does not apply to a disposal (second disposal) of residential land if the section has already been applied to a disposal (first disposal) and two years have not passed from the date of the first disposal.[13]

55. For example, in Example | Tauira 3, if instead of transferring the residential land to the third party, the LTC transferred the land back to person 1 (second transfer), rollover relief would not apply because only one year had passed since person 1 transferred the land to the LTC (first transfer).

## Rollover relief

**Rollover "relief" is not necessarily favourable**

56. Although it is referred to as rollover "relief", and often will prevent tax applying to a disposal of land, the rollover relief provided by s FD 1 is not necessarily favourable in all situations. For example, in some cases s FD 1 could prevent a person from using the main home exclusion (this is illustrated in Example | Tauira 9). Whether it is favourable or not, the rollover relief treatment applies automatically and there is no requirement to opt in or ability to opt out.

57. Where the requirements for rollover relief are met, the following rollover relief treatment applies.

**Rollover relief applies to all LTC owners**

58. Where a person or persons transfer residential land to an LTC and the requirements for rollover relief are satisfied (eg, if the person or persons have been associated with the LTC for the required 2-year period[14]), rollover relief will apply to all LTC owners, not just the LTC owner or owners who transferred the land to the LTC.

## Disposal amount

59. The transferor (in this situation, the person in their non-LTC owner capacity) is treated under s FD 1(2) as disposing of the residential land for an amount that equals the cost of the land to the transferor. This means that they will not have any profit or loss from the disposal.

**Acquisition cost**

60. Also under s FD 1(2), the disposal is treated as an acquisition by the transferee for an amount that equals the cost of the land to the transferor.

13 Section FD 1(7).

14 As noted at [44], when determining whether persons are associated under s FD 1(1)(a), transparency does not apply.

61. In the situation considered here, the transferor is the person in their non-LTC owner capacity. The transferees are the LTC owners (including the transferor in their LTC owner capacity).
62. Each transferee will have a share of the total cost of the land to the transferor determined by the transferees' effective look-through interests.

**Bright-line start date**

63. Under s FD 1(3), rollover relief is provided to a transferee in relation to their bright-line start date for an interest in land. The transferee is treated as having the same bright-line start date for an interest in land as the transferor. In other words, the bright-line start date for the interest in land will not reset.

**Transferor's use of land attributed to transferee**

64. Under s FD 1(5), the transferor's use of the land (and the periods of time in which it is so used) is attributed to the transferee. This is relevant to whether the transferee can satisfy the requirements of the main home exclusion if they subsequently dispose of the land within two years of their bright-line start date. The main home exclusion is discussed at [36].
65. Section FD 1(5) is relevant to the main home exclusion because for the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, "for most of the bright-line period", for a dwelling that was the main home. The attribution of the transferor's use of the land to the transferee under s FD 1(5) can determine whether residential land has been used by the transferee as a main home "for most of the bright-line period".
66. An example of attribution of use is provided at [115] in the context of the next situation considered in this statement (where attribution is more likely to be relevant).
67. In the situation considered in this section, the transferees are the LTC owners. As discussed next, an LTC owner can satisfy the requirements, and receive the benefit, of the main home exclusion (which will be relevant if they subsequently dispose of the land within two years of their bright line start date).

**Main home exclusion can apply to LTC owners**

68. If an LTC owner subsequently disposes of their interest in land, the question may arise as to whether they can use the main home exclusion. The main home exclusion is discussed above from [35].
69. For the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, for most of the bright-line period, for a dwelling that was the main home of the person (or a beneficiary of a trust, where the person is a trustee).
70. An LTC owner can satisfy the requirements, and receive the benefit, of the main home exclusion.
71. For non-tax purposes, residential land is owned by the LTC, not the LTC owners (and will be registered in the name of the LTC). This does not prevent an LTC owner from using the main home exclusion because, for tax purposes, s HB 1 treats an LTC owner as holding property that the LTC holds in proportion to the LTC owner's interest in the LTC.
72. As a result, the LTC owner is the person who is subject to s CB 6A and the person to whom the main home exclusion in s CB 16A could potentially apply.[15]
73. It might be argued that a person lives in a main home in their personal capacity, not in their capacity as an LTC owner. From this, it might be argued that an assessment of the person for tax in their capacity as an LTC owner should not take into account the fact that they live in the main home. However, the transparent tax treatment of an LTC does not mean the characteristics of an LTC owner in their separate capacity are ignored. Under s HB 1, an LTC owner is treated as having characteristics of the LTC and these characteristics, together with the LTC owner's own individual characteristics, constitute the LTC owner's tax profile. If an LTC owner in fact lives in a residential property as their main home and s HB 1 treats the LTC owner as disposing of a share of the property, the requirements of the main home exclusion can be satisfied. Further, the purposes for which a person holds residential land in their capacity as an LTC owner and their use of the land in their separate capacity can be consistent. There is not necessarily any issue with using an LTC to hold residential land that the LTC owners are using as a dwelling (provided deductions are not claimed for expenditure that has no nexus with the derivation of income or that is of a private or domestic nature). For example, a company is not required to be carrying on a business or other income earning activity in order to be a look-through company.

15 The view that an LTC owner can use the main home exclusion is consistent with an officials' comment on a submission discussed in the Officials' Report to the Finance and Expenditure Committee on Submissions on the Taxation (Bright-line Test for Residential Land) Bill (Policy and Strategy, Inland Revenue, October 2015) at page 36.

74. This is illustrated in Example | Tauira 4.

**Example | Tauira 4 – Main home exclusion can apply for LTC owners**

**Facts**

An LTC has two LTC owners (natural persons). The LTC owns a residential property that was purchased on 19 November 2023 for $1 million.

On 31 January 2025, the LTC transfers the residential property to a third party for $1.25 million.

Between 19 November 2023 and 31 January 2025, the LTC owners lived in the residential property as their main home.

**Tax treatment**

The LTC owners are treated under s HB 1 as holding and disposing of the residential land that the LTC holds and disposes. Therefore, they are subject to the bright-line test in s CB 6A. They have income under s CB 6A because the residential land has been disposed of within two years of their bright-line start date. However, they are eligible for the main home exclusion, so no assessable income arises for them from the disposal of the property.

75. The application of rollover relief is illustrated in Example | Tauira 5.

**Example | Tauira 5 Transfer of residential land to an LTC**

Persons 1 and 2 purchase a residential property as joint tenants for $1 million. The instrument to transfer the land to them is registered on 1 August 2023.

On 1 August 2024, persons 1 and 2 transfer the land to an LTC for $1.1 million. Persons 1 and 2 own the LTC in equal shares and are also directors of the LTC. They have owned the LTC for several years.

On 1 May 2026, the LTC transfers the land to a third party for $1.2 million.

Persons 1 and 2 did not live in the property at any time. They used it as a rental property.

**Transfer to LTC**

In their non-LTC owner capacities, persons 1 and 2 are each treated as disposing of a 50% interest in the residential land to the LTC. This occurs within two years of their bright-line start date and the main home exclusion does not apply. Therefore, the bright-line test applies to this disposal.

However, persons 1 and 2 are eligible for rollover relief on the disposal because they are each associated with the LTC (this is because, at the date of disposal and for at least two years before that date, they were LTC owners and directors of the LTC; they also each had effective look-through interests in the LTC of more than 25%).

The rollover relief includes:

- persons 1 and 2, in their non-LTC owner capacities, are each treated as disposing of their share of the land for $500,000 this equals the cost that they each incurred, so they do not realise a profit from the disposal;
- in their capacities as LTC owners, persons 1 and 2 are each treated as acquiring a share of the land at a cost of $500,000;
- in their capacities as LTC owners, persons 1 and 2 are treated as having a bright-line start date of 1 August 2023, the same bright-line start date they had in their non-LTC owner capacities; and
- in their capacities as LTC owners, persons 1 and 2 are attributed with the use of the land that they had in their non-LTC owner capacities.

**Transfer to third party**

The bright-line test does not apply to the transfer of the residential land to the third party on 1 May 2026.

When the LTC transfers the land to the third party, persons 1 and 2 are treated as disposing of their share of the residential land. By virtue of the rollover relief provided by s FD 1(3), persons 1 and 2, in their capacities as LTC owners, are each treated as having a bright-line start date of 1 August 2023. The transfer to the third party on 1 May 2026 is not within two years of this bright-line start date, so the bright-line test does not apply.

### If no rollover relief applies

76. If rollover relief does not apply, the value of the transfer is the market value of the land if s GC 1 applies, or the actual consideration provided for the transfer if s GC 1 does not apply.

77. Section GC 1 applies to the disposal of trading stock. The definition of "trading stock" includes land whose disposal would produce income under any of ss CB 6A to CB 15 (which relate to income from land).[16]

78. Section GC 1 will apply to a person who transfers their interest in land to an LTC (producing income under s CB 6A) if:
    - The land is disposed of for no consideration or a consideration that is less than market value;[17] and
    - One of the following applies:
        - the person does not carry on business, or if they do carry on business, the transfer of the land is not made in the course of carrying on the business for the purpose of deriving their assessable or excluded income (or both);[18] or
        - the person and the LTC are associated.[19]

79. It will be rare for a person to transfer residential land to an LTC in the course of carrying on a business. It will also be common for the LTC and the LTC owners to be associated. Therefore, where land is disposed of for no consideration or a consideration that is less than market value, it will be common for s GC 1 to apply and for the value of the transfer to be the market value.

80. If rollover relief does not apply, the bright-line start date will usually be the date on which the instrument to transfer the land to the LTC was registered under the Land Transfer Act 2017 (s CB 6A(2)). However, there are some exceptions to this, for example, if the land is outside New Zealand or if the land was acquired on the completion of a land development or subdivision.

81. The application of s GC 1 is illustrated in Example | Tauira 6.

**Example | Tauira 6 – Application of s GC 1 where no rollover relief applies**

**Facts**

In August 2024, persons 1 and 2 purchase a house together as a residential rental property. The purchase price is $1 million. The instrument to transfer the land to persons 1 and 2 is registered on 20 August 2024.

On 20 October 2025, despite their accountant's advice, persons 1 and 2 transfer the property to a newly incorporated company that they have elected to be an LTC and in which they have equal shares. On 20 October 2025 the value of the property has increased to $1.1 million, but they transfer the property to the LTC for $1 million.

**Bright-line test and rollover relief**

The bright-line test applies to the disposal of the land because the disposal is within two years of the bright-line start date.

Rollover relief does not apply because persons 1 and 2 have not been associated with the LTC for at least two years before the date of transfer.

**Application of s GC 1**

The transfer of the land to the LTC is treated as being made at market value under s GC 1. The requirements of s GC 1 are satisfied because the land comes within the definition of "trading stock" (because of the application of s CB 6A), the land is transferred for an amount that is less than its market value, and the disposal is to an associated person (unlike in s FD 1, there is no requirement for the association to have existed for at least two years before the date of disposal).

Persons 1 and 2 therefore have income of $1.1 million ($550,000 each) and deductions of $1 million ($500,000 each) for the cost of the land.

Section GC 1(3) also applies to the LTC owners as transferees, treating the $1.1 million market value of the land as expenditure incurred by the LTC owners ($550,000 each) in acquiring the land.

The LTC owners as transferees have bright-line start dates of 20 October 2025 for their interests in the land.

16 Para (b)(v) of the definition of "trading stock" in s YA 1.

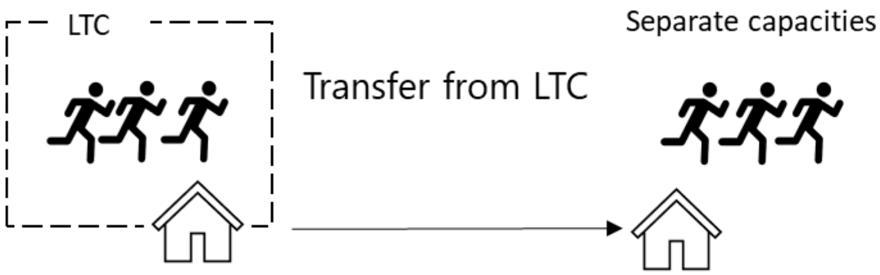
17 Section GC 1(1)(a).

18 Section GC 1(1)(b)(ii).

19 Section GC 1(1)(b)(iii). Section GC 1(1)(b)(i) is not relevant in this situation because the land is being disposed of to the LTC, not taken by the person for their own use.

## Where an LTC transfers residential land to the LTC owners

82. This section discusses the situation where residential land is transferred from an LTC to one or more of the LTC owners in their separate capacities.




83. The situation is the reverse of the previous situation discussed from [12] (where a person transfers an interest in residential land to an LTC). The tax treatment in this situation is similar to the tax treatment that applies to the previous situation.

### Whether there is a disposal

84. In this situation, the Commissioner considers that there is a disposal from the LTC to the LTC owner or owners. With one exception, the reasons for this are the same as for the previous situation, as discussed from [15].
85. In determining whether there is a disposal when an LTC transfers an interest in property to an LTC owner, it is relevant to ask whether the interest in property[20] that the LTC owner has before and after the transfer, in their capacity as LTC owner and in their separate capacity, is the same. If they have a different interest in property after the transfer, then they may have disposed of their original interest in property and replaced it with a new interest in property.
86. The nature of an LTC owner's interest in property owned by the LTC has been discussed from [18].
87. The nature of an LTC owner's interest in property has two dimensions:
    - the nature of the interests that LTC owners have for non-tax law purposes; and
    - the effect of s HB 1 (LTCs are transparent).

#### For non-tax law purposes

88. For non-tax law purposes, an LTC owner does not own property that the LTC owns. An LTC is a normal company – an entity that is separate from its owners. An LTC owner is merely a shareholder of the company. A company's property does not belong to the shareholders. Shareholders are not entitled to anything except for the ownership interests given by their shares. These ownership interests might include the right to a share on the distribution of the surplus assets of the company if it is liquidated or wound up. However, this interest is quite different from an interest that a person holds where they own property directly.
89. Therefore, for non-tax law purposes, when an LTC transfers an interest in land to an LTC owner, the LTC owner receives a very different interest compared with the ownership interest given by their shares.

#### The effect of s HB 1 (LTCs are transparent)

90. It might be argued that the transparent tax treatment under s HB 1 prevents the existence of a disposal on the basis that an LTC owner owns, or is treated by s HB 1 as owning, an interest in the property before and after the transfer. Section HB 1 is discussed from [24].
91. The Commissioner's view is that transparency under s HB 1 does not apply to prevent the existence of a disposal.
92. In the previous situation, one of the reasons for the conclusion that s HB 1 did not apply was that the person or persons who were transferring the land, and who were potentially subject to the bright-line test, were not acting in their capacity as LTC owners (see from [27]). The same reason does not apply in this situation. In this situation, the LTC owners would be the persons transferring the interest in land and, therefore, the persons potentially subject to the bright-line test. In transferring their interest in land, they would be acting in their capacity as LTC owners.

20 In terms of their rights and obligations the LTC owners have with respect to the property.

93. However, other reasons support the view that s HB 1 does not apply to prevent the existence of a disposal, which are the same reasons discussed for the previous situation (see [31] to [33]). In summary, the Commissioner considers that to apply the statutory fictions in s HB 1 in this situation would be going further than is necessary to achieve the purpose of s HB 1. There is no indication of any intention that the income tax treatments provided by s HB 1 were to apply to a context such as this. The view that there is a disposal is also consistent with legislative history of the now repealed s CB 6AB and ss FC 9B and FC 9C.

94. Therefore, where an LTC transfers residential land to one or more LTC owners (transferees) there are disposals of shares in the land by the LTC owners, as transferors and in their LTC owner capacities, to the transferees.

### Whether the main home exclusion applies

95. If the disposal is made within two years of the transferors' bright-line start dates, the bright-line test in s CB 6A could apply to the transferors.

96. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.

97. The earlier discussion about the main home exclusion (see from [34]) also applies to this situation. As discussed from [69], an LTC owner can satisfy the requirements and receive the benefit of the main home exclusion where residential land is held by an LTC.

#### Main home exclusion count

98. Another requirement for the main home exclusion to apply is that the person has not used the main home exclusion two or more times within the two years immediately before the bright-line end date for the residential land.

99. One question relevant to counting the number of times a person has used the main home exclusion is whether the main home exclusion is used if the safe harbour rule in s HB 5 also applies (discussed further in [100]). Where an LTC owner disposes of some or all of their owner's interests in an LTC, and the requirements of s HB 5 are satisfied, s HB 5(3) treats the disposal payment as excluded income of the LTC owner. Therefore, two exclusions could potentially apply to the disposal payment: the main home exclusion and the exclusion in s HB 5(3).

100. In this situation, the Commissioner's view is that the main home exclusion is not used if the safe harbour rule in s HB 5 applies to a disposal. The exception to the main home exclusion is intended to impose a limitation on the use of the exclusion, which prevents the exclusion from being abused. The safe harbour rule in s HB 5 essentially allows for the transfer and deferral of tax liability to another LTC owner where the amount paid for the ownership interest is close to the gross tax value less liabilities of the LTC (in the case of residential land, the gross tax value is the cost of the residential land, as revenue account property). This is not a transfer that Parliament would have intended to be counted in the exception to the main home exclusion.

### Whether rollover relief applies

101. The discussion about whether rollover relief applies in the context of the previous situation (see from [41]) also largely applies to this situation.

102. One practical difference is that in this situation, where the transfer is from the LTC to one or more of the LTC owners, it may be more likely that the LTC and the LTC owners will have been associated for two years before the date of transfer. Therefore, rollover relief may be more common in this situation than the previous one.

103. Where the requirements for rollover relief are met, the following rollover relief applies.

#### Disposal amount

104. The transferors (in this situation, the LTC owners in their capacities as LTC owners) are each treated under s FD 1(2) as transferring a share of the residential land for an amount that equals the cost of that share to the transferor. This means that they will not have any profit or loss from the disposal.

**Acquisition cost**

105. The transferee (in this situation, an LTC owner, but in their non-LTC owner capacity) is treated under s FD 1(2) as acquiring an interest in the residential land for an amount that equals the cost of the land to the transferors.

106. The cost of the residential land to the LTC owners (as transferors) is not necessarily the cost of the land to the LTC. This is because changes in LTC owners over time may have resulted in shares in the land being transferred between owners. If such transfers have occurred, different owners, who have acquired shares in the land at different times, can have different cost bases for their share of the land owned by the LTC, even if they have the same effective look through interest as other LTC owners. Therefore, the cost of the land to the transferors is the total of the costs of all the LTC owners.

107. Each transferee will have a share of the total cost of the residential land to the LTC owners (as transferors).

108. The calculation of the transferors' total cost is illustrated in Example | Tauira 7.

**Example | Tauira 7 – Transferors' total cost**

An LTC originally had two LTC owners: persons 1 and 2, with equal owner's interests in the LTC.

On 5 October 2023 the LTC purchased residential land for $1 million. This resulted in person 1 and 2 having a cost base for the land of $500,000 each.

On 6 October 2025, person 2 sold their 50% owner's interest in the LTC to person 3 for $600,000. This sale was not subject to the bright-line test because the sale was not within two years of person 2's bright-line start date (it is assumed the safe harbour rules in subpart HB do not apply).

Of the $600,000 purchase price paid for the shares, persons 2 and 3 agreed to allocate $550,000 to the acquisition of the share of the residential land. This resulted in person 3 having a cost base for the land of $550,000.

On 7 October 2027, the LTC transfers the land to person 3 for $1.3 million. Persons 1 and 3, in their capacities as LTC owners, are treated as disposing of their 50% shares in the land to person 3, in person 3's non-LTC capacity.

The disposal is not within two years of person 1's bright-line start date of 5 October 2023 or person 3's bright-line start date of 6 October 2025, so neither has income under the bright-line test.

For person 3, as transferee, rollover relief applies because the LTC and person 3 are associated on the date of transfer and for at least two years before the date of transfer.

Person 3 is treated under s FD 1(2) as acquiring the interest in the residential land for an amount that equals the cost of the interest to the transferors. This is $1.05 million, the total of person 1's cost of $500,000 and person 3's cost of $550,000.

Person 3 is also treated as having the transferors' bright-line start dates.

**Bright-line start date**

109. Under s FD 1(3), rollover relief is provided to the transferee in relation to their bright-line start date for an interest in land they acquire. The transferee is treated as having the same bright-line start date for an interest in land as the transferor. In other words, the bright-line start date for the interest in land does not reset.

110. Different LTC owners (as transferors) could have different bright-line start dates for their share of the land. If so, the transferee will have different bright-line start dates for the share of the land acquired from each transferor. If the transferee subsequently disposes of the land, this could lead to the bright-line test applying to only a portion of the land that is being disposed of. This is illustrated in Example | Tauira 8.

**Example | Tauira 8 - different bright-line start dates**

An LTC owns residential land. It has two LTC owners with equal owner's interests, persons 1 and 2. Person 1 has a bright-line start date of 1 February 2024 and person 2 has a bright-line start date of 1 February 2025.

On 31 July 2025, the LTC owners transfer the residential land to person 2 (in person 2's non-LTC owner capacity).

Rollover relief applies and person 2 (as transferee) is treated as having person 1's bright-line start date of 1 February 2024 with respect to the share of land acquired from person 1, and person 2's bright-line start date of 1 February 2025 with respect to the share of land they acquired from themselves (in their different capacities).

On 31 July 2026, person 2 disposes of the land to third party.

The bright-line test will not apply with respect to the share of the land acquired from person 1 as the land is not disposed of within two years of the bright-line start date for that share (1 February 2024).

However, the bright-line test will apply with respect to the share of the land that person 2 acquired from themselves, because the land was disposed of within two years of the bright-line acquisition date for that share (1 February 2025).

**Transferor's use of land is attributed to transferee**

111. Under s FD 1(5), the transferors' use of the land (and the periods of time in which it is so used) is attributed to the transferee. This is relevant to whether the transferee can satisfy the requirements of the main home exclusion if they subsequently dispose of the land within two years of their bright-line start date.

112. Section FD 1(5) is relevant because for the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, "for most of the bright-line period", for a dwelling that was the main home. The attribution of the transferor's use of the land to the transferee under s FD 1(5) can determine whether residential land has been used as a main home "for most of the bright-line period".

## If no rollover relief applies

113. If rollover relief does not apply, the value of the transfer is the market value of the land if s GC 1 applies, or the actual consideration provided for the transfer if s GC 1 does not apply. See discussion of s GC 1 from [78].

114. If rollover relief does not apply, the bright-line start date is determined under s CB 6A(2). The bright-line start date in this situation will usually be the date on which the instrument to transfer the land to an LTC owner (in their non-LTC owner capacity) was registered under the Land Transfer Act 2017.

115. Example | Tauira 9 illustrates the analysis in this section.

**Example | Tauira 9 Transfer of residential land to LTC owners**

Persons 1 and 2 incorporated a company and elected for it to be an LTC in 2020. Persons 1 and 2 own equal shares in the LTC and are both directors.

In November 2023, the LTC acquires residential land for $1 million. The instrument to transfer the land to the LTC is registered on 30 November 2023. For the next 12 months, the LTC uses the land as a rental property.

On 30 November 2024, the LTC transfers the residential land to persons 1 and 2 (in their non-LTC owner capacities) for $1.1 million. For the next 10 months, persons 1 and 2 use the land predominantly as their main home before transferring the land to a third party for $1.2 million on 30 September 2025.

**Transfer to persons 1 and 2**

In their LTC owner capacities, persons 1 and 2 are each treated as disposing of a 50% share of the residential land to themselves in their non-LTC owner capacities. This occurs within two years of their bright-line start date and the main home exclusion does not apply. Therefore, the bright-line test applies to this disposal.

However, persons 1 and 2 are eligible for rollover relief on the transfer because they are associated with the LTC at the date of transfer and for at least two years before that date. They are associated because at the date of transfer and for the last three years they have been LTC owners and directors of the LTC.

The rollover relief includes:

- in their LTC owner capacities, persons 1 and 2 are each treated as disposing of their share of the land for $500,000 on 30 November 2024 this equals the cost that they each incurred, so they do not realise a profit or loss from the disposal;
- in their non-LTC capacities, persons 1 and 2 are each treated as acquiring a share of the land at a cost of $500,000;
- in their non-LTC capacities, persons 1 and 2 are treated as having a bright-line start date of 30 November 2023, the same bright-line start date they had in their LTC owner capacities; and
- person 1 and 2's use of the land as a rental property for 12 months, in their LTC owner capacities, is attributed to person 1 and 2 in their non-LTC owner capacities.

**Transfer to third party**

The bright-line test applies to the transfer of the residential land to the third party on 30 September 2025.

The transfer is within the two years of the bright-line start date of 30 November 2023 and the main home exclusion does not apply.

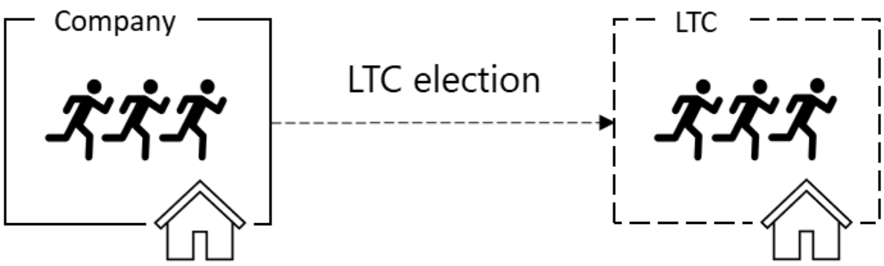
The main home exclusion does not apply because persons 1 and 2, in their non-LTC owner capacity, have not used the land for most of the bright-line period for a dwelling that was the main home. In this case, the "bright-line period" begins with the bright-line start date of 30 November 2023, the date the LTC acquired the land. The bright-line period is a period of 22 months and persons 1 and 2 are treated as having used the land as a main home for only 10 of these 22 months.

Therefore, persons 1 and 2 will each have income of $600,000 ($1.2 million ÷ 2), a deduction of $500,000 ($1 million ÷ 2) and, therefore, a profit of $100,000.

If the transfer to the third party had been over 2 months later, the bright-line test would not have applied.

## Where a company that owns residential land becomes an LTC

116. This section discusses the situation where a company that owns residential land becomes an LTC.




### There is no disposal in this situation

117. The Commissioner's view is that there is no disposal of residential land in this situation.

118. For non-tax law purposes, no disposal results from the election to become an LTC. LTCs are a tax concept only and the same company owns the land at all times.

119. In addition, the Act contains no provisions that explicitly treat a company as disposing of its assets when the shareholders elect for the company to become an LTC. In contrast, such a provision exists when a company ceases to be an LTC – see [125].

120. Further, the Commissioner's view is that s HB 1 does not result in the company disposing of the land to the LTC owners when the company becomes an LTC. The effect of s HB 1 is discussed next.

**The effect of s HB 1**

121. When a company becomes an LTC, s HB 1 treats the LTC owners as holding the land that the LTC holds. This means that before the election, the land is held by the company and after the election, the land is treated by s HB 1 as being held by the LTC owners. From this change, it might be argued that there is a disposal of land.

122. However, for the reasons discussed next, the Commissioner's view is that s HB 1 does not result in a disposal of the land.

123. Section HB 1 does not apply if the context requires otherwise. Section HB 1 is also a deeming provision that creates statutory fictions. In interpreting a deeming provision that creates a statutory fiction, it is necessary to understand the purpose of the provision. The fiction is then only taken as far as is necessary to achieve the purpose of the provision, and no further. The general purpose of s HB 1 is to provide transparent or look-through income tax treatment for electing closely held companies. The main goal of the look-through income tax treatment is to pass income, expenses, tax credits, rebates, gains and losses through to owners and to tax owners at the level of the owner.

124. By electing for the company to be an LTC, the shareholders of the company are making a choice provided under the Act about how they and the company will be taxed in future. It seems unlikely that Parliament would have intended for this election to result in a disposal through the operation of s HB 1. The Commissioner's view is that if Parliament had intended for the election to result in a disposal, it would have made this explicit.

125. In determining whether there is a disposal of land, it is relevant to consider the context provided by s HB 4(6), which applies where a company ceases to be an LTC. In that situation, which is the reverse of the situation considered here, s HB 4(6) treats an LTC owner as disposing of all their owner's interests in the LTC (which would include any interest the owner has in residential land the LTC holds). Different conclusions could be reached from the context of s HB 4(6):

- On the one hand, it might be argued s HB 4(6) indicates that, in the absence of s HB 4(6), there would be no disposal when a company ceases to be an LTC. From this, it might then be argued that there would also be no disposal in the situation when the shareholders of a company elect for the company to be an LTC.
- On the other hand, it might be argued that s HB 4(6) merely confirms that there is a disposal. However, it seems unlikely that Parliament would explicitly confirm this for the situation where a company ceases to be an LTC, but not for when a company becomes an LTC.

126. On balance, the Commissioner's view is the first conclusion at [125] is more likely to be correct, which suggests that there is no disposal when a company becomes an LTC.

127. Further support for the view that there is no disposal in this situation comes from the context of s CB 32C. Under s CB 32C, an LTC owner can have an amount of income based on the untaxed reserves of the company (but only if a company becomes an LTC after its first year of trading).[21] This is relevant because the calculation of the untaxed reserves involves a hypothetical disposal of property.

128. The formula for the amount included in income under s CB 32C includes a component called "untaxed reserves". Untaxed reserves contains a subcomponent called "dividends". The term "dividends" is defined in s CB 32C(7) for the purposes of the calculation of untaxed reserves. It includes the sum of the amounts that would be dividends if the company disposed of all its property at market value. However, this does not mean that there is a disposal of the property. Section CB 32C simply defines an amount based on a hypothetical disposal of the property.

129. The hypothetical disposal in s CB 32C suggests that Parliament did not consider that there is an actual disposal when a company becomes an LTC. If there was an actual disposal, it would not be necessary to include the hypothetical disposal in s CB 32C.

130. Another provision that applies when a company becomes an LTC is s HB 13(6). This provision treats an entity that ceases to be a "company" on becoming an LTC as having, as an LTC, the same "status, intention, purpose, and tax book timings and values" as it had as a company for its assets, liabilities, and associated legal rights and obligations. For tax purposes, an entity ceases to be a company on becoming an LTC because the definition of company in s YA 1 excludes an LTC for certain purposes.

131. Section HB 13(6) makes no mention of a disposal occurring when a company becomes an LTC. Nevertheless, it might be argued that if there is no disposal, then it would not have been strictly necessary for s HB 13(6) to provide that the entity has the same status, intention, purpose, and tax book timings and values it had as a company. However, s HB 13(6) specifically mentions that the entity ceases to be a company, which suggests that it was the ceasing to be a company, not a disposal, that motivated Parliament to confirm these matters. Therefore, it is considered that s HB 13(6) does not indicate there is a disposal.

132. For the reasons given above, the Commissioner considers that for tax purposes when a company becomes an LTC, there is no disposal of residential land or other property that the company holds.

21 Section CB 32C. It is necessary to bring the reserve amounts to tax on becoming an LTC because its status as an LTC means distributions to LTC owners are not taxed. If the reserves were not brought to tax on becoming an LTC, they could be distributed tax free.

133. Although there is no disposal event when a company becomes an LTC, the LTC owners are treated as holding the residential land that the LTC holds and the LTC owners may be assessable if, in their capacity as LTC owners, they dispose of the land. Therefore, for the purposes of a future disposal by the LTC owners, it is necessary to identify the LTC owners' cost base for the land and their bright-line start date.

### LTC owners' cost base for land

134. If the LTC owners subsequently dispose of the land and have income under s CB 6A, they are allowed a deduction for the cost of the land.

135. As noted at [130], s HB 13(6) provides that an entity is treated as having, as an LTC, the same status, intention, purpose, and tax book timings and values as it had as a company. Because the LTC is treated as having the company's tax book values, the LTC owners are also treated as having a share of these values under s HB 1.

136. "Tax book values" is not a defined term, but the Commissioner considers the ordinary meaning of this term includes the cost of land acquired by the company.

### Bright-line start date for the LTC owners

137. The Commissioner considers that where a company that owns residential land becomes an LTC, the LTC owners have the same bright-line start date for the land as the company had before it became an LTC.

138. As noted at [130], s HB 13(6) provides that an entity is treated as having, as an LTC, the same status, intention, purpose, and tax book timings and values as it had as a company. Because the LTC is treated as having these tax book timings, the LTC owners are also treated as having these tax book timings under s HB 1.

139. "Tax book timings" is not a defined term. Based on the ordinary meaning, the Commissioner considers that the term "tax book timings" includes the bright-line start date for residential land that the company owns.[22]

### Company's use of land attributed to LTC owner

140. By virtue of ss HB 13(6) and HB 1, when a company becomes an LTC, the LTC owners are treated as having the same status, intention, purpose, and tax book timings and values that the company had. The LTC owners' bright-line start dates will be the bright-line start date the company had.

141. This earlier bright-line start date and, therefore, longer bright-line period can affect whether the land is used as a main home for most of the bright-line period. A company is not able to use land as a home, and the use of land as a main home by the shareholders of the company (before it became an LTC) does not qualify as use by the company. Therefore, the application of the main home exclusion would depend on the LTC owners' use of the land as a main home after the transfer being long enough to satisfy the "most of the bright-line period" requirement.

142. Example | Tauira 10 and Example | Tauira 11 illustrate the analysis of the situation discussed in this section.

**Example | Tauira 10 – Company becoming an LTC**

**Facts**

Company A was incorporated on 1 April 2024. Persons 1 to 3 own the company in equal shares. They are also the directors of the company.

On the same day as it was incorporated, company A purchased a residential property to hold as a rental property. The instrument to transfer the land to the company was also registered on 1 April 2024. The property cost $900,000.

On 31 March 2025, persons 1 to 3 elected for company A to be an LTC for the 2026 income year. On that date, the residential property had a market value of $1 million.

On 5 May 2026, the LTC transfers the land to a third party for $1.1 million.



22 This is consistent with the commentary to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2), which proposed the addition of the words "tax book timings" to s HB 13(6).

**Tax treatment – effect of election**

When company A became an LTC, persons 1 to 3 were treated under s HB 1 as holding the residential property. This did not result in a disposal of the land from the company to persons 1 to 3 for the purposes of the bright-line test.

In their capacity as LTC owners, persons 1 to 3 are each treated as having a cost of $300,000 and as having a bright-line start date of 1 April 2024 in relation to the land. This is the same bright-line start date that the company had before it became an LTC.

When the land is sold to the third party on 5 May 2026, persons 1 to 3 are treated under s HB 1 as disposing of their interests in the land. However, for each person, the disposal is not subject to the bright-line test because the disposal is not within two years of their bright-line start date.

**Example | Tauira 11 - Attribution of use – where a company becomes an LTC**

**Facts**

Company A is owned by persons 1 and 2 in equal shares.

Company A owns a residential property. The property was purchased on 1 April 2024 for $1 million.

On 31 March 2025, persons 1 and 2 elect for the Company to be an LTC for the 2026 income year (from 1 April 2025).

On 30 November 2025, the LTC transfers the residential property to a third party for $1.25 million.

For the 12 months before the company became an LTC (between 1 April 2024 and 31 March 2025), the residential property was used as a rental property. For the eight months after the company became an LTC, and before the land was transferred to the third party (between 1 April 2025 and 30 November 2025), the land was used predominantly for a dwelling that was person 1 and 2's main home.

**Tax treatment**

When the company became an LTC, the LTC owners were treated by s HB 1 as holding the land, and when the LTC disposed of the land to the third party, the LTC owners were treated as disposing of their interests in the land.

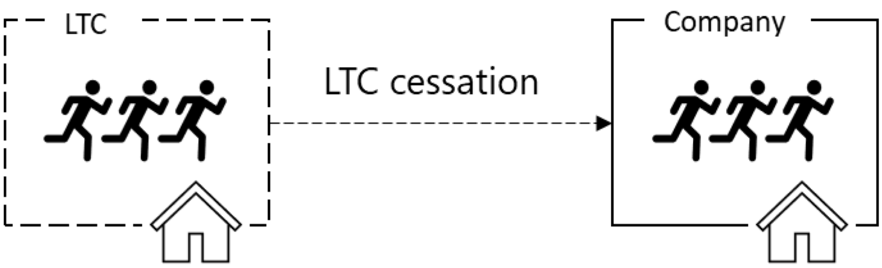
Further, when the company became an LTC, persons 1 and 2 (by virtue of s HB 13(6) and HB 1) were treated, as LTC owners, as having the same status, intention, purpose, and tax book timings and values that the company had. This means that the LTC owners have the same cost and bright-line start date as the company. It also means that the company's ownership and use of the land as a rental property for 12 months is attributed to persons 1 and 2.

The transfer of the residential property on 30 November 2025 to the third party is within two years of the bright-line start date of 1 April 2024. Further, the main home exclusion does not apply because persons 1 and 2 did not use the land as a main home for most of the bright-line period. In this case, the bright-line period is a period beginning with the bright-line start date of 1 April 2024 (the date the company purchased the land). This means the bright-line period was a period of 20 months. Persons 1 and 2 used the land as a main home for only eight of these 20 months.

Therefore, the bright-line test applies to the disposal and persons 1 and 2 each have income of $625,000 ($1.25 million ÷ 2) and deductions of $500,000 ($1 million ÷ 2) from the disposal.

## Where a company that owns residential land ceases to be an LTC

143. This section discusses the tax treatment of a company[23] that owns residential land and that ceases to be an LTC.




### Whether there is a disposal

144. Where a company ceases to be an LTC, s HB 4(6) treats an LTC owner as disposing of all their owner's interests for the LTC (including any share of residential land). As discussed from [119], there is no similar deemed disposal when a company becomes an LTC.

145. Section HB 4(6) provides:

> **HB 4 General provisions relating to disposals**
>
> *Cessation due to revocation or otherwise*
>
> (6) **A person is treated as disposing of all of their owner's interests** for a look-through company to a single third party for a payment equal to the interests' market value, **if the look-through company ceases to be a look-through company because of a revocation** or otherwise, but excluding cessation as described in subsection (3). The company is treated as acquiring all of the person's interests immediately after the cessation, from the third party, for a payment equal to the interests' market value, and for the purposes of section CB 15 (Transactions between associated persons), the person disposing of, and the company acquiring, the interests are treated as associated persons. [Emphasis added]

146. Section HB 4(6) applies if the company ceases to be a LTC because of a revocation or otherwise, but not if it is a permanent cessation as described in subs (3) (where the company itself ceases to exist as an entity through liquidation, court order, or otherwise). Section HB 4(6) can apply if one or more of the owners decides to revoke the election to be an LTC. Section HB 4(6) can also apply if the company ceases to be an LTC because it no longer satisfies the eligibility criteria.[24]

147. Where it applies, s HB 4(6) treats:

- an LTC owner as disposing of all their owner's interests to a (notional) single third party for a payment equal to the market value of the interests; and
- the company as acquiring all the LTC owner's interests immediately after the cessation from the third party for a payment equal to the market value of the interests.

### Whether the main home exclusion applies

148. If the disposal is made within two years of the LTC owner's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.

149. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.

150. The earlier discussion about the main home exclusion (see from [34]) also applies to this situation. Also, as discussed from [69], an LTC owner can satisfy the requirements and receive the benefit of the main home exclusion where residential land is held by an LTC.



23 "Company" is used here in a general sense. A company that is an LTC is excluded from the definition of "company" in s YA 1.

24 An LTC must meet the requirements in the definition of "look-through company" in s YA 1 at all times in the income year.

### Rollover relief does not apply

151. No rollover relief applies in this situation. For rollover relief in s FD 1 to apply, there must be a disposal of residential land between persons who are associated under ss YB 2 to YB 13. This requirement is not satisfied because under s HB 4(6), the LTC owners are treated as disposing of their interest to a notional third party, which is not a transfer between associated parties. Further, s HB 4(6) specifies that the disposal is at market value, which is inconsistent with rollover relief in relation to the value of the transfer.

### Value of transfer

152. Because there is no rollover relief, the disposal occurs at market value (as specified by s HB 4(6)).

### Bright-line start date

153. The company's bright-line start date resets. For tax purposes there was a break in the company's ownership of the land. Section HB 1 treated the LTC owners as holding the land before cessation, and because of the cessation the company is treated under s HB 4(6) as acquiring the land from the notional third party.

154. The new bright-line start date is the date that the company ceased to be an LTC. The reasons for this are as follows.

155. "Bright-line start date" is defined in s CB 6A(2). The subsection defines the term by reference to a table included in the legislation after the wording of the subsection. Section CB 6A(2) states that "A person's bright-line start date for their disposal of residential land is given in column 3 of the following table if the condition in column 2 of the relevant row is met for the person and the disposal". In this situation, row 3 of the table is relevant. The condition to be satisfied in row 3 is that "An instrument to transfer the land to the person was not registered before the person's bright-line end date". Where this condition is satisfied, the bright-line start date (specified in column 3 of row 3) is the date the person acquired an estate or interest in the land under s CB 15B.

156. In this situation (for a subsequent disposal by the company), there will be no instrument registered to transfer the land to the company in relation to the company's deemed acquisition of the land before the bright-line end date (the date of the subsequent disposal) because no instrument or registration is associated with a deemed disposal. Therefore, the company's bright-line start date is the date the company acquired an estate or interest in the land under s CB 15B (When land acquired).

157. Section CB 15B provides that a person acquires an estate, interest, or option that is land "on the date that begins a period in which the person has an estate or interest in, or an option to acquire, the land". The Commissioner considers that a company that ceases to be an LTC acquires an estate or interest in the land on the date that they are treated as acquiring land from the notional third party under s HB 4(6). This is the "date that begins the period in which the person has an estate or interest in the land" referred to in s CB 15B.

158. Example | Tauira 12 illustrates the analysis of the situation discussed in this section.

**Example | Tauira 12 – Company ceasing to be an LTC**

**Facts**

Company A is an LTC that persons 1 to 3 own in equal shares.

On 28 September 2023, company A purchased residential land for $900,000. It used the property as a rental property.

On 31 March 2025, the LTC owners notified IR of the revocation of LTC status.

On 1 April 2025, the residential land had a market value of $1.2 million.

**Tax treatment**

Company A ceases to be an LTC from 1 April 2025 because of the revocation of LTC status.

As LTC owners, persons 1 to 3 each had a one-third share of the residential land that company A owned. As LTC owners, they are each treated as disposing of their share of the land (along with all their other interests in the LTC) on 1 April 2025.

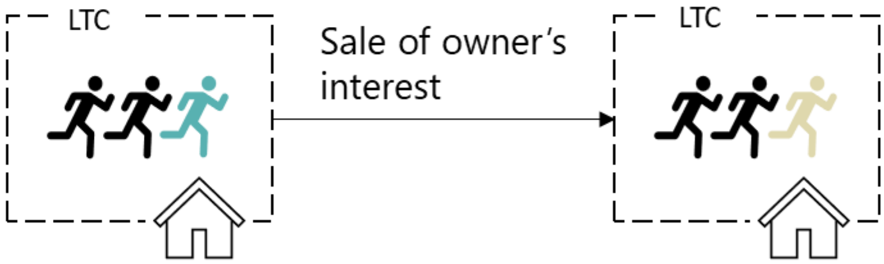
On cessation, no rollover relief is available to the LTC owners or the company. Persons 1 to 3 are treated as disposing of the land for market value. Therefore, they each have income under s CB 6A of $400,000 ($1.2 million market value ÷ 3) and are each allowed a deduction of $300,000 ($900,000 ÷ 3) for the cost of the land.

Company A is treated as acquiring the land for the $1.2 million market value. This will be company A's cost base for the land in future. The bright-line start date for company A resets on 1 April 2025.

### Where a person disposes of some or all of their owner's interests in an LTC that owns residential land

159. This section discusses the tax treatment when a person disposes of some or all of their owner's interests in an LTC that owns residential land.

160. This situation could occur when an LTC owner sells existing shares or when the LTC issues shares to a new owner, which dilutes the existing owners' interests.




#### Whether there is a disposal

161. If a person disposes of some or all of their owner's interest in an LTC and the LTC owns residential land, then the person is treated under s HB 1 as disposing of a share of the residential land (based on the owner's interest that is disposed of).

162. If the disposal is made within two years of the person's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.

#### Safe harbour rule may apply

163. This situation differs from the previous situations discussed because in this situation the safe harbour rule in s HB 5 may apply in addition to rollover relief. This safe harbour rule can apply where an LTC owner (exiting owner) disposes of some or all of their owner's interests in an LTC to a new or existing owner (entering owner).

164. Another safe harbour rule, s HB 6 (disposal of trading stock), might appear at first to be relevant, but it does not apply because "trading stock" does not include land for this purpose.[25]

165. Where s HB 5 applies, it has two relevant effects:

- It treats a payment received by an exiting owner for the disposal of LTC interests as excluded income.
- It treats an entering owner – not the exiting owner – as if the entering owner had originally acquired and held the LTC interests. This is relevant when determining the bright-line start date for the entering owner.

166. For s HB 5 to apply:

- an exiting owner must dispose of some or all of their owner's interests to an entering owner; and
- the amount calculated using the formula in s HB 5(1) must be less than zero.

167. The formula in s HB 5(1) examines whether the amounts paid or payable to the exiting owner (including the consideration for the current interests and any consideration for other disposals of their owner's interests that have occurred in the last year) exceed a net asset value (discussed at [168]) by more than $50,000. In other words, if the amount paid to the exiting owner is too high, as measured by this formula, s HB 5 does not apply.

168. In the formula, the net asset value is described as the difference between the "gross tax value" and liabilities. "Gross tax value" is the total value of the interests that are disposed of. For the purposes of determining the gross tax value amount, interests that are revenue account property, depreciable property or financial arrangements have the value that the Act gives to them. Revenue account property has its cost value; depreciable property has its adjusted tax value; and the Commissioner will accept a reasonable calculation of the value of a financial arrangement (for example, the value of any interest or principal repayment amounts receivable less any amounts payable under the financial arrangement). Other interests have their market value, for example, land held on capital account.

25 The definition of trading stock in s YA 1 and s EB 2.

### Whether the main home exclusion applies

169. If the disposal is made within two years of the person's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.

170. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.

171. The earlier discussion about the main home exclusion (see from [34]) also applies to this situation. Also, as discussed from [69], an LTC owner can satisfy the requirements and receive the benefit of the main home exclusion where residential land is held by an LTC.

### Whether rollover relief applies

172. As noted at [41], there are two alternative tests for the application of rollover relief under s FD 1 (discussed in more detail from [173]). Unlike for the situations considered in earlier sections of this statement, both tests can be relevant in this situation, not just the first. Also, for the first test, multiple associated person tests can be relevant in this situation, not just association under s YB 13 (look-through companies and owners of interests).

#### First rollover relief test – transfer between associated persons

173. Under the first test in s FD 1(1)(a), rollover relief applies when residential land is disposed of between persons associated under any of ss YB 2 to YB 13 at the date of disposal and for at least two years before that date.

174. Sections YB 2 to YB 13 contain all the associated person rules in subpart YB, except the tripartite relationship rule contained in s YB 14. Any of these could apply, except ss YB 2 or YB 3. A person who has a look-through interest in an LTC can only be a natural person or a trustee of at trust. This means that the associated person rules in ss YB 2 (two companies) and YB 3 (company and person other than company) are not applicable in this situation.

175. In the first two situations considered in this statement, for the purposes of the association requirement in s FD 1(1)(a), s HB 1 (Look-through companies are transparent) is ignored. This is because those situations involve transfers of residential land to or from the LTC. In this situation, there is no transfer of land to or from the LTC, rather one of the LTC owners (the exiting owner) is transferring some or all of their shares in the LTC to a new owner (entering owner). In this situation, it is relevant to consider association between the exiting owner and the entering owner.

176. Guidance on the associated person rules can be found in **IR620 A guide to associated persons definitions for income tax purposes**, which can be accessed from this page on Inland Revenue's website.

#### Second rollover relief test – transfer to trustee

177. Under the second test, rollover relief can apply in a case where residential land is transferred to a trustee of a trust in which all beneficiaries (ignoring the transferor if they are a beneficiary) are:
   - associated with the transferor:
     - at the date of transfer; and
     - for at least two years before that date (except for beneficiaries that are less than two years old or beneficiaries who have become associated due to marriage, civil union, de facto relationship or adoption, who must be associated with the transferor since birth, marriage, civil union, de facto relationship or adoption, as applicable); or
   - an association, club, institution, society, organisation, or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere.

#### Rollover relief

178. The rollover relief in this situation is the same as discussed earlier in the context of transfers between LTCs and LTC owners (see from [104]). The rollover relief includes rollover relief in relation to the transferor's disposal amount, the transferee's acquisition cost and bright-line start date, and the attribution of the use of the land.

#### If no rollover relief applies

179. If the safe harbour rule (discussed at [163]) and rollover relief do not apply, the value of the transfer is the market value of the land if s GC 1 applies, or the actual consideration provided for the transfer if s GC 1 does not apply. See discussion of s GC 1 from [78].

180. Further, if the safe harbour rule and rollover relief do not apply, the bright-line start date for the entering owner will be determined under s CB 6A(2). In this situation (which involves a sale of shares in the LTC), the bright-line start date will generally be the date the entering owner acquires the shares. This is because of the definition of bright-line start date in s CB 6A(2). As discussed at [155], the subsection defines the term by reference to a table included in the legislation after the wording of the subsection. Section CB 6A(2) states that "A person's bright-line start date for their disposal of residential land is given in column 3 of the following table if the condition in column 2 of the relevant row is met for the person and the disposal". In this situation, row 3 of the table is relevant. The condition to be satisfied in row 3 is that "An instrument to transfer the land to the person was not registered before the person's bright-line end date". Because this situation merely involves the disposal or issue of shares in an LTC, the land is unlikely to be registered in the name of the entering owner before the entering owner subsequently disposes of their interest. The land will be registered in the name of the LTC, which is a company for non-tax purposes. Where row 3 applies, the bright-line start date is the date the entering owner acquired an estate or interest in the land under s CB 15B, which in this case is the date the shares in the LTC are acquired by the entering owner.

181. Example | Tauira 13 illustrates the analysis in this section.

**Example | Tauira 13 Disposal of owner's interest in LTC**

**Facts**

Person 1 is the sole shareholder and director of an LTC.

On 6 May 2024, the LTC acquires residential land to hold as a rental property. The land cost $2.4 million. The land is the only asset of the LTC and the LTC does not have any liabilities.

On 8 June 2025, person 1 gets married to a person they met 3 months earlier.

Shortly after getting married, person 1 reorganises some of their finances. As part of this, on 10 June 2025, person 1 sells 25% of their owner's interests in the LTC to their daughter, 25% to their nephew and 25% to the trustee of a newly formed trust. The beneficiaries of the trust are person 1, person 1's children and person 1's spouse.

On 10 June 2025, the land has a market value of $2.6 million. Each 25% owner's interest is transferred for $610,000 (which in this case, is slightly lower than 25% of the market value of the land).

**Bright-line test**

When person 1 sells their owner's interest in the LTC to the entering owners, person 1 is treated by virtue of s HB 1 as disposing of a share of the residential land.

This transfer, on 10 June 2025, is within two years of person 1's bright-line start date of 6 May 2024. Therefore, the bright-line test will apply to the transfer.

However, it is necessary to consider whether the safe harbour rule in s HB 5 or rollover relief under s FD 1 applies.

**Safe harbour rule**

The safe harbour rule in s HB 5 applies if the amount calculated using the formula in s HB 5(1) is less than zero:

Disposal payment + previous payments – (gross tax value – liabilities) - $50,000

Person 1 is disposing of 75% of their owner's interest. Therefore, the calculation is as follows:

$1,830,000 + 0 – ($1,800,000 – 0) - $50,000 = -$20,000

The result is less than zero, so the safe harbour rule in s HB 5 applies.

The safe harbour rule results in the disposal payment being excluded income for the exiting owner (person 1). The entering owners (the daughter, the nephew and the trustee) are treated as if they had originally acquired and held the current interests, not the exiting owner. This means the entering owners are treated as acquiring the land on the date that person 1 (in their capacity as LTC owner) acquired the land, on 6 May 2024. This will be the entering owners' bright-line start date. It also means the entering owners will have, proportionally, the same cost base as the person 1, that is $600,000 each.

Because the safe harbour rule applies it is not necessary to consider whether bright-line rollover relief is available.

If the 75% owner's interest had been transferred for $1,850,000 or more, the safe harbour rule would not apply. The following discusses the bright-line rollover relief that would apply if the safe harbour rule did not apply.

**Bright-line rollover relief**

Rollover relief would apply to the disposals to person 1's daughter and to the trustee, but not to the disposal to the nephew.

Rollover relief applies for the disposal to the daughter under s FD 1(1)(a) because person 1 and the daughter are associated under s YB 4 (two relatives) at the date of disposal and for at least two years before that date.[26]

Rollover relief applies for the transfer to the trustee under s FD 1(1)(b). In this case, it does not matter that person 1 has been associated with their new spouse (who is a beneficiary of the trust) for less than two years.

Rollover relief does not apply for the disposal to the nephew because association between two relatives under s YB 4 applies only for two degrees of blood relationship.

Person 1 will be treated as disposing of 50% of the interests in the land (the total interests transferred to the daughter and the trustee) for an amount that equals 50% of the cost of the land for person 1. This means they will not have a profit with respect to the disposal of this 50% interest.

The daughter and the trustee will each be treated as acquiring a 25% share of the land for amounts equal to 25% of the cost of the land for person 1. The daughter and the trustee will also have the same bright-line start date as person 1 for the interests.

Rollover relief will not apply for person 1 or the nephew for the 25% interest disposed of to the nephew.

Section GC 1 will treat the disposal as being made at market value. Section GC 1 will apply because the transfer is not made in the course of carrying on a business (s GC 1(b)(ii)). The market value of the 25% share of land is $650,000 (25% of $2.6 million). Person 1's cost for the 25% share is $600,000 (25% of $2.4 million). Therefore, person 1 will have income of $650,000 and deductions of $600,000.

The nephew will have a cost base of $650,000 (s GC 1(3)) and his bright-line start date will reset on 10 June 2025, the date he acquires the owner's interest and therefore the share of the land.



26 The exception from association in s YB 4(2), which applies for the purposes of the "land provisions", does not apply in this context because s FD 1 is not included within the exhaustive definition of "land provisions" in s YA 1.

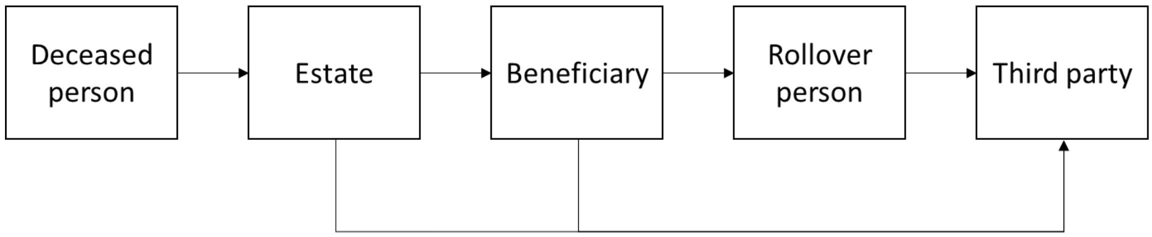
## Miscellaneous transfers

### Transfers following death of a person

182. Where a person who holds residential land dies (the deceased person), the bright-line test does not apply to a transfer of the residential land:

- from the deceased person to the executor or administrator of their estate;[27]
- from the executor or administrator of the estate to a beneficiary of the estate (beneficiary) or to any other person;[28]
- by a beneficiary of the estate (who acquired the land from the executor or administrator of the estate) to any person;[29] and
- by a person (rollover person) to a third party, if the rollover person acquired the land from the beneficiary, and a rollover relief provision in subpart FD applies to the acquisition of the land by the rollover person from the beneficiary.[30]

183. The last bullet ensures that residential land is not subject to the bright-line test merely because it is transferred by a beneficiary into a more appropriate ownership structure after receiving a distribution from an estate. This structure could include an LTC, provided the transfer by the beneficiary to the LTC is eligible for rollover relief. As noted at [51], if an LTC is newly formed, the transfer will not be eligible.




### Transfer of residential land from a trustee of a trust to an LTC

184. A transfer of residential land from a trustee of a trust to an LTC could be eligible for rollover relief if the trustee and the LTC were associated at the date of transfer and for at least two years before that date.

185. The trustee could be associated with the LTC:

- under s YB 13(2), if the trustee is an LTC owner with effective look-through interests of 25% or more; or
- under the aggregation rule in s YB 13(3), if the trustee is associated with an LTC owner under any of ss YB 2 to YB 11 and YB 14 and, as a result, are treated as having effective look-through interests in the LTC of 25% or more.

186. In the latter case, if a trustee is associated with an LTC owner (for example, if the LTC owner is a beneficiary of the trust (s YB 6)), then under the aggregation rule in s YB 13(3), the trustee is treated as holding anything held by the LTC owner, which would allow the trustee to be associated with the LTC under s YB 13(2).



27 Section FC 9(2).
28 Section CB 6A(5)(a)(i).
29 Section CB 6A(5)(a)(ii).
30 Section FC 9(4).

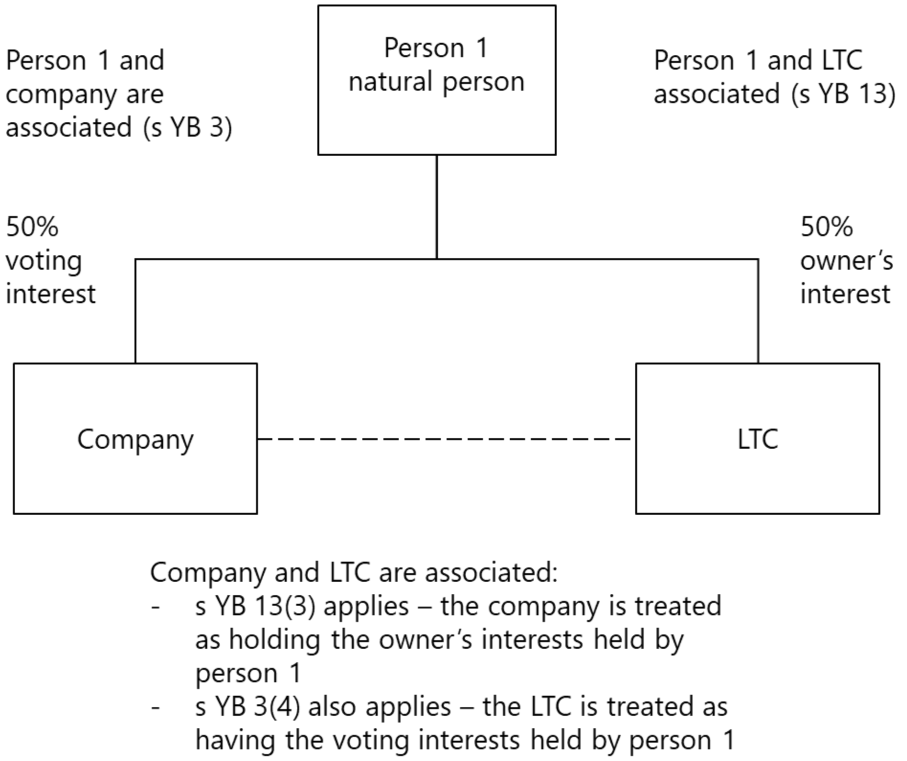
### Transfer of residential land from a company to an LTC

187. A transfer of residential land from a company to an LTC can be eligible for rollover relief if the company and the LTC are associated.

188. A company and an LTC can be associated under an aggregation rule in either s YB 3(3) or s YB 13(3).

189. This illustrated in Diagram | Hoahoa 1.

**Diagram | Hoahoa 1 – company associated with an LTC under aggregation rule**




190. In the diagram, s YB 13(3) treats the company (who is associated with person 1 under s YB 3) as having the 50% owner's interests in the LTC held by person 1. This results in the company being associated with the LTC under s YB 13(2). Similarly, s YB 3(3) treats the LTC (who is associated with person 1 under s YB 13) as having the 50% voting interest in the company held by person 1. This results in the LTC being associated with the company under s YB 3(1).

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6AB, CB 16A, CB 32C, EB 2, FC 9, FC 9B, FC 9C, FD 1, HB 1, HB 4, HB 5, HB 6, HB 13, HG 2, HZ 4E, and YA 1 ("company", "look-through company", "trading stock")

Land Transfer Act 2017

### Case references | Tohutoro kēhi

*Carter v Carter* [1896] 1 Ch 62

*Case Q57* (1993) 15 NZTC 5,325

*FCT v Cooling* 90 ATC 4,472 (FC)

*Henty House Pty Ltd v FCT* (1953) 88 CLR 141 (HCA)

*Picton Borough v Marlin Motels (1971) Ltd* [1975] 1 NZLR 65 (HC)

*Re Levy, ex parte Walton* (1881) 17 Ch D 746; [1881 – 85] All ER Rep 548

*Tobin v Dorman* [1937] NZLR 937 (HC)

### Other references | Tohutoro anō

*Bennion on Statutory Interpretation* (7th ed, LexisNexis, London, 2017)

Burrows and Carter *Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021)

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Rollover relief – bright-line test and interest limitation (special report, Policy and Regulatory Stewardship, Inland Revenue, 22 May 2023)
**taxpolicy.ird.govt.nz/publications/2023/2023-sr-rollover-relief.**

Submissions on the Taxation (Bright-line Test for Residential Land) Bill - officials' report to the Finance and Expenditure Committee (Policy and Strategy, Inland Revenue, October 2015)
**taxpolicy.ird.govt.nz/publications/2015/2015-or-bltrl**

Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) – Commentary on the bill (Policy and Regulatory Stewardship, Inland Revenue, September 2022)
**taxpolicy.ird.govt.nz/publications/2022/2022-commentary-perm2-bill**

# QUESTIONS WE'VE BEEN ASKED

This section of the *TIB* sets out the answers to some day-to-day questions people have asked. They are published here as they may be of general interest to readers.

## QB 25/07: What is the income tax treatment of gift cards and products provided as trade rebates or promotions?

Issued | Tukuna: 16 April 2025

This question we've been asked explains the income tax treatment of gift cards and products provided by trade suppliers to trade customers (business to business) as trade rebates, promotions, or rewards for trade customers buying goods or services from trade suppliers.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 1, CE 1, CX 2(1), DA 1, RD 27(2) and RD 45

### Question | Pātai

What is the income tax treatment of gift cards and products provided by trade suppliers to trade customers as trade rebates and promotions for:

- the trade customers;
- employees, including shareholder employees, when trade customers provide the gift cards or products to their employees, directly or indirectly, by allowing employees to uplift and retain the cards or products;
- shareholders, when trade customers provide the gift cards or products to (non-employee) shareholders or to persons associated with shareholders; and
- the trade suppliers?

### Answers | Whakautu

#### Trade customers – gift cards

- The gift cards are income of the trade customers in the amount of the face value of the cards.
- "Open loop" cards are money, and when they are provided directly or indirectly by trade customer employers to:
  - non-shareholder employees they are employment income. In such cases PAYE income payments, in the amount of the face value of the cards grossed up by the applicable PAYE tax rate, must be withheld and paid by the trade customer; and
  - shareholder-employees they are income. The tax treatment will depend on whether a shareholder–employee has elected for amounts paid to them in their capacity as an employee to be treated as income other than from a PAYE income payment (if no election is made amounts paid are PAYE income payments).
- "Closed loop" cards provided directly or indirectly by trade customer employers to:
  - non-shareholder employees are an unclassified fringe benefit with a fringe benefit value of the face value of the cards. Trade customers are liable to pay FBT on that value (subject to the liability thresholds for unclassified benefits); and
  - shareholder-employees are an unclassified fringe benefit (as above) unless trade customer employers choose to have the cards treated as dividends.

- Trade customers are allowed a deduction for the amount of the face value of the gift cards treated as income and provided directly or indirectly to:
  - employees; and
  - shareholder employees (when they receive the cards in their capacity as employees).
- Trade customers that are companies are not allowed a deduction for gift cards provided to shareholders or to persons associated with shareholders because the cards are dividends.
- Trade customers who use a gift card to purchase goods and/or services for use in their business are allowed a deduction for the expenditure (ie, the expenditure includes the face value of the card applied to the purchase of the goods and/or services).

### Trade customers – products

- The products are income of the trade customers in the amount of the realisable value of the products (that is, their "secondhand value").
- Products provided directly or indirectly by trade customer employers to:
  - non-shareholder employees are an unclassified fringe benefit with a fringe benefit value of their market value, and the trade customers are liable to pay FBT on that value (subject to the liability thresholds for unclassified benefits); and
  - shareholder-employees are an unclassified fringe benefit (as above) unless trade customer employers choose to have the products treated as dividends.
- Trade customers are allowed a deduction for the amount of the realisable (secondhand) value of the products treated as income and provided directly or indirectly to:
  - employees; and
  - shareholder employees (when they receive the products in their capacity as employees).
- Trade customers that are companies are not allowed a deduction for products provided to shareholders because the products are dividends.
- Trade customers are allowed a deduction for the amount of the realisable (secondhand) value of the products treated as income, if they sell the products. The amount received for the products is income for the trade customers.

### Shareholders – cards and products

- Cards and products provided by trade customers to their shareholders, or to persons associated with the shareholders, are dividend income of the recipients. [1]

### Trade suppliers – gift cards and products

- Trade suppliers are allowed a deduction for the amount of expenditure incurred on the gift cards or products.

## Key terms | Kīanga tau tāpua

**Closed loop card** means a prepaid card that is accepted for payment by only a specific merchant or multiple merchants at the same location (such as a shopping mall) and can be used until the preloaded monetary value is depleted or the card expires.

**Open loop card** means a prepaid card co-branded with a credit card (or other payment network) processor that is accepted for payment by merchants anywhere the network processor's brand is accepted (that is, in the world, in-store or online) and can be used until the pre-loaded monetary value is depleted or the card expires.

**Product and card trade rebates** mean goods, closed loop cards and open loop cards that trade suppliers provide to trade customers because of their purchases of goods and services from the trade suppliers. Product and card trade rebates are a form of purchase rebate.

1 Trade customers can elect that products and closed loop cards provided to shareholder-employees are treated as fringe benefits or dividends.

**Trade customer** means a person carrying on a business who buys goods or services from trade suppliers.

**Trade supplier** means a person carrying on a business who sells goods or services to (not necessarily exclusively) trade customers.

## Scope of this item

This QWBA considers how the income tax laws apply to trade rebate arrangements between businesses where trade suppliers provide products or gift cards to their trade customers as rewards for purchasing goods and services.

This QWBA does not consider how the taxation laws apply to business to consumer loyalty schemes. Nor does it consider similar arrangements involving customer loyalty points schemes where trade customers are provided with (earn) points for purchasing goods and services from trade suppliers that can be exchanged (redeemed) for rewards (for example, goods, services, and discounts). However, it should be assumed that similar issues to those considered in this item, arise for consideration with business-to-business loyalty points schemes.

There are other commercial arrangements, to varying degrees like the trade rebate arrangements discussed in this QWBA, that involve money or product inducements or benefits. How the income tax laws apply to such arrangements, and whether they apply in the same way as they apply to trade rebates arrangements, will depend on the facts of the arrangements and the true legal character of (the rights and obligations created by) the legal arrangements entered into and carried out.[2]

## Explanation | Whakamāramatanga

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

### Introduction

1. A common commercial practice is for trade suppliers to provide rebates to their trade customers in the form of discounts to prices. Trade suppliers may provide the discounts at the time of purchase or by issuing invoices for the full (non-discounted) purchase price and credit notes for the discounts. This Question We've Been Asked (QWBA) is not concerned with price discount trade rebates.
2. However, the Commissioner is aware of an increasing practice of trade suppliers providing rebates to their trade customers in the form of product and card trade rebates and that some trade customers provide the products and cards to their employees. The Commissioner understands that in some instances the product and card trade rebates are being incorrectly viewed or are being promoted as "tax free" to the trade customers.
3. Taxpayers are subject to various statutory obligations, including an obligation, unless they are non-filing taxpayers, to correctly determine the amount of tax they have payable. Taxpayers who do not comply with their statutory obligations are liable for civil and criminal penalties under the Tax Administration Act 1994. Trade customers are filing taxpayers and must determine the correct amount of tax payable when filing returns and making assessments of tax.
4. To help taxpayers comply with their obligations, the Commissioner has been asked to explain how the income tax laws apply when:
   - trade suppliers provide product and card trade rebates to trade customers;
   - trade customers use products received as trade rebates in their businesses; and
   - trade customers provide the product and card trade rebates to their employees either directly or indirectly (that is, by allowing the employees to uplift products and cards from trade suppliers and retain them for their private use).

2 *ANZCO Foods Ltd v CIR* [2016] NZHC 1015, (2016) 27 NZTC 22-049 at [48] – [52]; *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289, at [46] – [48]; *A Taxpayer v CIR* (1997) 18 NZTC 13,350 (CA) at 13,366; *Finnigan v CIR* (1995) 17 NZTC 12,170 (CA) at 12,173-12,174; *Marac Life Assurance Ltd v CIR* [1986] 1 NZLR 694 (CA); *Mills v Dowdall* [1983] NZLR 154 (CA) at 159; *Buckley & Young Ltd v CIR* [1978] 2 NZLR 485 (CA) at 489-490.

## Trade customers

5. This section explains that:
   - product and card trade rebates are business income (from [6]);
   - there is a deduction when trade customers dispose of product and card rebates (from [32]);
   - open loop cards provided to employees are income (from [45]); and
   - closed loop cards and products provided to employees are fringe benefits (from [58]).

### Product and card trade rebates are business income

6. An amount is income of a person if it is income under a provision in Part C.
7. Section CB 1 is the general rule for income from business:

> ***Business generally***
>
> **CB 1 Amounts derived from business**
>
> *Income*
>
> (1) An amount that a person derives from a business is income of the person.
>
> *Exclusion*
>
> (2) Subsection (1) does not apply to an amount that is of a capital nature.

#### Amount

8. The definition of "amount" for the purposes of the Act has eight paragraphs – paras (a) to (h) (s YA 1). The definitions in paras (b) to (h) are for specific sections that do not include s CB 1. The general definition in para (a) is an inclusive definition and provides that the word amount "includes an amount in money's worth". Words that are inclusively defined in legislation have their ordinary meaning (which is left undefined) and an enlarged or special meaning given by the inclusive definition.

#### Money and money's worth

9. In the context of income tax legislation, the ordinary meaning of "amount" includes "money", which is defined in the *Concise Oxford English Dictionary* to mean a medium of exchange in the form of banknotes and coins.[3]
10. In the digital era, it is also accepted that money includes "electronic money" (e-money). There is no definition of e-money in New Zealand legislation. There are definitions in overseas jurisdictions' legislation, and many articles (from the mid-1990s) by regulators and academics have considered e-money. The Commissioner considers that the definition of e-money in Directive 2009/110/EC of the European Parliament and Council reflects the essential characteristics of e-money (at art 2(2)):[4]

> "electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions … and which is accepted by a natural or legal person other than the electronic money issuer.

11. The expression "money's worth" has a technical legal meaning – a thing is money's worth if it is convertible, in one or more steps, into money. The idea underlying the money's worth principle is that:
    - income tax is a tax on income (that is, something that goes into a person's pocket); and
    - for something to be income it needs to be capable of being turned (converted) into money, so its monetary value can be ascertained and tax imposed and quantified on that monetary value.

    It is not necessary that the thing is in fact converted into money, all that is necessary is that it is something of a kind that can be turned into money.[5]
12. The money's worth of something that can be turned into money is the market value that would be obtained for the thing if it were sold (that is, its secondhand market value).

3 *Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011). The word money is defined in the Act for specific provisions, which do not include s CB 1 or the definition of amount.

4 Directive 2009/110/EC of the European Parliament and of the Council (European Parliament, Council of the European Union, 16 September 2009).

5 *Abbott v Philbin (Inspector of Taxes)* [1960] 2 All ER 763 (HL).

**Products are "money's worth"**

13. Products (goods) provided as trade rebates by trade suppliers to trade customers are money's worth because the products can be sold for money. For example, a microwave oven provided as a trade rebate can be sold by a trade customer and the money's worth of the microwave oven is the price the trade customer would receive for the microwave oven if sold.

**Open loop cards are money and closed loop cards are money's worth**

14. In the payments processing industry, prepaid cards are generally described as being one of three types: open loop, closed loop, and semi-open/closed loop cards. In *Epay New Zealand Limited BD Ezi-Pay Limited and Ors*,[6] the New Zealand Commerce Commission discussed gift cards and described, in broad terms, the three types of cards as follows:

> **Gift cards**
>
> 135. Gift cards are essentially, pre-paid credit that can be redeemed for goods or services in a retailer. As their name suggests, gift cards are usually purchased by consumers and given to others as a gift. As noted by epay in its application, gift cards have existed in various forms for a long time. Historically, gift cards took the form of paper vouchers or gift certificates. Nowadays, they are more commonly plastic magnetic swipe cards.
>
> 136. The Commission understands that there are broadly three different types of gift cards:
>
> 136.1 "Closed loop" cards, which are specific to a particular retail chain or business and can be redeemed only with that retailer. An example of a closed loop card is the Mitre 10 gift card.
>
> 136.2 "Open loop" cards, which carry credit that can be redeemed at the majority of retailers. Kiwibank's Prezzy card is an example of an open loop card.
>
> 136.3 "Network" cards, which are in between an open loop and closed loop card. An example of a network card is a Westfield gift card, which can be redeemed at any retailer within any Westfield mall.
>
> 137. Traditionally, gift cards were "closed loop" and were sold by the relevant retailer in its stores (eg Mitre 10 card purchased in store from Mitre 10). However, the introduction of open loop cards and plastic magnetic swipe cards has widened the ways through which consumers can purchase gift cards. Consumers are now able to purchase gift cards online and via stands of cards that are available in a range of retailers (eg a consumer can purchase a Mitre 10 gift card at the supermarket).
>
> [Footnote omitted]

15. Closed loop cards are accepted by only a specific merchant and semi-open/closed loop cards are accepted by multiple merchants at the same location (for example, a shopping mall). For the purposes of this QWBA, semi-open/closed loop cards are treated as closed loop cards.

***Open loop cards are money***

16. In the article "New Zealand's payment landscape: A primer", the authors explain:[7]
    - a payment occurs when funds are transferred in exchange for goods and services;
    - payment instructions are used to instruct a transfer of value; and
    - electronic payment instruments can be categorised into interbank payments, card instruments and e-money.

17. In relation to e-money, the authors cite the European Parliament and Council definition (in [10]) and explain the following:
    - E-money is an electronic representation of funds held on a piece of hardware (that is, on a prepaid card) or on software (that is, in a mobile wallet) that can be used for making payments to other parties outside the e-money issuer.
    - E-money is separate to funds issued by a commercial bank and held in a transaction account. E-money refers to funds issued by a third party in exchange for cash or commercial bank money (in a transaction account). The e-money funds are held in an account managed by the issuer.
    - E-money takes several forms, including funds held on plastic and online gift cards that can be used with multiple merchants and are recognised outside the issuer. Many types of mobile wallets issue e-money, including PayPal and Google Pay.

6 *Epay New Zealand Limited and Ezi-Pay Limited & Ors* [2012] NZCC 13.

7 L Dudson, L Gillies and A Wadsworth, New Zealand's payment landscape: A primer *Reserve Bank of New Zealand Bulletin* Vol 85, No 3 (November 2022) at 2 and 16.

18. The Commissioner considers that open loop cards are e-money and money. This is because money in the form of banknotes and coins (cash) and e-money are both widely accepted mediums of exchange to pay for goods and services. Open loop cards co-branded with a credit card are (generally) accepted anywhere in the world (and online) wherever the credit card is accepted for payment, so are more widely accepted as a medium of exchange than New Zealand cash.
19. It follows that the "amount" of an open loop card is the preloaded monetary value (face value) of the card.

***Closed loop cards are money's worth***

20. Closed loop cards are not widely accepted as a medium of exchange to pay for goods and services. They are recognised or accepted only by the issuer for payment. Closed loop cards include merchant-specific cards, shopping mall–specific cards and transport cards.
21. The Commissioner considers that closed loop cards are not e-money and are not money because they are not widely accepted as a medium of exchange to make payment for goods and services. However, closed loop cards are money's worth because they can be converted into money. An issue, however, is what is the money's worth of a closed loop card – its preloaded monetary (face) value or the convertible value of the thing purchased with the card?
22. The Commissioner considers the money's worth of a closed loop card is its preloaded monetary value (face value) because the card can be used to buy (or be applied towards the purchase of) goods and services up to the preloaded amount. Furthermore, the original form of prepaid cards were paper vouchers, and it has been accepted that the monetary value of such vouchers is their face value. In the English case *Laidler v Perry (Inspector of Taxes)*,[8] an employer provided Christmas gifts to each of its 2,300 employees in the form of £10 vouchers enabling them to buy articles at shops of their choice. The taxpayer had been assessed for income tax on the £10 face value of the voucher for the 1955–56 to 1960–61 income years. The main issue before the Court of Appeal and House of Lords was whether the vouchers were a taxable benefit from employment (a reward for services) or a non-taxable gesture of goodwill. Both the Court of Appeal and House of Lords found the vouchers were rewards for services and taxable. The assessments were therefore upheld. In the Court of Appeal, the taxpayer argued that if the vouchers were taxable, the amount to be assessed was something less than their face value of £10. Before the House of Lords, the taxpayer did not dispute that the value of each voucher was its face value.

**Trade rebates are derived from carrying on business**

23. The ordinary meaning of "derive" is to obtain something from a specified source.[9] The requirement in s CB 1(1) is that a person obtains an amount from the specified source of a business carried on by the person. Trade customers satisfy this requirement because they obtain product and card trade rebates in the ordinary course of carrying on their businesses.
24. In income tax legislation, the meaning of derive and the principles of derivation have further aspects. These aspects are the timing of the derivation of an amount and the principle that the receipt of an amount of income is not "derived", if the amount has not yet been earned (that is, the amount is a prepayment) and is subject to a contingency of repayment. These further aspects are not relevant to product and card trade rebates, which are derived when received by trade customers and are not subject to a contingency of repayment.

**Trade rebate products and cards are not capital in nature**

25. The law is settled on the approach to apply to determine whether an amount received by a business is income or capital in nature.[10] When a receipt arises from ordinary business operations or as an ordinary incident of the business, this stamps the receipt with the character of income. A receipt is capital in nature if it does not arise from ordinary business operations and results in an essential change in the nature or to the structure of the business. Payments made voluntarily, when the payer is under no contractual obligation to make the payment, and received in the ordinary course or as an ordinary incident of carrying on a business are income, not capital, in nature for the recipient of the payment.[11]



8 *Laidler v Perry (Inspector of Taxes)* [1965] 2 All ER 121 (HL), *Laidler v Perry (inspector of Taxes* [1964] 3 All ER 329 (CA).

9 *Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011).

10 *CIR v Wattie* [1999] 1 NZLR 529 (PC), *Birkdale Service Station Ltd v CIR* [2001] 1 NZLR 293 (CA).

11 *FCT v Squatting Investment Co Ltd* [1954] 1 All ER 349 (PC), *Cromwell Jockey Club* (1954) 10 ATD 431 (SC).

26. Product and card trade rebates received by trade customers are income in nature. This is because the products and cards are received in the ordinary course or as an ordinary incident of the trade customer carrying on their businesses, with the purchasing of goods and services from trade suppliers being part of those ordinary business operations. And furthermore, the receipt of product and card trade rebates by trade customers does not result in any change in the nature or to the structure of the trade customer's business.

**Expiry of cards not relevant**

27. If an open loop or closed card received by a trade customer as a trade rebate expires before the card is used the expiry of the card does not retroactively change the fact the card on its receipt is income of the trade customer.[12]

### Trade rebates are not gifts and ss FC 1(1)(e) and FC 2(1) do not apply

28. Broadly, gifts are not usually subject to income tax. However, in certain circumstances the Commissioner considers gifts can be assessable income and subject to income tax. The circumstances are considered in IS 23/11.[13]

29. The word "gift" is not defined for the purposes of the Act. At common law, a gift is a truly gratuitous (voluntary) disposition of property where the owner of the property conveys the ownership of the property to another person for no consideration or advantage of a material character.[14]

30. Trade rebates are not gifts. Trade suppliers do not provide trade rebates gratuitously to trade customers but rather to reward them for buying goods and services and to encourage them to buy further goods and services.

31. Section FC 2(1) provides that a transfer of property described in s FC 1(1) is treated as the disposal of the property by the transferor and an acquisition by the transferee at the market value of the property. The transfer described in s FC 1(1)(e) is a transfer of property on the making of a gift. Since trade rebates are not gifts, s FC 1(1)(e) is not satisfied and s FC 2(1) has no application to trade rebates.

### Deductions allowed for trade rebate products and cards

32. Under s DA 1(1), the general permission, a person carrying on a business for the purpose of deriving assessable income or excluded income or a combination of the two is allowed a deduction for an amount of expenditure or loss, including an amount of depreciation loss, incurred in the course of carrying on their business.

33. As previously mentioned:
    - the word "amount" is defined for the purposes of the Act to "include an amount of money's worth";
    - the expression "money's worth" has a technical legal meaning – a thing is money's worth if it is convertible, in one or more steps, into money;
    - open loop cards are money in the amount of the face value of the cards; and
    - closed loop cards are money's worth in the amount of the face value of the cards; and
    - products are money's worth in the amount of the realisable (secondhand) value of the product.

34. The word "expenditure" is not defined for the purposes of the Act so takes its ordinary meaning in context and having regard to any relevant case law that has considered its meaning. The ordinary meaning of expenditure is "the action of spending funds ▪ the amount of money spent".[15] In *Case* E48, the Taxation Review Authority said that "the word "expenditure" seems … to be a very wide word which simply means … the laying out of money."[16]

35. The Commissioner considers that "expenditure" in the phrase "an amount of expenditure" in s DA 1 means the laying out of an amount of money or an amount of money's worth.

36. When a trade customer receives an open loop card or closed loop card (as a trade rebate) and uses the card to purchase goods or services for use in carrying on their business (including purchasing goods or services that are provided to employees as fringe benefits), or provides the card to an employee, the trade customer has laid out an amount of money and is allowed a deduction for the face value of the card.

12 The expiry of a card that is income in nature is similar to the circumstance of a cheque that is income in nature that is not presented. In *Ullrich v CIR* [1964] NZLR 386, it was held the payee remains liable for income tax on the amount of an expired cheque.

13 Interpretation Statement IS 23/11 Income tax: Income – when gifts are assessable income (5 December 2023).

14 *Mills v Dowdall* (CA) [1983] NZLR 154 (CA); *Church of Jesus Christ of Latter-Day Saints Trust Board v CIR* [2020] 2 NZLR 647 (CA).

15 Concise Oxford English Dictionary (12th ed, 2011).

16 *Case* E48 (1982) 5 NZTC 59,285 at 52,289.

37. When a trade customer receives a product (as a trade rebate) and provides the product in exchange (payment) for a good or service used in their business, or provides the product to the employee (a fringe benefit) the trade customer has laid out an amount of money's worth and is allowed a deduction for the money's worth (being the realisable (secondhand) value of the product).

### Deduction not allowed for trade rebate products and cards provided to shareholders

38. A transfer of company value to a person is a dividend if the cause of the transfer is a shareholding in the company.[17] A transfer of company value occurs when a company provides money or money's worth to the person. If the person provides any money or money's worth to the company under the same arrangement, there is a transfer of value to the person to the extent the market value of what the company provides is more than the market value of what the person provides.[18] And a transfer of company value is caused by a shareholding in a company if the person holds shares in the company or is associated with a person who holds shares in the company and the company makes the transfer because of that shareholding.[19]

39. No specific provision in part D of the Act allows or denies a deduction for a dividend. However, the payment of a dividend is generally denied deductibility because it does not have the any nexus with the derivation of income as required by s DA 1. Further, it is long settled common law principle that there is a distinction between expenditure incurred in deriving profits (income), which are deductible, and the post-profit distributions, which are not deductible.

40. When a trade customer that is a company receives a trade rebate product or card and provides that product or card to a shareholder, or a person associated with a shareholder, the trade customer:
    - has transferred value, and paid a dividend, to the recipient; and
    - is not allowed a deduction for the dividend.

41. Sections FC 1(1)(d) and FC 2(1) do not alter these conclusions. As mentioned earlier, s FC 2(1) treats the transfers of property described in s FC 1(1) as a disposal by the transferor and an acquisition by the transferee at the market value of the item for the transferor. The transfer described in s FC 1(1)(d) is the transfer of property on a distribution in kind[20] by a company in a transfer of company value caused by a shareholding in the company. Although s FC 2(1) deems there to be a disposal by the transferor and an acquisition by the transferee at market value, it does not deem the transferee to provide money or money's worth to the transferor.

### Trade rebate products and cards provided to shareholders are income to the shareholders

42. A dividend derived by a person is income of the person.[21]

43. When a trade customer that is a company receives a trade rebate product or card and provides that product or card to a shareholder, or a person associated with a shareholder, the product or card is a dividend and income for the shareholders.

44. The amount of the dividend (income) is:
    - when the dividend is a product, the secondhand value of the product; and
    - when the dividend is a card, the face value of the card.

### Open loop cards provided to employees are income

45. Some trade customers who receive open loop cards as trade rebates provide the cards to their employees, either directly or indirectly (that is, by allowing the employees to uplift the cards from trade suppliers and retain them for their private use).

46. How the income tax laws apply depends on whether the employee is a shareholder in the trade customer.

17 Section CD 4(1).

18 Section CD 5(1).

19 Section CD 6(1).

20 A transfer of (non-cash) property.

21 Section CD 1.

**Non–shareholder-employees**

47. Section CE 1(1) specifies the types of amounts derived by persons in connection with their employment that are treated as (employment) income, including "any other benefit in money".[22] The Commissioner (as mentioned earlier) considers that open loop cards are e-money and money. It follows from this that the trade rebate open loop cards that trade customer employers provide to their employees are "any other benefit in money" and (employment) income of the employees.

48. Salary and wages and "extra pay" are PAYE income payments.[23] The term "salary or wages" is defined in s RD 5(1) and means (relevantly) a payment of salary or wages and excludes the payment of an extra pay.

49. The term extra pay is defined in s RD 7. It means a payment made to an employee that is not a payment regularly included in their salary or wages, is not overtime pay, and is made in one lump sum or two or more instalments. While it is a question of fact in each case, the Commissioner considers that in most instances when trade customer employers provide trade rebate open loop cards (money) to their employees the cards are extra pay. This is because it will be rare for such cards to be regularly included in employees' salary or wages. In the rare case when trade rebate open loop cards are regularly included in the salary or wages of employees of trade customers, the cards will be salary or wages and not extra pay.

50. When trade customers provide trade rebate open loop cards (money) to their employees, the cards are PAYE income payments, and the trade customers must withhold an amount of tax for the payments and pay the withheld amount to the Commissioner.[24] The amount of tax that trade customers must withhold depends on whether the PAYE income payment is an extra pay or salary or wages and on the expected taxable income of the relevant employee for the income year. Trade customers will need to gross up the face value of the open loop cards (since the face value is the amount of money received by the employees) by the applicable PAYE tax rate and pay the grossed-up amount less the face value of the cards to the Commissioner. PAYE paid by an employer is a tax-deductible expense.[25] For comprehensive information on withholding amounts of tax for PAYE income payments, see Employer's guide – Information to help you with your responsibilities as an employer – **IR335**[26] and Weekly and fortnightly PAYE deduction tables – **IR340**.[27] Further information is also available on Inland Revenue's website, including PAYE calculators.

51. If an employer, for any reason, does not withhold tax from a PAYE income payment, the employee must pay the amount of the tax to the Commissioner.[28]

**Shareholder-employees**

52. A shareholder-employee is a person who is a shareholder in and an employee of the employer company and receives or is entitled to receive salary or wages or income that is not a PAYE income payment.[29]

53. Shareholder-employees of smaller companies often do not derive regular amounts of salary or wages or do not get paid in regular periods throughout the year. Also, their remuneration for the income year often depends on the profitability of the business, and this is not known until after the end of the income year and completion of annual accounts.

54. Treating irregular amounts of income received by shareholder-employees during the income year as PAYE income payments can present compliance difficulties. To address this, s RD 3B allows shareholder-employees of smaller companies (that is, close companies or companies with 25 or fewer shareholders that are not look-through companies) to choose, if a qualifying circumstance exists, to have all amounts of income they receive as not being subject to PAYE.



22 Section CE 1(1)(g).
23 Section RD 3.
24 Sections BE 1(1), RA 5 and RD 4.
25 Section DB 1(2)(b).
26 Employer's guide – Information to help you with your responsibilities as an employer – IR335 (guide, Inland Revenue, July 2024).
27 Weekly and fortnightly PAYE deduction tables – Tax tables for pay periods between 31 July 2024 and 31 March 2025 – IR340 (Inland Revenue, August 2024).
28 Section RD 21.
29 Section YA 1 definition of "shareholder-employee".

55. Section RD 3C allows shareholder-employees of smaller companies to choose to split their income so that their base salary is subject to PAYE and variable amounts of income are not subject to PAYE. If a shareholder-employee chooses to apply s RD 3B or s RD 3C,[30] the amounts received during the income year not subject to PAYE are taxable in the shareholder-employee's tax returns.[31]

56. As mentioned, open loop cards are e-money and money. How the income tax laws apply to open loop cards (money) provided by trade customers to shareholder-employees of the trade customers depends on whether the shareholder-employees have made an election under s RD 3B or s RD 3C or have made no election under either section.

57. If no election is made, an open loop card a shareholder-employee receives is an extra pay (assuming the cards are not regularly included in the salary or wages of the shareholder-employee). If an election is made under s RD 3B or s RD 3C, the open loop card is not subject to PAYE and is taxable in the shareholder-employee's tax return.

## Closed loop cards and products provided to employees are fringe benefits

### Closed loop cards are neither e-money nor money

58. As mentioned above, the Commissioner considers that closed loop cards are not emoney and are not money. It follows from this that any trade rebate closed loop cards that trade customer employers provide to their employees are not "any other benefit in money" and are not (employment) income of the employees.

59. The FBT rules apply to an employer who provides a fringe benefit to their employees in connection with their employment.[32]

60. The term "fringe benefit" is defined in s CX 2(1) and means a benefit an employer provides to an employee in connection with their employment that either arises in a way described in ss CX 6, CX 9 or CX 10 or ss CX 12 to CX 16 or is an unclassified benefit (that is, a fringe benefit not referred to in ss CX 6 to CX 16) and is not a benefit specifically excluded from being a fringe benefit under the exclusions in ss CX 19 to CX 33B.

61. The word "benefit" is not defined for the purposes of the Act so takes its ordinary meaning. The *Concise Oxford English Dictionary* relevantly defines benefit to mean "an advantage or profit gained from something". In the commentary on BR Pub 14/10: FBT – Provision of benefits by third parties – Section CX 2(2), the Commissioner considered the purpose of the FBT rules and said fringe benefits are benefits that provide an economic advantage to an employee because they reduce an employee's need to meet private expenditure from their income and are, in economic terms, equivalent to the payment of additional salary or wages in money to an employee.

62. A closed loop card an employer provides to an employee for the employee's own use is a fringe benefit. This is because the card is a benefit (advantage) to the employee as it reduces the employee's need to meet private expenditure from their salary or wages. A closed loop card is an unclassified benefit because it does not arise in a way described in ss CX 6, CX 9 and CX 10 or ss CX 12 to CX 16, and none of the exclusions in ss CX 19 to CX 33B apply.

63. The FBT rules determine the value of a fringe benefit. Section RD 27(2) contains a default valuation rule. It provides that if the value of a fringe benefit cannot be ascertained under ss RD 28, RD 29 and RD 33 to RD 41, the value is market value as defined in s RD 27(3) or otherwise as the Commissioner determines. Since the valuation rules in s RD 28, RD 29 and RD 33 to RD 41 do not apply to an unclassified benefit, the default valuation rule applies. The definition of "market value" in s RD 27(3) is the price normally paid for the fringe benefit in a sale in the open market, freely offered, made on ordinary trade terms, and made to a member of the public. The price normally paid to purchase a closed loop card from the issuer of the card is the face value of the card. To provide certainty to taxpayers, the Commissioner determines that the (fringe benefit) value of a closed loop card is its preloaded monetary (face) value.

30 A taxpayer makes an election to apply s RD 3B or s RD 3C by filing a return that applies the applicable section. If a taxpayer elects to have amounts paid to them in their capacity as an employee of the company treated as income other than from a PAYE income payment, that treatment applies for the income year of election and in later income years.

31 Irregular amounts (non-PAYE income payment amounts) received during the income year by a shareholder-employee are commonly referred to as "drawings" and create debits in the shareholder-employee's current account. After the end of the income year and finalisation of the company's accounts, an amount is generally allocated as a shareholder-salary and/or dividends are declared, and the salary and/or dividends are credited to the shareholder's current account with retrospective effect. Debit balances in shareholder-employee current accounts can have FBT consequences. These are explained in Fringe benefit tax guide – A guide to working with FBT – IR409 (guide, Inland Revenue, July 2024) at 22.

32 Section RD 25(2).

64. Whether an employer is liable to pay FBT on a trade rebate closed loop card provided to an employee depends on whether the *de minimis* exemptions for unclassified benefits are exceeded. The exemptions are in s RD 45. If the total value of unclassified benefits an employer provides do not exceed the exemption threshold for the applicable FBT period, the employer is not liable to pay FBT on the unclassified benefit. If an exemption is exceeded, the employer is liable to pay FBT on the total value of the unclassified benefits provided. The relevant exemptions depend on whether an employer pays FBT quarterly, annually, or on an income-year basis.

65. FBT paid by an employer is generally a tax-deductible expense.[33]

**Products**

66. Trade rebate products that trade customers provide to their employees are fringe benefits.

67. Products are goods. Section RD 40 has three valuation rules for goods. The first rule applies when the person providing the goods manufactured, produced or processed them. Under the first rule, the value is the market value of the goods. The second rule applies when the person providing the goods acquired them or paid for them to be acquired, dealing at arm's length with the supplier of the goods. Under the second rule, the value is the cost of the goods to the person.[34] However, neither of these rules can apply to determine the value of trade rebate products. The first rule does not apply because trade customers do not manufacture, produce or process the products. And the second rule does not apply because the arm's length dealing by trade customers is to acquire goods or services and not the trade rebate products (that is, trade customers incur no cost to acquire a trade rebate product). The third rule depends on the first or second rule applying and since neither applies to trade rebate products, the third rule cannot apply.

68. Since the fringe benefit value of trade rebate products cannot be ascertained under s RD 40, the default valuation rule in s RD 27(2) applies – market value or otherwise as the Commissioner determines. The value of trade rebate products under the default valuation rule is market value (as defined in s RD 27(3)).[35] In this case, the retail price of the product.

69. Trade rebate products are unclassified fringe benefits, and whether an employer is liable to pay FBT on a trade rebate product provided to an employee depends on whether the *de minimis* thresholds, discussed at [64], for unclassified benefits are exceeded.

**Closed loop cards and products provided to shareholder-employees are fringe benefits or dividends**

70. For the purposes of the FBT rules, an employee includes a person who is a shareholder-employee.[36]

71. A non-cash benefit provided to a shareholder-employee is treated as having been provided in connection with employment, and the employer can choose to treat the non-cash benefit as a fringe benefit or a dividend.[37] If an election is not made, the FBT rules apply. If an election is made, the dividend rules (and not the FBT rules) apply, and the company employer must give notice of the election to the Commissioner in the time allowed for filing an FBT return for the period in which the benefit is provided.[38]

33 Section DB 1(2)(b).

34 Cost for a person registered for GST means the GST inclusive cost of the goods bought and for a person not registered for GST means the amount paid by the person for the goods - s RD 40(3).

35 Section RD 27(3) provides that market value means the price normally paid, at the time when the fringe benefit is received by the employee, for the fringe benefit in a sale in the open market, and freely offered, and made on ordinary trade terms, and to the member of the public at arm's length.

36 Section YA 1 definition of "employee", para (ab). See also para (c) of the definition, which specifies that "employee" in the FBT rules, and in the definition of shareholder-employee (para b), does not include a person if the only PAYE income received or receivable is of a specified kind.

37 Section CX 17(1) and (2).

38 Section CX 17(5).

72. Trade rebate closed loop cards and products are non-cash benefits, and when trade customer company employers provide such non-cash benefits to shareholder-employees the benefits are treated as having been provided in connection with employment. Trade customer company employers can choose to treat the closed loop cards and products as fringe benefits or dividends. If the trade customer makes no election, the FBT rules apply. If an election is made to treat the closed loop cards and products as dividends the dividend (and not the FBT) rules apply.[39] An explanation of the application of the dividend rules is outside the scope of this QWBA. Information on the dividend rules is available on Inland Revenue's website and in guides such as Resident withholding tax (RWT) on dividends – payer's guide – IR284[40] and Imputation – A guide for New Zealand companies – IR274.[41]

### Trade suppliers – deduction allowed for expenditure on products and card trade rebates

73. Under s DA 1, the general permission, a person carrying on a business for the purpose of deriving assessable income or excluded income or a combination of the two is allowed a deduction for an amount of expenditure incurred in the course of carrying on the business. The deduction is allocated to the income year in which the expenditure or loss is incurred, unless a specific rule provides for allocation on some other basis.[42]

74. The general permission is overridden by each of the six general limitations.[43] If a general limitation applies, no deduction is available under the general permission.

75. Expenditure incurred by a trade supplier on product and card trade rebates is incurred in carrying on their business and is deductible under the general permission, provided no general limitation applies. If no general limitation applies, the deduction is allocated to the income year in which the expenditure on the product and card rebates is incurred. Although whether any general limitation applies depends on the facts and circumstances of each case, it is likely no general limitation will apply in the circumstances addressed in this QWBA.

## Past treatment of open loop cards

76. The Commissioner acknowledges that some employers have been incorrectly treating open loop cards provided to employees as fringe benefits (and subject to the FBT rules) and not the payment of money (and PAYE income payments). The Commissioner will not apply resources to correct previous tax positions taken in return periods ending on or before the date of this statement where an employer has incorrectly treated the provision of an open loop card to an employee as a fringe benefit and returned FBT on that basis.

## Examples | Tauira

**Example | Tauira 1 – Trade customer receives closed loop card**

**Facts**

Daisy Merino carries on business as a farmer and purchases farming supplies from Farming Trade Supplies Ltd. To encourage customer loyalty, Farming Trade Supplies Ltd gives its trade customers a rebate in the form of a gift card with a face value of $100 for every $1,000 of purchases. The card is a closed loop card and can be used to buy products from only Farming Trade Supplies Ltd.

Daisy Merino purchases $2,000 of materials and receives two gift cards. Daisy Merino does not return the value of the cards ($200) as income.

**How the income tax laws apply**

- The value of the cards ($200) is business income of Daisy Merino.

39 Section CD 20.

40 Resident withholding tax (RWT) on dividends – payer's guide – IR284 (guide, Inland Revenue, September 2020).

41 Imputation – A guide for New Zealand companies – IR274 (guide, Inland Revenue, July 2022).

42 Section BD 4(2).

43 Section DA 2.

**Example | Tauira 2 – Trade customer receives closed loop card and uses card to purchase products for their business**

**Facts**

This example uses the same facts as Example | Tauira 1 except that Daisy Merino uses the cards towards the purchase of herbicide for use on her farm.

**How the income tax laws apply**

- The value of the cards ($200) is business income of Daisy Merino.
- Daisy Merino is allowed a deduction for the cost of the herbicide (including the value of the cards ($200).

**Example | Tauira 3 – Trade customer receives closed loop card and provides card to employee**

**Facts**

Builder Ltd carries on business as a builder and purchases building materials from Building Trade Supplies Ltd. To encourage customer loyalty, Building Trade Supplies Ltd gives its trade customers a rebate in the form of a gift card with a face value of $100 for every $1,000 of purchases. The card is a closed loop card and can be used to buy products from only Building Trade Supplies Ltd.

Builder Ltd purchases $4,000 of materials and receives a gift card with a face value of $400. It provides the card to an employee, who does not hold shares in Builder Ltd.

**How the income tax laws apply**

- The value of the card ($400) is business income of Builder Ltd.
- Builder Ltd is allowed a deduction for the value of the card ($400) provided to the employee.
- The card provided to the employee is an unclassified fringe benefit with a fringe benefit value of $400. FBT is payable on the unclassified benefit (subject to the application of minimum liability thresholds in s RD 45). If Builder Ltd is liable to pay FBT on the card, it is allowed a deduction for the FBT paid.

**Example | Tauira 4 – Trade customer receives open loop cards and provides cards to employees**

**Facts**

Builder Ltd from Example | Tauira 3 also purchases building materials from Competitor Building Trade Supplies Ltd. To encourage customer loyalty, Competitor Building Trade Supplies Ltd gives its trade customers a rebate in the form of a gift card with a face value of $100 for every $1,000 of purchases. The card is an open loop card that is co-branded with a multinational payment card service provider, so is accepted (globally) online and instore by millions of merchants that accept the provider's cards.

Builder Ltd purchases $5,000 of materials and receives five gift cards. Builder Ltd uses two cards to buy materials and gives one card to each of its three employees for their private use. The employees do not hold shares in Builder Ltd.

**How the income tax laws apply**

- The value of the five cards ($500) is business income of Builder Ltd.
- Builder Ltd is allowed a deduction for the expenditure on the materials (such expenditure including the face value of the two cards applied to the purchase of the materials) and for the face value of the three cards provided to the employees.
- The three cards provided to the employees are PAYE income payments. Builder Ltd must withhold and pay tax for each payment. This will require Builder Ltd to gross up the face value of each card ($100) by the applicable PAYE tax rate that applies to each employee. If the applicable rate for each employee is 33%, Builder Ltd must pay PAYE of $49 in relation to each card.
- Builder Ltd is allowed a deduction for the PAYE paid.

**Example | Tauira 5 – Trade customer receives trade rebate products and provides products to an employee and a shareholder**

**Facts**

Plumber Ltd carries on business as a plumber and purchases plumbing materials from Plumbing Trade Supplies Ltd. To encourage customer loyalty, for every $1,000 of purchases, Plumbing Trade Supplies Ltd gives its trade customers rebates in the form of a variety of products from which a customer can select.

Plumber Ltd purchases $20,000 of materials and selects two barbecues, each with a retail value of $750. Plumber Ltd gives one barbecue to an employee and one barbecue to X, who is a shareholder. New (unwanted) barbecues of the same type are being sold on a popular online trading platform for $550.

**How the income tax laws apply**

- The "secondhand" value ($1,100) of the barbecues is business income of Plumber Ltd.
- The barbecue provided to X is a dividend. Plumber Ltd is not allowed a deduction for the value of the barbecue. The secondhand value of the barbeque ($550) is income for X.
- Plumber Ltd has a deduction for the secondhand value ($550) of the barbecue provided to the employee.
- The barbecue provided to the employee is an unclassified fringe benefit with a fringe benefit value of its market value of $750. FBT is payable on the unclassified benefit (subject to the application of minimum liability thresholds in s RD 45).
- If Plumber Ltd is liable to pay FBT on the barbecue provided to the employee, it is allowed a deduction for the FBT paid.

# References | Tohutoro

## Legislative references | Tohutoro whakatureture

**Income Tax Act 2007**

Sections BD 4, BE 1, CB 1, CE 1, CX 2(1), CX 17, DA 1, DA 2, DB 1(2)(b), FC 1(1)(d) and (e), FC 2(1), RA 5, RD 3, RD 3B, RD 3C, RD 4, RD 5, RD 7, RD 21, RD 25, RD 27, RD 28, RD 29, RD 33 to RD 41, RD 45, YA 1 ("amount", "employee", "shareholder-employee")

## Case references | Tohutoro kēhi

*Abbott v Philbin (Inspector of Taxes)* [1960] 2 All ER 763 (HL)

*Birkdale Service Station Ltd v CIR* [2001] 1 NZLR 293 (CA)

*CIR v Wattie* [1999] 1 NZLR 529 (PC)

*Cromwell Jockey Club* (1954) 10 ATD 431 (SC)

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# QB 25/08: When is land acquired for a purpose or with an intention of disposal so that the amount derived from the sale is income?

Issued | Tukuna: 9 May 2025

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.
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.

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 easonable occupation of the house as, due to subdivision requirements, it would not have been possible to reduce the area of the land.

### 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)).

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

### 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).

### 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 15 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 15 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 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.

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

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.

### 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.

### 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.

### 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.

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)).

## Examples | Tauira

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 | Tauira 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 | Tauira 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 | Tauira 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 | Tauira 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 25/09: 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?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-09**

QB 25/10: On what date is a person treated as acquiring land for the purposes of the land sale rules?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-10**

QB 25/14: When does the business premises exclusion to the bright-line test apply?
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# QB 25/09: 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?

Issued | Tukuna: 9 May 2025

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**

One of these taxing provisions might apply

**Sections CB 6 to CB 11** *See [4]*

- You acquired land with a purpose or an intention of disposal; or
- You or someone you were associated with was, at a relevant time, in the business of dealing in, developing, or dividing land, or erecting buildings.

**Section CB 6A** *See [4]*

- None of ss CB 6 to CB 11 (see left column) or s CB 12 apply; and
- The land is residential land, and your "bright-line end date" is within 2 years of your "bright-line start date".

You might get an exclusion because you lived at the property

**Residential exclusion in s CB 16** *See from [11]*

- The land had a house on it, or you 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).*
- The land area is 4,500 square metres or less

  *(or if it is larger, the larger area has to be required for the reasonable occupation and enjoyment of the house).*

**Main home exclusion in s CB 16A** *See from [14]*

- The land has been used predominantly, for most of the time you owned it, for a dwelling that was your main home

  *(or, if you are a trustee of a trust, the dwelling was the main home of a beneficiary of the trust, so long as a principal settlor of the trust does not have a different main home).*

But the exclusion **cannot be used** if:

**You have a "regular pattern"** *See [11]*

- You acquired the land with a purpose or intention of disposing of it (s CB 6 applies to the disposal); and
- You have a "regular pattern" of acquiring and disposing of, or building and disposing of, houses that you occupied mainly as residences.

**You have used it twice in 2 years *OR* you have a "regular pattern"** *See from [14]*

- You have already used the main home exclusion twice in the last 2 years; or
- You have a regular pattern of acquiring and disposing of residential land that had your main home on it.

Do you have a "regular pattern"?

**How to decide if you have a "regular pattern"** *See [23]*

- Consider the number of similar transactions and the intervals of time between them.
- There is no hard-and-fast rule, but generally 3 or more prior transactions would be needed.
- The reason or purpose for each transaction is irrelevant – what matters is how similar and regular they are.

## 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.

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].

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 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 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.

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

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.

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.
    - 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.

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.

- 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.
- 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 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.

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

**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<br>(Q Street) | February 2016 | Apartment in Auckland CBD purchased. Enzo, and later his partner, lived in it. | June 2017 |
| 2<br>(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<br>(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<br>(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<br>(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<br>(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<br>(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<br>(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<br>(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.<br><br>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.



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

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 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.

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007 – ss CB 6A (including "bright-line start date, "bright-line end date"), CB 6, CB 7, CB 8, CB 9, CB 10, CB 11, CB 12, CB 13, CB 14, CB 15, CB 16A, CB 16, CB 17, CB 18, DA 1, DA 2, DB 6, EA 2.

### Case references | Tohutoro kēhi

*Case 5/2013* [2013] NZTRA 05, 26 NZTC 2,004

*Case C9* (1977) 3 NZTC 60,058

*Case G76* (1985) 7 NZTC 1,348

*Case K21* (1988) 10 NZTC 218

*Case M102* (1990) 12 NZTC 2,634

*Dobson v CIR* (1987) 9 NZTC 6,025 (HC)

*Parry v CIR* (1984) 6 NZTC 61,820 (HC)

### Other references | Tohutoro anō

IS 20/08: Income tax – When is development or division work "minor"? *Tax Information Bulletin* Vol 32, No 9 (October 2020): 10
**taxtechnical.ird.govt.nz/tib/volume-32---2020/tib-vol32-no9**
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IS 23/10: Deductibility of holding costs for land, *Tax Information Bulletin* Vol 35, No 11 (December 2023): 49
**taxtechnical.ird.govt.nz/tib/volume-35---2023/tib-vol35-no11**
**taxtechnical.ird.govt.nz/interpretation-statements/2023/is-23-10**

# QB 25/10: On what date is a person treated as acquiring land for the purposes of the land sale rules?

Issued | Tukuna: 9 May 2025

This question we've been asked explains when a person acquires land for the purposes of the land sale rules in the Income Tax Act 2007. The date that someone acquires land is relevant to many of the land sale rules – for example those involving 10-year timeframes or where the circumstances at the date of acquisition need to be considered (this may include what your intention was, whether you were associated with someone in a relevant land-related business, or why you acquired the land).

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A and CB 15B

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

- **QB 17/02:** Income tax – Date of acquisition of land, and start date for 2-year bright-line test

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

## Question | Pātai

**On what date is a person treated as acquiring land for the purposes of the land sale rules?**

## Answer | Whakautu

**Some of the land sale rules require identifying of the date that someone acquired land.**

**The date a person is treated as acquiring land for the purposes of the land sale rules depends on the type of land, the parties to the transaction, and what was done with the land.**

**Section CB 15B sets out the main rules about when a person is treated as acquiring land for income tax purposes. The general rule in s CB 15B is that someone acquires land on the date that they first have an estate or interest in the land or first have an option to acquire the land. There are different dates land is treated as acquired in other situations.**

**Table | Tūtohi 1 shows the date on which land is acquired in different situations, for the purposes of the land sale rules.**

**Note that the date from which the 2-year bright-line test starts is usually different from the date of acquisition of land for the purposes of the other land sale rules in the Act. For more information, see QB 25/11: When is the bright-line start date for the 2-year bright-line test?**

In addition to explaining the date of acquisition, many of the examples in this QWBA also state when the 2-year period for the bright-line test starts, to help distinguish between the two, even though the bright-line test may not be relevant in the circumstances.

**Table | Tūtohi 1 – When land is acquired for the purposes of the land sale rules[1]**

| Circumstances | The date on which the land is acquired for the purposes of the land sale rules |
|---|---|
| Standard purchase of land | The date a binding contract to purchase the land is formed (even if some conditions still need to be met – see further from [13]). |
| Land other than freehold (eg, a leasehold estate, an equitable interest in land, or an option to acquire land) | The date on which the person first had an interest in the land (subject to the rest of the rules in this table). |
| Land acquired from the exercise of an option | The date the person exercised the option. |
| Agreement to acquire land on behalf of a company not yet formed | The date the agreement was entered into. |
| Land that a person subdivides | The date the person acquired the original undivided piece of land. |
| Land acquired from an associated person | For ss CB 7 to CB 12 and CB 14 only, the date the associated person acquired the land. The other rules in this table apply to land acquired from an associated person for the purpose of other land sale rules. |
| Separate rules about when land is treated as acquired (see [51] and [52]) might apply if a person acquired the land by way of a:<br>• settlement of relationship property;<br>• distribution on someone's death;<br>• distribution from a trust;<br>• transfer of value from a company;<br>• gift; or<br>• resident's restricted amalgamation. | |

## Explanation | Whakamāramatanga

### Why we have been asked to clarify the date of acquisition of land

1. The date that land is acquired is relevant to many of the land sale rules – for example those involving 10-year timeframes or where the circumstances at the date of acquisition need to be considered (this may include what your intention was, whether you were associated with someone in a relevant land-related business, or why you acquired the land).
2. Section CB 15B was enacted to clarify when a person acquires land for income tax purposes. The Commissioner has been asked to confirm when a person will acquire an estate or interest in land for the purposes of s CB 15B, and to provide examples of the date of acquisition of land in different scenarios.

### Date of disposal of land

3. In most cases, the date that land is acquired for the purposes of the land sale rules will not be the date it is disposed of by the vendor or transferor. This question we've been asked (QWBA) does not consider the date of disposal of land.

1 As noted above, the date from which the 2-year bright-line test starts is usually different from the date of acquisition of land for the purposes of the other land sale rules in the Act. For more information, see QB 25/11.

## Definition of "land"

4. "Land" is defined in s YA 1 as including any estate or interest in land, and as including an option to acquire land or an estate or interest in land:

> **YA 1 Definitions**
>
> In this Act, unless the context requires otherwise,—
>
> …
>
> **land**—
>
> (a) includes any estate or interest in land:
>
> (b) includes an option to acquire land or an estate or interest in land:
>
> (c) does not include a mortgage:
>
> …

5. Section YA 1 defines "estate", "interest", "estate or interest in land" and similar terms as meaning:

> **YA 1 Definitions**
>
> In this Act, unless the context requires otherwise,—
>
> …
>
> **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

6. Any estate or interest in land (whether legal or equitable, and whether vested or contingent) is "land". An option to acquire land or an estate or interest in land is also "land".
7. The land sale rules in the Act can apply to the disposal of any estate or interest that is "land" as defined in s YA 1.

## When land is acquired for purposes of the land sale rules

8. A person will often acquire different estates or interests (each being "land") in the same piece of underlying physical land at different times. For example, during the typical course of acquiring a freehold estate in fee simple, a person will usually acquire an equitable interest in the estate before acquiring the legal interest in the estate.
9. A person may acquire different interests in land, that are each "land" in their own right, at different times. However, what is relevant is the date of acquisition for **the land that is disposed of**, as this is the land that is potentially subject to tax under one of the land sale rules in subpart CB. For example, if someone is disposing of a freehold estate in fee simple and the date of acquisition is relevant to a particular taxing provision, the question is – when did they acquire *that land* (ie, the freehold estate)? Any other interest they have had in the land (for example, a leasehold interest) is not relevant.

### The general rule

10. Section CB 15B sets out the general rule about when land is acquired for the purposes of the land sale rules:

> **CB 15B When land acquired**
>
> *General rule*
>
> (1) For the purposes of this subpart, a person acquires an estate, interest, or option that is land (the **land**) on the date that begins a period in which the person has an estate or interest in, or an option to acquire, the land, alone or jointly or in common with another person.

QUESTIONS WE'VE BEEN ASKED

11. Under this general rule, a person acquires land on the date that they first have an estate or interest in the land, or first have an option to acquire the land. When land is acquired, different interests will typically arise at different times, and then ultimately merge when the full title is conferred. The fact that s CB 15B refers to the date that "begins a period" in which the person has an estate or interest in the land, or an option to acquire it, indicates that it is the **first** estate or interest in the land in question that is relevant.
12. As the High Court noted in *AAA Developments (Ormiston) Ltd v CIR* (2015) 27 NZTC 22,026 (HC), under s CB 15B a person is treated as acquiring land at the stage in the process of acquisition when they have a right or an interest in the land and are entitled to apply to a court for protection of that right.

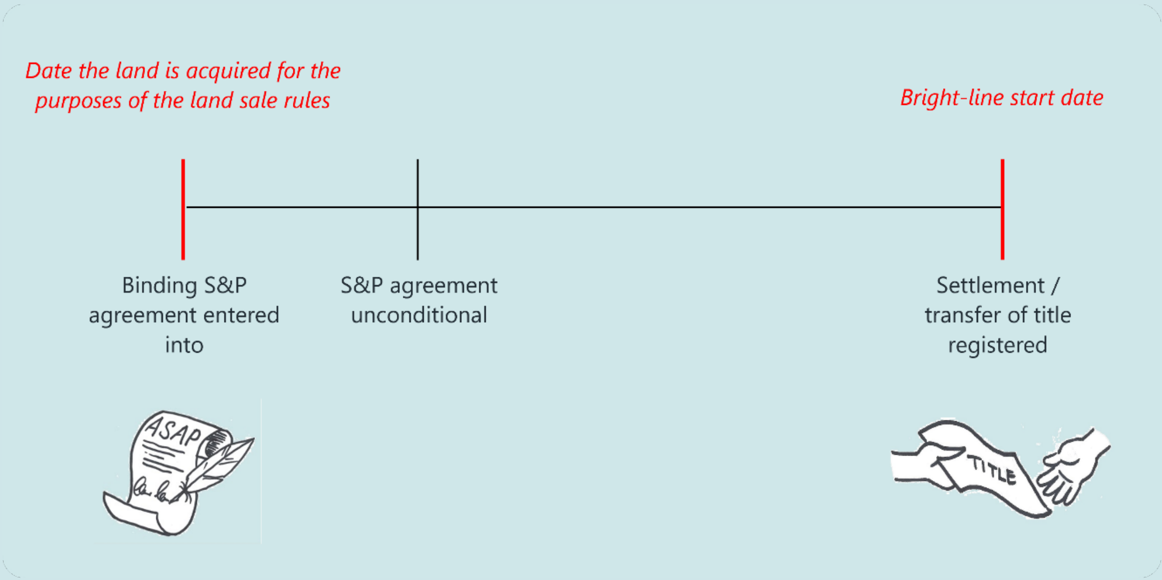
**When does someone first have an estate or interest in land under a sale and purchase agreement?**

13. The Act does not specify when someone is considered to first have an estate or interest in land. However, in *Bevin v Smith* [1994] 3 NZLR 648 (CA) the court held that a purchaser has an equitable interest in land from the time a binding contract exists, even if it is conditional. This is when equitable remedies are available to protect the purchaser's rights under the contract, though specific performance in the strict sense (ie, for the transfer of title) would not yet be available.
14. The most common conditions in contracts for the sale and purchase of land (eg, the need to obtain finance, a building report or a LIM) would not prevent there being a binding contract. But sometimes conditions will mean that there is not yet a binding contract, so the land is not considered to be acquired yet. For example, there may not be a binding contract if a condition requires the approval of a company's directors or the trustees of a trust, or requires due diligence to be carried out. It is necessary to consider the terms of the particular contract and the nature of the conditions to determine whether there is a binding contract.[2]
15. As noted at [11], under s CB 15B, the date a person acquires land is the date they first have an estate or interest in the land, or an option to acquire the land. In a typical land purchase, this is the date at which a binding contract to purchase the land is formed (even if some conditions still need to be met).
16. This is supported by the extrinsic materials from the time of the introduction of s CB 15B. Those materials make it clear that a person is treated as acquiring land at the time a binding agreement for the acquisition is formed, even if there are conditions that still need to be fulfilled. See, for example, *Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Commentary on the Bill* (Inland Revenue, November 2013).
17. What is relevant is the time that the person acquires the first interest in **the land in question** – that is, the land they are disposing of. Other interests in the same underlying physical land will not be relevant. For example, if the sale of a freehold estate may give rise to taxation and the date of acquisition is relevant, the fact that the person previously had a leasehold interest in the land will not be relevant. The date on which their first interest in the freehold estate arose will be the date they acquired that land.
18. The following two examples illustrate when land is acquired under the general rule in s CB 15B(1).



2 See *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 (CA), *Willetts v Ryan* [1968] NZLR 863 (CA), and *Barrett v IBC International Ltd* [1995] 3 NZLR 170 (CA)).

**Example | Tauira 1 – Binding sale and purchase agreement**

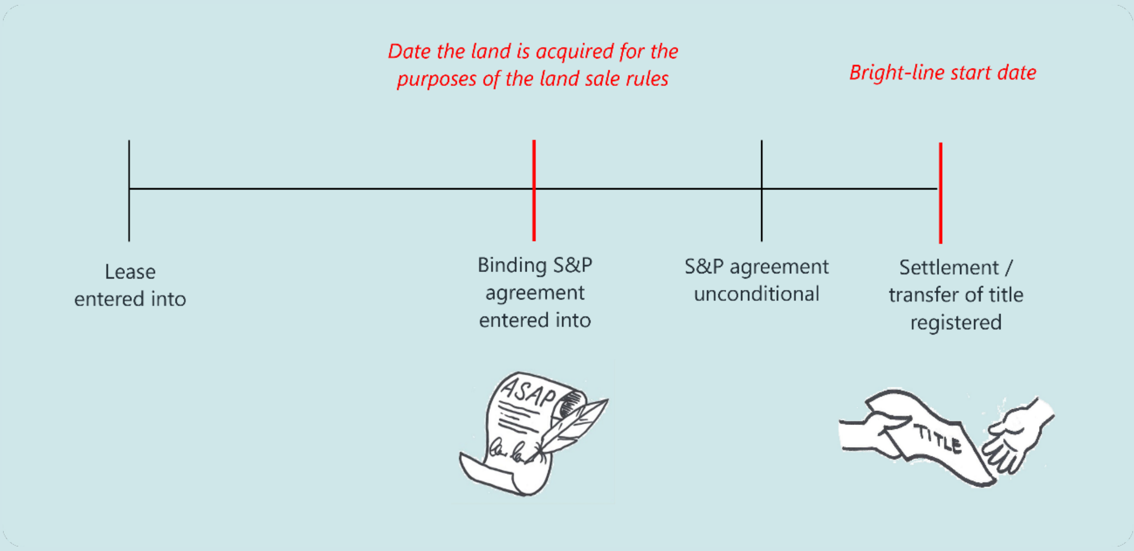



Sally entered into a sale and purchase agreement (S&P) to purchase some land (the freehold estate). The agreement was subject to Sally obtaining satisfactory LIM and building reports within a specified timeframe. She met those conditions, and the sale was settled in due course. When Sally sold the property sometime later, one of the land sale rules in subpart CB potentially applied, which meant that the date that she acquired the land was relevant.

For the purposes of the land sale rules, Sally acquired the land when she and the vendor entered into the binding sale and purchase agreement, even though that agreement was subject to conditions, because that was when Sally first had an equitable interest in the land.

If Sally sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date from which the 2-year period runs) is the date the transfer of title was registered to Sally. If Sally sold the land before 1 July 2024, one of the historical bright-line tests may apply. See **QB 25/11** for more information.

**Example | Tauira 2 – Lease before acquisition of freehold estate**




Tony and Cleo were renting a house that the owner then decided to sell. Before putting the property on the market, the owner asked Tony and Cleo if they were interested in purchasing the property. They were, so entered into a sale and purchase agreement (S&P) for the property. The agreement was subject to finance. The couple met that condition, and the sale was settled in due course.

When Tony and Cleo sold the property sometime later, one of the land sale rules in subpart CB potentially applied, which meant that the date that they acquired the land (the freehold estate) was relevant.

For the purposes of the land sale rules, Tony and Cleo acquired the land (the freehold estate) when they and the vendor entered into the binding sale and purchase agreement, even though it was subject to finance, because that was when Tony and Cleo first had an equitable interest in the land. It is not relevant that they previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when they acquired the freehold estate.

If Tony and Cleo sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date from which the 2-year period runs) is the date the transfer of title was registered to Tony and Cleo. If Tony and Cleo sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB 25/11 for more information.

### Date of acquisition for nominations, assignments of contractual rights, and novations of contracts

19. There are some common situations concerning contracts for land transactions that may affect the date of acquisition for the purposes of the land sale rules. The following outlines these situations and the relevant date of acquisition for each.

**Nominations**

20. There are two types of common nomination situation that may affect the date of acquisition.
21. The first is where the named purchaser is acting on someone else's behalf, and that person is subsequently nominated as the purchaser.
22. In this situation, s YB 21 applies. Under that provision, because the named purchaser was acting on the other person's behalf, the other person is treated as having done what the named purchaser did (ie, enter into the contract), and holding the resulting rights. The person acting on the other's behalf is ignored. Because of this, the person who the nominee is acting for will be treated as having acquired the land at the time the nominee first had an estate or interest in the land. In a standard purchase of land situation this will be when there is a binding contract between the vendor and the nominee to purchase the land.
23. The second common nomination situation is where someone enters into a binding sale and purchase agreement to purchase land and that person "and/or nominee" are named as the purchaser. Before settlement, the person may then choose to nominate someone else (a nominee) to complete the purchase. A common situation where this occurs is where, after entering into the sale and purchase agreement, the purchasers decide to hold the property in a trust or other entity.

24. In this second type of nomination situation, the nominee can enforce the contract through ss 12 and 17 of the Contract and Commercial Law Act 2017,[3] but the original contracting party (the nominator) remains a party to the contract and may also enforce its terms.
25. In this situation, the nominee acquires the land under s CB 15B on the date they are nominated as the purchaser. This is when the nominee first has an equitable interest in the land. This is because the nominee can enforce the contract through ss 12 and 17 of the Contract and Commercial Law Act 2017. While the original named purchaser remains a party to the contract, and may also enforce its terms (in addition to remaining liable for the performance of the burden of their promises under the contract), the nomination gives the nominee an equitable interest in the land too.[4]
26. Usually, in this type of nominee situation, the nominator and nominee are associated. Where land is transferred between associated persons, s CB 15(2) alters the date of acquisition for the transferee for the purposes of most of the land sale rules (ss CB 7 to CB 12, and s CB 14). Section CB 15(2) treats the transferee as having acquired the land on whatever date the transferor acquired it. However, s CB 15(2) will **not apply** to alter the date of acquisition for a nominee who is associated with the original named purchaser who nominated them. This is because the original named purchaser does not *transfer* their interest in the land to the nominee when they make the nomination. As noted at [24], they continue to have their rights under the contract and, therefore, their interest in the land, until settlement. The nomination simply creates additional rights (for the nominee).
27. The nominee's date of acquisition is, therefore, established under the general rule in s CB 15B(1). As noted at [25], this will be the date they are nominated as the purchaser.

**Assignment of contractual rights**

28. Another scenario that can occur is that the named purchaser assigns their rights under the sale and purchase agreement to someone else. If there is an assignment of contractual rights, the assignor **transfers** their rights to the assignee, who is then entitled to the benefit of the contract and can enforce those rights against the other party to the contract.
29. An assignment of contractual rights occurs under a sale and purchase agreement to purchase land if there is a deed or other signed document that shows the intention is that the original named purchaser is transferring all of their rights under the sale and purchase agreement to the other person – whether absolutely, conditionally, or by way of charge.
30. A common example of an assignment of contractual rights is where someone purchases land off the plans and then on-sells it before settlement. Note that the document does not need to claim to be an assignment to be one. A document that is described as a nomination may, in fact, amount to an assignment of the contractual rights. That said, someone simply nominating a different person or entity as the purchaser would not inadvertently create an assignment of the contractual rights, given the nature of the wording that would be needed for there to be an assignment.
31. In this situation, the assignee acquires the land under s CB 15B on the date of the assignment. This is when the assignee first has an equitable interest in the land.
32. If the assignor and assignee are associated, the assignee's date of acquisition for the purposes of most of the land sale rules (ss CB 7 to CB 12, and s CB 14) will be the date that the assignor first had their equitable interest in the land (ie, typically, the date they entered into the contract to purchase the land, even if some conditions still needed to be met).
33. This is because, as above, s CB 15(2) treats someone who acquires land from an associated person as having acquired it on the date the associated person did. That means the assignee is treated as having acquired the equitable interest in the land that the assignor had at the date the assignor acquired it.
34. If the assignee's subsequent disposal of the estate in fee simple is potentially subject to tax and the date they acquired the land is relevant, the question in terms of s CB 15B is when they first acquired an estate or interest in that land. Because they were associated with the assignor, so are treated as having acquired the equitable interest at the time the assignor did, that is when they first had an interest in the estate in fee simple.



3 See for example, *Rattrays Wholesale Ltd v Meredyth-Young & A'Court* [1997] 2 NZLR 363 (HC) and *Laidlaw v Parsonage* [2010] 1 NZLR 286 (CA), concerning the predecessors to those sections.

4 *Rivette v Atrax Group New Zealand Ltd* (2010) 11 NZCPR 723 (HC).

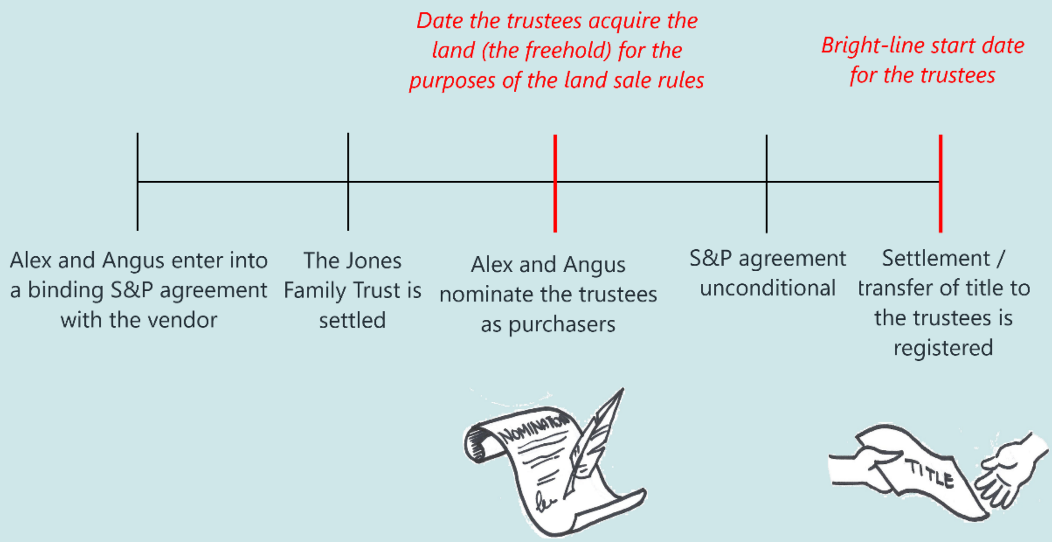
**Novation of the contract**

35. It is also possible for there to be a novation, in which case the original contract is discharged, and a new contract with a different purchaser entered into. This requires the vendor to consent to both the cancellation of the original contract and the creation of the new contract. Consent may be inferred from the behaviour of the vendor, but a normal nomination situation is unlikely to be regarded as a novation. See, for example, *Karangahape Road International Village Ltd v Holloway* [1989] 1 NZLR 83 (HC) and *Stonne Ltd v Ronyx Holdings Ltd* (2005) 7 NZCPR 18 (HC).

36. If what has occurred is a novation of the contract (see [35]), there will be no implications under the land sale rules for the original purchaser. This is because their interest in the land is not disposed of – it simply ceases to exist when the original contract is discharged. The purchaser under the new contract will acquire the land under the rules discussed in this QWBA.

37. The following two examples illustrate when land is acquired under s CB 15B where there is a nomination (Example | Tauira 3), and when there is an assignment of contractual rights (Example | Tauira 4).

**Example | Tauira 3 – Acquisition of land where there is a nominee**




Alex and Angus entered into a sale and purchase (S&P) agreement to buy a property they thought would be a great investment. They planned to hold the property in a trust, but had not yet settled a trust when they found the property they wanted to buy. The sale and purchase agreement named "Alex and Angus and/or nominee" as the purchaser. Alex and Angus later settled a trust (the Jones Family Trust), and advised the vendor that they nominated the trustees of the Jones Family Trust to be the purchasers and take title at settlement. After they obtained a satisfactory building report and LIM, the sale and purchase agreement subsequently went unconditional.

The sale was concluded, and the title was registered in the names of the trustees of the trust. When the Jones Family Trust sold the property some years later, one of the land sale rules in subpart CB potentially applied and the date that the trustees of the trust acquired the land was relevant.

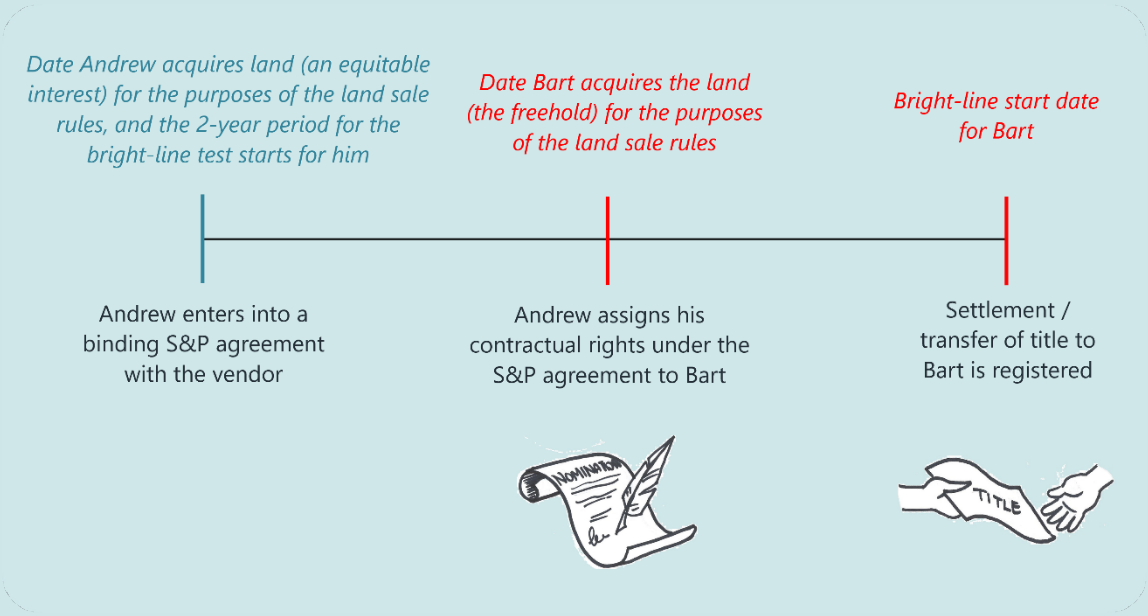
For the purposes of the land sale rules, the trustees of the Jones Family Trust acquired the land on the date Alex and Angus nominated the trustees as the purchasers. This was when they first had an equitable interest in the land.

Alex and Angus are each associated with the trustees of the trust, because they are settlors of the trust (see s YB 8). But s CB 15(2) does **not** apply in this case to treat the trustees of the Jones Family Trust as having acquired the land when Alex and Angus did. This is because the nomination did not give rise to a transfer of land from Alex and Angus to the trustees. Alex and Angus continued to hold their rights under the contract, and therefore their interest in the land. The nomination simply created additional rights (for the trustees).

If the trustees of the Jones Family Trust sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date the 2-year period runs from) is the date the transfer of title was registered to the trustees. If the trustees sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB 25/11 for more information.

The nomination of the trustees as purchaser will not give rise to any tax implications under the land sale rules for Alex and Angus. This is because, as noted above, Alex and Angus did not transfer their interest in the land to the trustees when they made the nomination – there was no disposal. On settlement, when the legal title transferred to the trustees, Alex and Angus's interest in the land simply ceased to exist; it was not disposed of.

**Example | Tauira 4 – Acquisition of land where there is an assignment of contractual rights to purchase the land**




Andrew entered into a sale and purchase (S&P) agreement to buy a house, and paid a deposit of $60,000. Andrew later received an unsolicited offer from a non-associated party, Bart, to buy the property. Andrew agreed to the sale and, as settlement had not yet occurred, Andrew and Bart decided that Andrew would assign his rights under the sale and purchase agreement to Bart in exchange for a fee of $110,000. This was recorded in a deed, which was signed 2 months after Andrew entered into the sale and purchase agreement with the vendor. The deed was entitled "Deed of Nomination", but it was clear from the words of the deed that the intention was that Andrew was transferring his rights under the sale and purchase agreement to Bart.

Therefore, the transaction was an assignment of the contractual rights, not a nomination. The label the parties put on the document does not determine its legal effect. The sale was concluded with Bart as the purchaser. When Bart sold the property some years later, one of the land sale rules in subpart CB potentially applied and the date that he had acquired the land was relevant.

For the purposes of the land sale rules, Bart acquired the land on the date the deed that assigned the contractual rights to him was executed. This was when Bart first had an equitable interest in the land.

If Bart sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date the 2-year period runs from) is the date the transfer of title was registered to him. If Bart sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB 25/11 for more information.

When Andrew entered into the sale and purchase agreement to buy the house, he acquired an equitable interest in the land (which is "land" as defined in s YA 1). The bright-line test could apply to Andrew's disposal of his rights under the sale and purchase agreement to Bart, if none of ss CB 6 to CB 12 apply. When Andrew assigned the rights under the contract to Bart, he transferred his equitable interest to Bart. Because Andrew entered into an agreement to dispose of land before the registration of title, the bright-line period started on the date he acquired the equitable interest – that is, the date the sale and purchase agreement was entered into.

Because the land is residential land, and the assignment of the contractual rights to Bart was within 2 years of the start of the bright-line period for Andrew, the amount Andrew derived on the disposal ($110,000) is income under the bright-line test in s CB 6A (if none of ss CB 6 to CB 12 apply). The main home exclusion from the bright-line test (in s CB 16A) cannot apply because Andrew never lived in the house. Andrew would be able to deduct the cost of his acquisition of the equitable interest (ie, the amount of the deposit he paid, $60,000).

**What if someone acquires land by way of an option?**

38. A different date of acquisition rule (in s CB 15B(3)) applies if someone acquires land through the exercise of an option to acquire it.

39. An option to acquire land might be a right contained within a lease, or it might be granted separately. An option is essentially an offer to sell, together with a contract not to revoke the offer.[5]

40. Someone may also be granted what is known as a pre-emptive right or "first right option" to acquire land – for example, a right of first refusal or a right of first offer. Although these pre-emptive rights are not, strictly speaking, options, if someone acquires the land through the exercise of such a right, it will have become an option by that point. This means the date of acquisition rule for acquiring land through the exercise of an option will also apply if someone acquires the land through the exercise of a pre-emptive right.

41. Under the rule, if a person acquires land through the exercise of an option, they are regarded as acquiring the land **on the date that they exercised the option**. As noted above, what is relevant is when they acquired the land in question (ie, the land they are disposing of). It is not relevant if they previously had a different interest in the same underlying physical land. For example, if a person had a leasehold interest in the land and an option to acquire the freehold, and they exercise the option, acquire the freehold and subsequently dispose of it, what is relevant is when they acquired the freehold. In that situation it would be the date that they exercised the option. Their prior leasehold interest is not relevant.

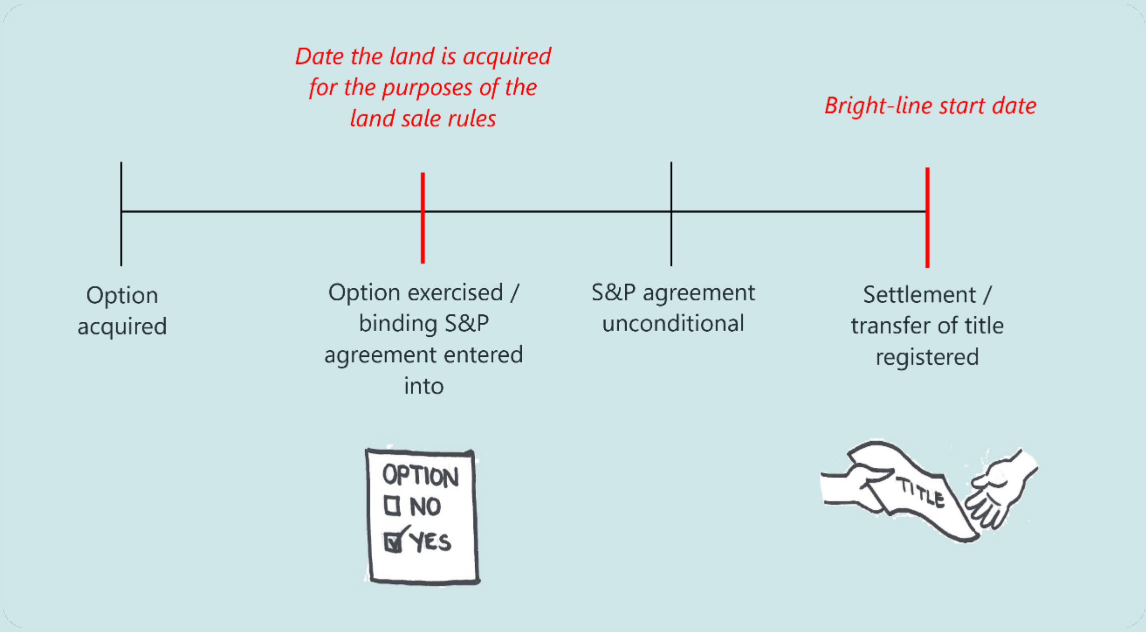
42. Another thing to note is that an option to acquire land (or an estate or interest in land) is also itself "land" as defined in the Act. Therefore, if someone disposes of an option to acquire land, the date the option was acquired may be relevant. On this point, see from [45].

43. The following four examples illustrate when land is acquired under s CB 15B where an option or "first right option" is involved. The first three examples involve an option to purchase land (Example | Tauira 5), lease with option to purchase land (Ex | Tauira 6) or lease with later option to purchase land (Example | Tauira 7). Example | Tauira 8 involves a "first right option".



5 See, for example, *Alexander v Tse* [1988] 1 NZLR 318 (CA), and DW McMorland, *Sale of Land* (4th ed, Cathcart Trust, Auckland, 2022) at 3.16).

**Example | Tauira 5 – Option to purchase land**

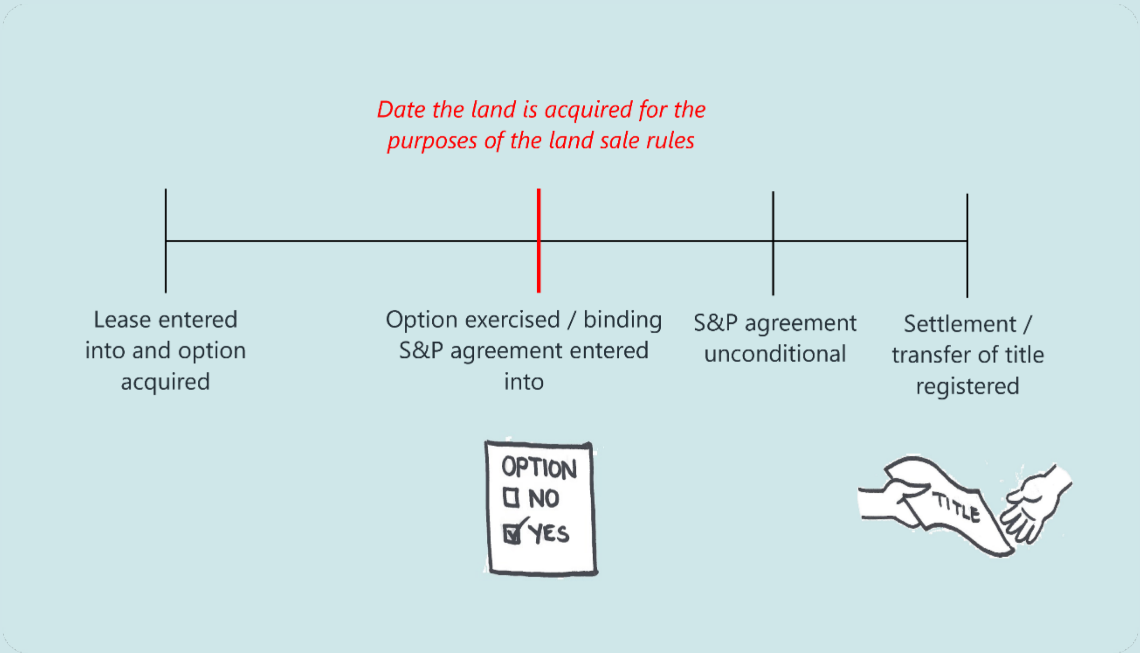



Sanjay purchased an option to buy some land for a specified sum. He exercised the option. Doing so created a binding contract for the sale and purchase (S&P) of the land on the terms set out in the option contract. The sale was settled in due course. When Sanjay went to sell the land several years later, one of the land sale rules in subpart CB potentially applied, meaning the date that Sanjay acquired the land (the freehold estate) was relevant.

Because Sanjay acquired the freehold estate through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the rule in s CB 15B(3), for the purposes of the land sale rules, Sanjay acquired the land (the freehold) when he exercised the option.

If Sanjay sold the land on or after 1 July 2024 and none of ss CB 6 to CB 12 applied, the 2-year bright-line test could potentially apply. The bright-line start date (the date from which the 2-year period runs) is the date the transfer of title was registered to him. If Sanjay sold the land before 1 July 2024, one of the historical bright-line tests may apply. See QB 25/11 for more information.

**Example | Tauira 6 – Lease with option to purchase land**

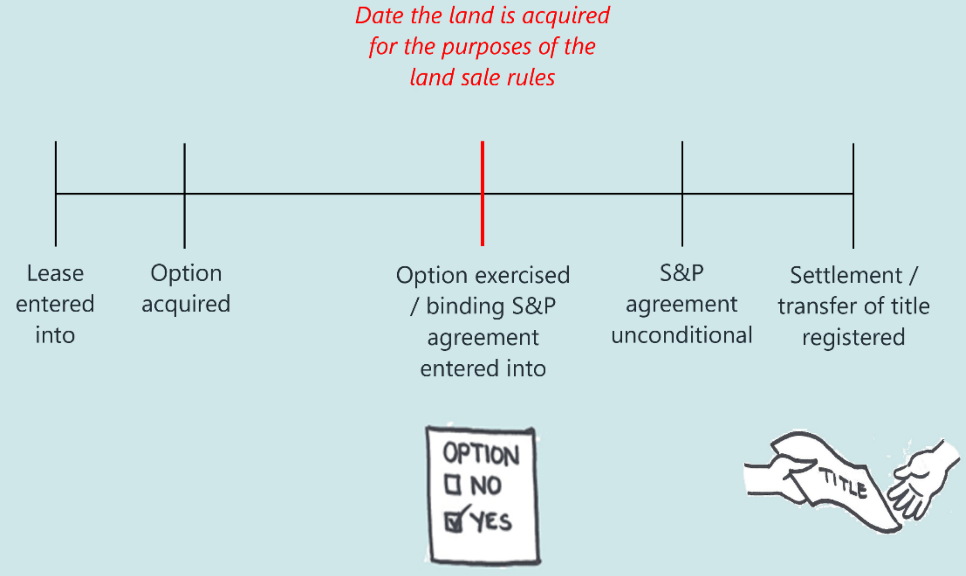



Baymax Robotics Limited entered into a lease of business premises and at the same time acquired an option, exercisable within the next 2 years, to buy the premises for a specified sum. Baymax Robotics exercised the option, intending to subsequently sell the land, as it was considered a profit could be made. In exercising the option, a binding contract for the sale and purchase (S&P) of the land was created on the terms set out in the option contract. The sale was settled in due course. When Baymax Robotics went to sell the premises, one of the land sale rules in subpart CB potentially applied and the date that Baymax Robotics had acquired the land (the freehold estate) was relevant.

Because Baymax Robotics acquired the freehold estate through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the rule in s CB 15B(3), for the purposes of the land sale rules, Baymax Robotics acquired the land (the freehold) when it exercised the option.

If none of ss CB 6 to CB 12 applied, it may be necessary to consider whether the bright-line test could potentially apply. This would involve considering whether the land is "residential land" as defined in s YA 1. It is assumed for this example the land is not "residential land" as it is used predominantly as business premises. See **QB 25/14**: **When does the business premises exclusion to the bright-line test apply?** for information about the business premises exemption to the bright-line test.

**Example | Tauira 7 – Lease and subsequent option to purchase land**



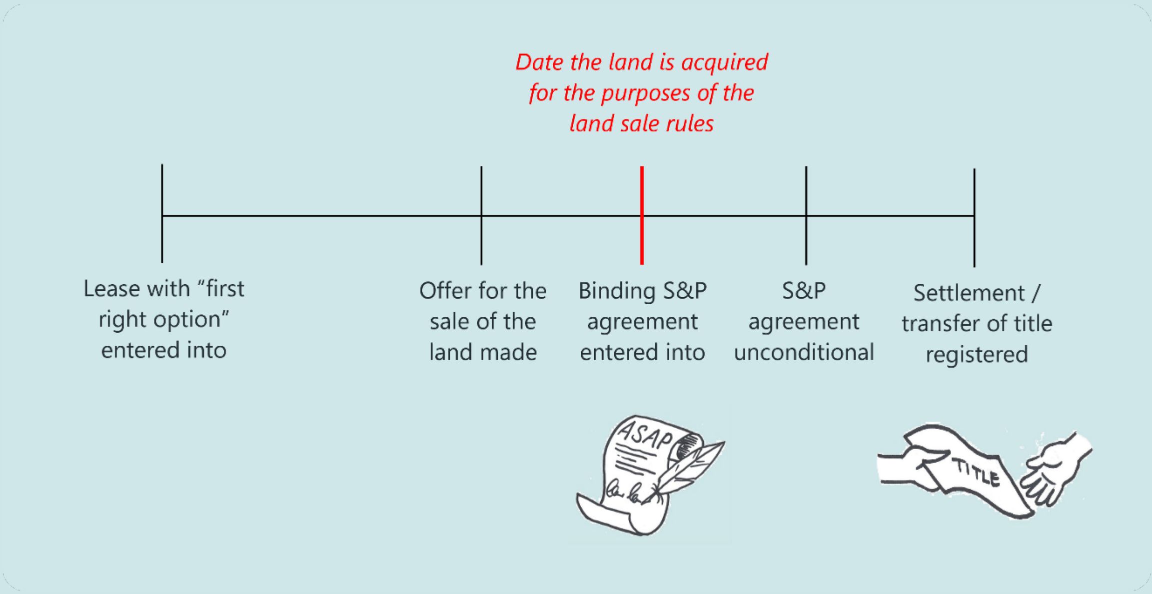

Scissorhands Sculpting Limited was leasing some land from which it operated its business. As the business became increasingly successful, Scissorhands Sculpting wanted to lock in the ability to purchase the land if things continued to go well. Scissorhands Sculpting entered into negotiations with the owner and, as a result, acquired an option, exercisable within a set period, to buy the land for an agreed sum. Scissorhands Sculpting exercised the option. In exercising the option, a binding contract for the sale and purchase of the land was created on the terms set out in the option contract. The sale was settled in due course.

To maximise the profit, Scissorhands Sculpting did some development work on the land prior to selling it. One of the land sale rules in subpart CB potentially applied to the sale and the date that Scissorhands Sculpting had acquired the land (the freehold estate) was relevant.

Because Scissorhands Sculpting acquired the freehold through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the rule in s CB 15B(3), for the purposes of the land sale rules, Scissorhands Sculpting acquired the land (the freehold) when it exercised the option. It is not relevant that the company previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

If none of ss CB 6 to CB 12 applied, it may be necessary to consider whether the bright-line test could potentially apply. This would involve considering whether the land is "residential land" as defined in s YA 1. It is assumed for this example the land is not "residential land" as it is used predominantly as business premises. See QB 25/14 for information about the business premises exemption to the bright-line test.

**Example | Tauira 8 – Lease with "first right option" to purchase land**




Jimmy Chews Limited leased its restaurant premises and had a "first right option" (a right of first refusal) to purchase the land if the owner decided to sell it. Later, the owner decided to sell the land during the term of the lease. The owner made an offer to Jimmy Chews, which Jimmy Chews accepted, and the parties entered into a sale and purchase (S&P) agreement.

The sale and purchase agreement was subject to finance and to the obtaining of a satisfactory building report and LIM. Those conditions were fulfilled, and the sale was settled in due course. Jimmy Chews moved to larger business premises and leased the land to another hospitality business. When Jimmy Chews went to sell the land, one of the land sale rules in subpart CB potentially applied and the date that Jimmy Chews acquired the land (the freehold estate) was relevant.

When the previous owner made an offer to Jimmy Chews, the "first right option" became an option to acquire the freehold. Because Jimmy Chews acquired the freehold through the exercise of that option, the exception to the general rule (contained in s CB 15B(3)) applies.

Under the rule in s CB 15B(3), for the purposes of the land sale rules, Jimmy Chews acquired the land (the freehold) when it exercised the option by accepting the offer and entering into the binding contract for the sale and purchase of the land. It is not relevant that Jimmy Chews previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

If none of ss CB 6 to CB 12 applied, it may be necessary to consider whether the bright-line test could potentially apply. This would involve considering whether the land is "residential land" as defined in s YA 1. It is assumed for this example the land is not "residential land". See QB 25/14 for information about the business premises exemption to the bright-line test.

### Subdivided land

44. If someone subdivides land, a new title might be issued. This does not reset the person's date of acquisition of the land. Their date of acquisition for the new land will be whatever date they acquired the original undivided piece of land.[6]

### Acquisition of an option

45. As noted at [6], an option to acquire land or an estate or interest in land also falls within the definition of "land" in the Act.

46. Because options to acquire land or estates or interests in land are "land", if someone disposes of an option to another party rather than exercising it, the amount they derive on disposing of the option may be income under one of the land sale rules in subpart CB. Depending on which taxing provision is potentially relevant, the time at which the person acquired the option may be relevant.

6 For example, see *Paul Stephens Construction Ltd v CIR* (1990) 12 NZTC 7,192 (HC).

47. Under s CB 15B, an option will be acquired when a binding agreement creating the option, or for the transfer of the option, is entered into. This is the time from which the holder or purchaser of the option has an interest in the option.

48. Example | Tauira 9 illustrates when a company acquires an option to acquire land under s CB 15B, and what bright-line start date applies for an option. See QB 25/11 for more detailed guidance on the bright-line start date.

**Example | Tauira 9 – Acquiring an option to purchase land**

ABC Dealing Limited, which carries on a business of dealing in land, entered into an option contract under which it had the right to purchase some residential land within a specified period, for a specified price. ABC Dealing Limited decided to sell the option, and did so.

For the purposes of the land sale rules, ABC Dealing Limited acquired the land (the option) when the option contract was entered into. This is the time from which ABC Dealing Limited has an interest in the option.

Because there was no registered transfer of land to ABC Dealing Limited before the date it entered into a contract to sell the option, the bright-line start date is also the date the option contract was entered into. See **QB 25/11** for more information.

### Acquisition of land on behalf of a company to be formed

49. Section CB 15B(2) provides that if a person on behalf of a company to be formed enters into an agreement under which the company will have land, the company is treated, for the purposes of subpart CB in relation to the land, as existing from the date the person enters into the agreement.

50. Because the company is deemed to exist at the time the relevant agreement is entered into and the person entered into the agreement on behalf of the company, the date that the person entered into the agreement (that gave rise to an interest in land) will be the date the company is treated as having acquired the land.

### When there may be a different date of acquisition rule

51. Note that, for particular transactions, relevant provisions in subpart FB or FC may override the date of acquisition rules in s CB 15B. Those subparts deal with transactions such as transfers on settlements of relationship property, distributions on death, distributions from a trust, transfers of value from a company, and gifts of property.

52. In addition, for the purposes of certain provisions, a person may be treated as acquiring land at a different date than the date under s CB 15, if they acquire land on an amalgamation (s FO 17) or, as noted at [26], from an associated person (s CB 15(2)).

# References | Tohutoro

## Legislative references | Tohutoro whakatureture

Contract and Commercial Law Act 2017, ss 12 and 17

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 14, CB 15, CB 15B, CB 16A, FO 17, YA 1 ("estate" (in relation to land), "estate in land" "estate or interest in land", "interest" (in relation to land), "interest in land", "land", "residential land"),YB 8, YB 21, subparts FB and FC.

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*AAA Developments (Ormiston) Ltd v CIR (2015) 27 NZTC 22,026 (HC)*

*Alexander v Tse [1988] 1 NZLR 318 (CA)*

*Barrett v IBC International Ltd [1995] 3 NZLR 170 (CA)*

*Bevin v Smith [1994] 3 NZLR 648 (CA)*

*Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd [2002] 2 NZLR 433 (CA)*

*Karangahape Road International Village Ltd v Holloway [1989] 1 NZLR 83 (HC)*

*Laidlaw v Parsonage [2010] 1 NZLR 286 (CA)*

*Paul Stephens Construction Ltd v CIR (1990) 12 NZTC 7,192 (HC)*

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

*Rivette v Atrax Group New Zealand Ltd (2010) 11 NZCPR 723 (HC)*

*Stonne Ltd v Ronyx Holdings Ltd (2005) 7 NZCPR 18 (HC)*

*Willetts v Ryan [1968] NZLR 863 (CA)*

## Other references | Tohutoro anō

*McMorland, DW, Sale of Land (4th ed, Cathcart Trust, Auckland, 2022)*

*Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Commentary on the Bill (Inland Revenue, Wellington, November 2013)*

QB 25/11: When is the bright-line start date for the 2-year bright-line test?
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# QB 25/11: When is the bright-line start date for the 2-year bright-line test?

Issued | Tukuna: 9 May 2025

This question we've been asked (QWBA) provides guidance on the bright-line start date, to work out whether residential land is potentially subject to the 2-year bright-line test.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A and FD 1

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

- **QB 17/02**: Income tax – Date of acquisition of land, and start date for 2-year bright-line test

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

## Question | Pātai

**When is the bright-line start date for the 2-year bright-line test?**

## Answer | Whakautu

**If you dispose of residential land within 2 years of acquiring it, the disposal may be subject to tax under the 2-year bright-line test in s CB 6A. The date the 2-year period starts is referred to as the "bright-line start date".**

**In a standard land purchase, the bright-line start date is the date the title is transferred to you. But different start dates apply in other circumstances. Table | Tūtohi 1 shows the relevant bright-line start dates in different situations.**

**Note that the bright-line start date is usually different from the date of acquisition of land for the purpose of the other land sale rules in the Act.**

**Table | Tūtohi 1 – Bright-line start date**

| Circumstances | Bright-line start date |
|---|---|
| Standard purchase of land. | The date the land transfer to you is registered under the Land Transfer Act 2017. |
| Land held in a trust and there is a change of trustees. | The bright-line start date that the previous trustee had. |
| Land that results from you subdividing your land. | Your bright-line start date for the original undivided piece of land. |
| Land acquired on the completion of a land development or subdivision (ie, land bought off the plans). | The date you entered into the contract to acquire the land. |
| You have a freehold estate that was converted from a lease with perpetual right of renewal. | The date you were granted the leasehold estate. |
| Settlement of relationship property. | The bright-line start date that the transferor under the settlement had. |

| | |
|---|---|
| A joint tenancy converted to a tenancy in common, or vice versa. | To the extent your share or notional share in the land has not changed, you keep the bright-line start date you had for the land before the conversion. |
| A land transfer that changes your share in the land. | The land transfer registration date is the bright-line start date only for any additional share in the land you are getting. Your bright-line start date for the share in the land you owned before does not change. |
| Land outside New Zealand. | The date the land transfer to you is registered under any overseas law similar to the Land Transfer Act 2017. |
| Where the title is not registered to you before your bright-line end date.<br><br>[Your bright-line end date is the earliest of the date you have an agreement to dispose of the land or the date you in fact dispose of it.] | The date you acquired an estate or interest in the land under s CB 15B. This is the same date you are regarded as acquiring land for the purposes of the other land sale rules in the Act, as explained in QB 25/10. |
| Land transferred to you from an associated person, where the requirements for rollover relief are met (see from [19]). | The bright-line start date that the transferor had. |
| Land for which other rollover relief is available. This may be relevant for transfers involving Māori trusts or land included in a settlement of a claim under the Treaty of Waitangi. | The bright-line start date that the transferor had. |

## Explanation | Whakamāramatanga

1. The 2-year bright-line test in s CB 6A may apply to tax gains from the disposal of residential land if your "bright-line end date" (which, for typical land sales, is the date you enter into an agreement to sell or dispose of the land)[1] is within 2 years of your "bright-line start date".
2. You need to identify when the 2-year period for the bright-line test in s CB 6A starts (the "bright-line start date"), so you can determine if the disposal of your land may be taxed under the bright-line test. Note that in some situations, even if you dispose of the land within the 2-year period, the bright-line test will not apply – for example, if you satisfy the main home exclusion (s CB 16A).
3. The current 2-year bright-line test potentially applies only if:
   - none of the land sale rules in ss CB 6 to CB 12 apply; and
   - you dispose of the residential land on or after 1 July 2024.
4. Other bright-line tests, which vary from 2 to 10 years, may apply to land disposed of before 1 July 2024. The start date for those old bright-line tests is generally the same as the bright-line start date for the current 2-year test, but not in all situations. This question we've been asked (QWBA) concerns only the current 2-year test.
5. The date of acquisition for the purposes of the other land sale rules in the Act is often different from the bright-line start date. 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 on working out the date of acquisition for the purposes of the land sale rules generally.
6. This QWBA does not contain examples, but the examples in QB 25/10 state the relevant bright-line start date as well as the date of acquisition.

### In a standard land purchase, the bright-line start date is the date the land transfer to you was registered

7. In a typical land purchase, the 2-year period starts when the land transfer to you was registered under the Land Transfer Act 2017 and you acquired the legal title. This occurs on the settlement date in almost all cases.
8. However, there are exceptions to this usual rule that change your bright-line start date (as Table | Tūtohi 1 above shows). The following briefly explains the other possible bright-line start dates set out in the table.

1 Section CB 6A(4).

## Exceptions to the standard bright-line start date

### Change of trustee

9. Transfers due to a change in trustee do not affect the original bright-line start date. This means that when a trustee of a trust transfers land to another trustee of the trust due to a change in trustees, the bright-line start date remains the same as the original trustee's bright-line start date.

### Subdivided land

10. If you subdivide land, your bright-line start date is the start date you had for the undivided land. It does not matter that new titles may be issued.

### Land bought off the plans

11. If you acquired land on completion of a land development or subdivision (ie, you purchased off the plans), your bright-line start date is the date the sale and purchase agreement was entered into. It is not the date the transfer to you was registered, after the development or subdivision was completed.

### A freehold estate converted from a lease with a perpetual right of renewal

12. If you had a lease with a perpetual right of renewal that was converted into a freehold estate, your bright-line start date is the date the original leasehold estate was granted to you.

### Settlement of relationship property

13. Under s FB 3A, when residential land is transferred on a settlement of relationship property, the bright-line start date for the transferee is whatever the transferor's bright-line start date was.

### Conversion of joint tenancy to tenancy in common (or vice versa)

14. A joint tenancy is when the owners of land do not have divided shares in the land. A tenancy in common is when each owner has a divided share of the land that is recorded on the record of title. If you have a joint tenancy and convert this ownership to a tenancy in common, or vice versa, you do not get a new bright-line start date because of the conversion, except to the extent (if any) that your share (or notional share) of the land changes.

### A change in your share of the land

15. Under s CB 6A(3), if a transfer of land changes your share in a piece of land, the transfer registration sets the bright-line start date only for any new share in the land you are getting. The bright-line start date for the share in the land you had before does not reset.
16. This means, for example, if two people each have a 50% share in land, and one of them (Person A) buys the other person's (Person B's) share, Person A's bright-line start date for their original 50% share does not change, but their bright-line start date for the new 50% share is the date the title is transferred from Person B.

### Land outside New Zealand

17. For land outside New Zealand, your bright-line start date is the date the land transfer was registered under any overseas law similar to the Land Transfer Act 2017.

### The title is not registered to you before your bright-line end date

18. A special rule applies if your bright-line end date[2] for the land occurs before the land transfer to you is registered. In this situation, your bright-line start date will be the date you acquired an estate or interest under s CB 15B, which sets out when land is acquired for the purposes of the other land sale rules in the Act. As noted in Table 1, **QB 25/10** provides guidance on the date of acquisition for the land sale rules generally.

### Land transferred to you from an associated person, where rollover relief is available

19. In addition to the bright-line start dates covered in Table | Tūtohi 1, s FD 1 modifies the bright-line start date for disposals of property in certain circumstances. This is one aspect of what is referred to as "rollover relief" from the bright-line test.
20. Rollover relief covers disposals between associated persons in certain circumstances. This applies if the transferor and transferee have been associated under any of ss YB 2 to YB 13 for at least 2 years at the date of transfer.

2 As noted at [1], for typical land sales, this is the date you enter into an agreement to sell or dispose of the land.

21. Two individuals are associated if, for example, they are married or in a civil union or de facto relationship, or are within two degrees of blood relationship.[3] Other relevant types of association include a trustee and a beneficiary of the trust, or a person and a company for which the person has a voting or market interest of 25% or more.[4]
22. Rollover relief also applies to a transfer to a trustee of a trust if all beneficiaries are associated with the transferor and have been for at least 2 years. This ensures rollover relief can apply where land is settled on a new family trust. The requirement to have been associated with the transferor for at least 2 years does not apply to persons under 2 years of age or those who have become associated with the transferor due to marriage, civil union, de facto relationship, or adoption. In those situations, the person must have been associated with the transferor since birth, marriage, civil union, de facto relationship, or adoption (as applicable).
23. If s FD 1 applies, one of the consequences is that the transferee's bright-line start date is whatever the transferor's bright-line start date was. However, the following transitional rules apply if the transferor acquired the land before 1 July 2024:
    - If the transferor acquired the land before 27 March 2021, the bright-line start date the transferee takes on is 27 March 2021.
    - If the transferor acquired the residential land before 1 July 2024 and on or after 27 March 2021, the transferor's bright-line acquisition date is the date that the transferee takes on as their bright-line start date. This means if the transferor received rollover relief under an earlier bright-line test, the benefit of any earlier rollover relief continues under the current bright-line test.
24. For more information about rollover relief under s FD 1, see **QB 25/15: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?**

### Land transfers involving Māori trusts, where rollover relief is available

25. Section FD 2 also provides rollover relief for disposals into Māori rollover trusts, between Māori rollover trusts if the beneficiaries of both trusts are the same, and disposals out to a settlor of the trust in limited circumstances.[5]
26. "Māori rollover trust" is defined in s FD 2(6) as a trust in which a trustee is a "Maori authority" or eligible to elect to be one, and all beneficiaries of the trust are members of the same iwi or hapū, or descendants of the same tipuna, and the land is subject to Te Ture Whenua Maori Act 1993.
27. If s FD 2 applies, one of the consequences is that the transferee's bright-line start date is whatever the transferor's bright-line start date was.[6]

### Transfers of land included in a Treaty of Waitangi settlement, where rollover relief is available

28. There is also rollover relief available under s FD 3 for certain transfers of residential land included in a settlement claim under the Treaty of Waitangi, if the transfer is to a trustee of a trust that is or is eligible to be a Maori authority.
29. If s FD 3 applies, one of the consequences is that the transferee's bright-line start date is whatever the transferor's bright-line start date was.[7]

### Nominations

30. In a situation where the named purchaser nominates someone else to complete the purchase, the bright-line start date for the nominee is the date the transfer of title is registered to them, just like in a typical land transaction. If there is no registered transfer of the land to the nominee on or before the date they sell or dispose of the land, the 2-year period will start on the date they were nominated as purchaser.

3 This includes being within two degrees of relationship with a person's spouse or partner: s YB 4(1). There is an exception if the individuals cannot reasonably be expected to know the other person exists or is a close relative.

4 Sections YB 6 and YB 3 respectively.

5 The settlors must have originally transferred the land to the trustee, they must be beneficiaries of the trust, and they must have acquired the same amount of land back as they transferred in (or at least the same proportion if one of the settlors has died).

6 If the transferor acquired the land before 1 July 2024, their bright-line acquisition date is treated as a bright-line start date.

7 If the transferor acquired the land before 1 July 2024, their bright-line acquisition date is treated as a bright-line start date.

31. The nomination of someone else as purchaser does not give rise to any potential bright-line implications for the nominator (the original named purchaser).[8] This is because the nominator does not transfer their interest in the land to the nominee when they make the nomination – there is no disposal. When the legal title transfers to the nominee, the nominator's interest in the land simply ceases to exist, it is not disposed of. This is similar to the lapsing of an option to acquire land, which has been considered by the Taxation Review Authority not to be a disposition of land (*Case M4* (1990) 12 NZTC 2,021 (TRA)).

### Acquiring land for a company to be formed

32. There are no bright-line test implications for a person who acquires land on behalf of a company yet to be formed where the company subsequently ratifies the contract for the acquisition of the land. This is because s 182 of the Companies Act 1993 allows for ratification of pre-incorporation contracts, and at common law an effective ratification constitutes the relationship of principal and agent retrospectively.[9] This means that the person who acquired the land on behalf of the company yet to be formed has not themselves acquired (and subsequently disposed of) a land interest.
33. The company's bright-line start date is the date the instrument to transfer the land to the company is registered on settlement.

### Look-through companies

34. Because look-through companies are transparent for most income tax purposes, there are various transactions that involve an LTC that give rise to different bright-line issues and bright-line start dates. Interpretation statement **IS 25/15**: **Look-through companies and disposal of residential land under the bright-line test** considers the application of the bright-line test to different scenarios concerning LTCs, and outlines the relevant bright-line start dates.

8 This only applies to true nominations. In some situations, what is described as a nomination may be, in fact, an assignment of contractual rights. See QB 25/10 for more information about different types of nomination and assignments of contractual rights.

9 See further in this regard: *Laws of New Zealand* Agency (online ed, accessed 5 February 2025) from [42].

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Companies Act 1993, s 182

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 15B, CB 16A, FD 1 to FD 3, YB 2 to YB 13

Land Transfer Act 2017

### Case references | Tohutoro kēhi

*Case M4* (1990) 12 NZTC 2,021 (TRA)

### Other references

Stephen Kós (ed) *Laws of New Zealand* Agency (online ed, accessed 5 February 2025)

QB 25/10: On what date is a person treated as acquiring land for the purposes of the land sale rules?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-10**

QB 25/15: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-15**

IS 25/15: Look-through companies and disposal of residential land under the bright-line test
**taxtechnical.ird.govt.nz/interpretation-statements/2025/is-25-15**

# QB 25/12: How does the bright-line test apply to the sale of a subdivided section?

Issued | Tukuna: 9 May 2025

This question we've been asked (QWBA) explains when a section subdivided from residential land and sold within 2 years will be excluded from the bright-line test. It will be of interest to sellers seeking to rely on the main home exclusion.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A and CB 16A

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

- **QB 18/16**: Income tax — bright-line test — main home exclusion — sale of subdivided section

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

## Question | Pātai

**How does the bright-line test apply to the sale of a subdivided section?**

## Answer | Whakautu

**The bright-line test can apply if a person subdivides residential land and sells one or more of the subdivided sections within 2 years of the "bright-line start date". When determining whether the sale of the subdivided section is subject to the bright-line test, the bright-line start date for the section is the bright-line start date for the undivided land.**

**The sale is excluded from the bright-line test when the main home exclusion applies.**

**The main home exclusion applies when:**

- **the land in the subdivided section has been used predominantly for the seller's main home. This is usually met if more than 50% of the land is used by the seller for their main home. However, if the split between main home use of the land and other uses is close, the nature and importance of the different uses of the land may also be relevant; and**
- **the seller has used the land in the subdivided section in that manner for more than 50% of the bright-line period.**

**The main home exclusion can apply even if the section being sold does not have a dwelling on it. This is because "used for a dwelling" in the main home exclusion includes other areas of land the seller uses frequently, repeatedly or customarily in connection with or for the benefit of the dwelling.**

## Key terms | Kīanga tau tāpua

**Bright-line test** applies to tax sales of residential land occurring within a 2-year period.

**Curtilage** means an area of land attached to a dwelling and forming one enclosure with it, such as a yard or garden.

**Subdividing** involves the legal division of land into multiple sections and the creation of new legal titles for each section.

# Explanation | Whakamāramatanga

## The bright-line test

1. The bright-line test in s CB 6A taxes the sale of residential land within a 2-year period.
2. The 2-year bright-line test applies when a person disposes of residential land on or after 1 July 2024, if their bright-line end date (which is typically the date the person enters into an agreement to sell the land) is within 2 years of their bright-line start date (which in typical land transactions is the date on which the transfer to the person was registered). The period beginning on the bright-line start date and ending on the bright-line end date is referred to as the bright-line period. There are other bright-line tests that applied to land disposed of before 1 July 2024, but this QWBA concerns only the current 2-year bright-line test.
3. The bright-line test under s CB 6A applies only where none of the land sale rules in ss CB 6 to CB 12 apply (eg, s CB 6, which applies to the sale of land acquired for a purpose or with an intention of disposal).

## Scope of this QWBA

4. This QWBA is about whether the main home exclusion to the bright line test can apply in a situation where:
   - there is undivided land with a dwelling on it that is the seller's main home;
   - the land is then subdivided into new sections, one of which has the main home dwelling on it and another (or others) which do not; and
   - the seller sells one or more of the subdivided sections that do not contain the main home dwelling.
5. In this QWBA, it is assumed that none of the other land sale rules in ss CB 6 to CB 12 of the Income Tax Act 2007 apply to the sale of the subdivided section. The bright-line test needs to be considered only where the sale is not taxed under any of the other land sale rules in ss CB 6 to CB 12.
6. Additionally, for simplicity this QWBA assumes the person disposing of the land is not the trustee of a trust.[1]

## The bright-line test applies to residential land

7. The bright-line test applies to "residential land", which is a broadly defined term in s YA 1. The broad definition means that a subdivided section of land can still be residential land even if there is no dwelling on the land. It is sufficient that the owner has an arrangement relating to building a dwelling, or that it is bare land that may be used for building a dwelling under the operative district plan.
8. The definition of residential land also excludes land that is:
   - "farmland";[2] or
   - used predominantly as business premises.[3]
9. If a subdivided section of land is not residential land, the sale of the section will not be subject to the bright-line test.

## When is the bright-line start date for subdivided land?

10. Section CB 6A(2) outlines a person's bright-line start date for the disposal of residential land, which varies depending on the circumstances. As noted at [2], the bright-line start date in a typical land transaction is the date the instrument to transfer the title to the person is registered, which is the settlement date.
11. Section CB 6A(2) has a specific rule for land that results from a person subdividing their land. In that situation, the bright-line start date is the person's bright-line start date for the undivided land.
12. For example, if you purchase land in January 2019 and subdivide it into three lots with new titles being issued to you in July 2024, the bright-line start date for the subdivided lots will be January 2019. This means the bright-line test will not apply if you sell any of the lots on or after 1 July 2024, as the bright-line end date will not be within 2 years of the bright-line start date.

1 However, the main home exclusion may also be available, following the same principles, if the person disposing of the land is a trustee of a trust, if: (1) the dwelling was the main home of a beneficiary of the trust, and (2) no principal settlor of the trust has a main home, or if they do it is the home being disposed of.

2 See QB 25/13: When is the sale of a lifestyle block excluded from the bright-line test? for information about when a lifestyle block is "farmland".

3 Unless it used as business premises for a business of supplying accommodation, and the dwelling is not the main home of the person.

## Can the main home exclusion apply to a sale of a subdivided section of land?

13. The main home exclusion can apply to the sale of a subdivided section of land. It applies even though the subdivided section of land has a separate certificate of title from the undivided land, and even if the land has no dwelling on it.

14. This is because the subdivided land may still have been used predominantly, for most of the bright-line period, for a dwelling that was the seller's main home, as required by s CB 16A(1). The discussion from [25] explains how the main home exclusion can apply to land after it has been subdivided.

### The main home exclusion

15. The main home exclusion in s CB 16A(1) provides:

> **CB 16A Main home exclusion for disposal within 2 years**
>
> *Main home exclusion*
>
> (1) Section CB 6A does not apply to a person who disposes of residential land if the land has been **used predominantly, for most of the bright-line period, for a dwelling that was the main home** for—
>
> (a) the person; or
>
> (b) a beneficiary of a trust, if the person is a trustee of the trust and—
>
> (i) a principal settlor of the trust does not have a main home; or
>
> (ii) if a principal settlor of the trust does have a main home, it is that main home which the person is disposing of.
>
> *Modified rule for constructing main home*
>
> (2) For the purposes of determining under subsection (1) whether residential land has been used for most of the bright-line period predominantly for a dwelling that was the main home of the person or a beneficiary of a trust, as described in subsection (1), **the period in which the dwelling was constructed is ignored**.
>
> [Emphasis added]

16. For the main home exclusion to apply, the seller must have used the land in question predominantly, for most of the bright-line period, for a dwelling that was their main home.

17. Section YA 1 defines "main home":

> **main home** means, for a person, the 1 dwelling—
>
> (a) that is mainly used as a residence by the person (a **home**); and
>
> (b) with which the person has the greatest connection, if they have more than 1 home

18. There are three points to note about the definition of "main home":

- A person can have only one "main home".
- For a dwelling to be the "main home" of a person, it must be mainly used as a residence by the person (ie, a home).
- If the person has more than one home, the main home is the home with which the person has the greatest connection.

19. See **QB 24/01: If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test?** for help in determining which property the seller has the greatest connection with.

20. Land that is **"used… for a dwelling"** is not limited to the land on which the dwelling is situated or to the surrounding curtilage (like a yard and garden). Land used for a dwelling can also include other areas the person uses frequently, repeatedly or customarily in connection with or for the benefit of the dwelling. In the Commissioner's view, for an area of land to be used for a dwelling, the land must be actually used for the dwelling. That is, it is the **actual use** of the land, **rather than any intended use**, that is relevant.

21. The extent to which residential land is used **in connection with or for the benefit of a dwelling** is a question of fact that turns on the circumstances of each case. Factors that may indicate land is being used in connection with or for the benefit of a dwelling include the land being:

- set aside exclusively for private residential purposes;
- used for an activity that complements or adds to the enjoyment of the dwelling;
- clearly identifiable as being used in connection with or for the benefit of the dwelling; and
- incidental to the enjoyment of the dwelling.

22. The area of land in question must have been used for a dwelling **by the seller**.[4]
23. For the main home exclusion to apply, the land needs to have been **used predominantly** for a dwelling that was the seller's main home. This will involve comparing the physical area of land used by the seller for the dwelling with the total area of the land. If more than 50% of the total area is used by the seller for their main home, this will generally satisfy the "predominantly" requirement.
24. If the split between the seller's private residential use of the land in the subdivided section and their use of that land for other purposes is close, the nature and the importance of the different uses could be relevant when determining the seller's predominant use.

### How the main home exclusion applies to subdivided sections of land

25. For the main home exclusion to apply to a subdivided section, the land in the subdivided section must have been used predominantly for a dwelling that was the seller's main home for more than 50% of the bright-line period.
26. The use of the land in the subdivided section for all of the bright-line period – both before and after the subdivision – is relevant in determining whether the land in that section has been used for a dwelling that was the seller's main home for most of the bright-line period.
27. Even after land is subdivided, before being sold the land in a subdivided section may continue to be used in connection with or for the benefit of the owner's main home dwelling on one of the other sections resulting from the subdivision. Alternatively, it may be that from a particular point in time, which could be before or after the subdivision, the land in the subdivided section ceases to be used for the main home. For example, this could be the case if earthworks, construction, or some other activity on the land mean the owner no longer uses that land in connection with or for the benefit of their main home.
28. The length of time during the bright-line period, both before and after the subdivision, that the land in the subdivided section is used for the main home and the length of time it is not used for the main home need to be compared to determine whether the "most of the bright-line period" requirement is met.

## How many times can a seller use the main home exclusion?

29. Under s CB 16A(3), the main home exclusion will not be available where a seller disposes of residential land and:
    - the seller has already used the main home exclusion twice within the two years immediately preceding the bright-line end date (eg, in the case of a sale of land, within 2 years of the date the sale agreement is entered into); or
    - the seller has engaged in a regular pattern of acquiring and disposing of residential land that had their main home on it.
30. The regular pattern carve-out from the main home exclusion also applies to a group of persons who occupy all the relevant properties together. A 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.
31. Each section of land that results from a subdivision is a separate piece of residential land. If the main home exclusion is applied to the sale of multiple sections of land resulting from a subdivision (which could include the section with the dwelling), the application of the exclusion to each section will count as a separate use of the exclusion for the purposes of s CB 16A(3)(a).
32. For example, if an area of residential land the owner has used as their main home was subdivided into three sections of land and all three sections were sold within the 2-year bright-line, the main home exclusion could not be relied on for the sale of the third section if it had been used for the sale of the first two sections. The main home exclusion would also not apply to any further sales made by the seller within 2 years of the two sales for which the main home exclusion was used.
33. Additionally, buying undivided land and subsequently selling subdivided sections is relevant when determining whether the seller has engaged in a regular pattern of acquiring and disposing of relevant residential land.
34. These exceptions to the main home exclusion are discussed further in **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?**

4 Or the beneficiary of a trust, if the person disposing of the land is a trustee of the trust, and no principal settlor of the trust has a main home, or if they do it is the home being disposed of.

## Examples | Tauira

**Example | Tauira 1 – Sale of subdivided section of land with no new dwelling**

Simon acquires a property that he uses as his main home. Two months after the title was registered to Simon, he decides to subdivide the land due to a change in circumstances. New certificates of title are created for the subdivided section containing the dwelling and the subdivided section at the rear of the property that was used as the backyard for Simon's home (the backyard section). While trying to sell the backyard section, Simon continues to enjoy the land in the section as his backyard. He eventually manages to sell the section 12 months later.

The sale of the backyard section is within 2 years of Simon's bright-line start date for the land. Simon can use the main home exclusion for the sale because the land in the backyard section was predominantly used in connection with a dwelling that was Simon's main home for most of (in fact, all of) the bright-line period.

**Example | Tauira 2 – Sale of subdivided section of land with new dwelling**

The facts are the same as in Example | Tauira 1 except that immediately after subdividing the backyard section, Simon clears the area and begins constructing a new dwelling with surrounding curtilage (a small garden and a garage). From this time, Simon is no longer using the land in the backyard section in connection with or for the benefit of his main home.

The main home exclusion will not apply to the sale of the backyard section of land because the land in the section was not used predominantly for a dwelling that was Simon's main home for most of the bright-line period. The bright-line period for the backyard section is 14 months (starting on the date the original undivided section was transferred to Simon, and ending on the date the contract for sale of the section was entered into). Of that period, Simon uses the land in the backyard section in connection with and for the benefit of his main home for only 2 months.

It is only the construction period of a person's main home that is ignored for the purposes of determining whether residential land has been used for the main home for most of the bright-line period. The construction period for any other dwelling is not ignored.

**Example | Tauira 3 – Delay in using the land as the main home**

Hugo purchases vacant land with the intention of building his new home on it. It takes 18 months from the bright-line start date to obtain finalised architectural plans and relevant building consents, engage a builder, and for construction and final sign-off. While the house is under construction, Hugo lives with family in a nearby suburb. Hugo finally moves into the house 18 months after purchasing the land.

The cost of construction was more than Hugo had anticipated, and he decides to subdivide and sell off a portion of his backyard to help pay his mortgage.

It takes a further 5 months after moving into the house for Hugo to subdivide and sell the portion of his backyard. At all times during this period, the subdivided portion remained part of the backyard and Hugo continued to use it.

The subdivided portion of Hugo's backyard was used predominantly for his dwelling (as the backyard), so the main home exclusion applies to the sale of the subdivided portion of the backyard. While Hugo only lived in the house for 5 months, the period in which the dwelling is constructed is ignored when determining whether the land was used predominantly as a dwelling for most of the bright-line period.

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, YA 1 ("main home", "residential land")

### Other references | Tohutoro anō

QB 24/01: If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test? *Tax Information Bulletin* Vol 36, No 6 (July 2024): 39
**taxtechnical.ird.govt.nz/tib/volume-36---2024/tib-vol36-no6**
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QB 25/13: When is the sale of a lifestyle block excluded from the bright-line test?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-13**

# QB 25/13: When is the sale of a lifestyle block excluded from the bright-line test?

Issued | Tukuna: 9 May 2025

This question we've been asked (QWBA) explains when lifestyle blocks sold within 2 years will be excluded from the bright-line test. It will be of interest to sellers seeking to rely on the farmland or main home exclusion.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A, CB 16A and YA 1 definitions: "farmland", "residential land"

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

- **QB 18/17:** Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks

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

## Question | Pātai

**When is the sale of a lifestyle block excluded from the bright-line test?**

## Answer | Whakautu

**The sale is excluded from the bright-line test when the farmland or main home exclusions apply.[1]**

**The farmland exclusion will apply where the land is being, or in its current state, could be, used for a farming or agricultural business carried on by the owner. Lifestyle blocks are generally not farmland. This is because they are generally not worked in a farming or agricultural business of the owner, and are generally not, due to their area and nature, capable of being worked as a farming or agricultural business.**

**The main home exclusion applies where both of the following conditions are met:**

- **The land has been used predominantly for the seller's main home. This is usually met if more than 50% of the land is used by the seller for their main home. However, if the split between main home use of the land and other uses is close, the nature and importance of the different uses of the land may also be relevant.**
- **The land has been used in that manner for more than 50% of the bright-line period.**

## Key terms | Kīanga tau tāpua

**The bright-line test** applies to tax sales of residential land occurring within a 2-year period.

**Curtilage** means an area of land attached to a dwelling and forming one enclosure with it, such as a yard or garden.

**Farmland exclusion** means the exclusion from the definition of "residential land" for farmland.

**Main home** means a dwelling that is mainly used as a home by the seller and, if the seller has more than one, the home with which the seller has the greatest connection.

1 There is also an exclusion for business premises, referred to at [5], which is outside the scope of this QWBA. See further QB 25/14: When does the business premises exclusion to the bright-line test apply?

## Explanation | Whakamāramatanga

### The bright-line test

1. The bright-line test under s CB 6A may apply to tax the sale of residential land within a 2-year period.
2. The 2-year bright-line test may applywhen a person disposes of residential land on or after 1 July 2024, if their bright-line end date (which is typically the date the person enters into an agreement to sell the land) is within 2 years of their bright-line start date (which in typical land transactions is the date the transfer to the person was registered). The period beginning on the bright-line start date and ending on the bright-line end date is referred to as the bright-line period.
3. There are other bright-line tests that applied to land disposed of before 1 July 2024, but this QWBA concerns only the current 2-year bright-line test.
4. The bright-line test under s CB 6A applies only where none of the land taxing rules in ss CB 6 to CB 12 apply (eg, s CB 6, which applies to the sale of land acquired for a purpose or with an intention of disposal).

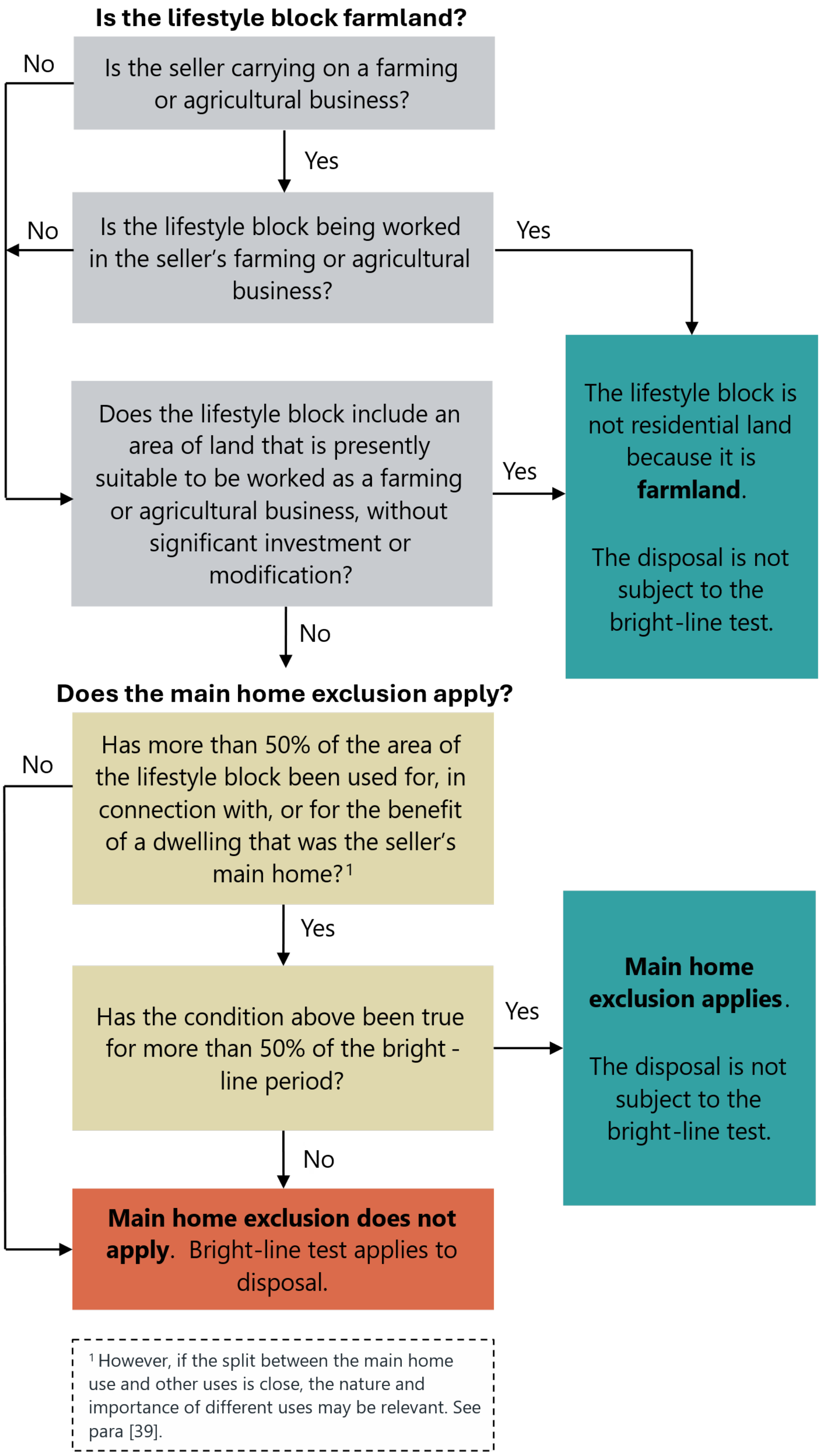
### Scope of this QWBA

5. This QWBA concerns the circumstances in which the sale of a lifestyle block is excluded from the bright-line test. It considers the farmland and main home exclusions as these are the most relevant exclusions in this context. This QWBA does not discuss the business premises exclusion. For information on the business premises exclusion, see **QB 25/14**: **When does the business premises exclusion to the bright-line test apply?**
6. In this QWBA it is assumed:
   - there was a dwelling on the land that was the seller's main home;
   - none of the other land sale rules in ss CB 6 to CB 12 of the Income Tax Act 2007 apply to the sale of the land;[2] and
   - none of the exceptions to the main home exclusion apply (see [40]).
7. Additionally, for simplicity this QWBA assumes the person disposing of the land is not the trustee of a trust.[3]
8. Figure | Hoahoa 1 on page 4 summarises the main steps for determining whether the bright-line test applies to the sale of a lifestyle block. These steps address whether the land is farmland and whether the main home exclusion applies. The flowchart assumes the lifestyle block is residential land if it is not farmland. If, applying the flowchart, the result is that the main home exclusion applies, you will still need to consider whether any of the exceptions to the main home exclusion apply. For a discussion of these exclusions, 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?**

2 This is because the bright-line test potentially applies only where the sale is not taxed under any of the other land sale rules.

3 However, the main home exclusion may also be available, following the same principles, where the person disposing of the land is a trustee of the trust, if: (1) the dwelling was the main home of a beneficiary of the trust, and (2) no principal settlor of the trust has a main home, or if they do it is the home being disposed of.

**Figure | Hoahoa 1: Flowchart of steps to determine whether the sale of a lifestyle block within 2 years is subject to the bright-line test**



## Is a lifestyle block "residential land"?

9. The bright-line test applies to sales and other disposals of "residential land".
10. The definition of residential land includes:
    - land that has a dwelling on it;
    - land for which the owner has an arrangement to build a dwelling; and
    - bare land that is allowed to have a dwelling on it under the relevant council's district plan.
11. There are some exclusions from the definition of residential land, including for "farmland".

## Is a lifestyle block farmland?

12. Because the definition of residential land excludes farmland, if a lifestyle block meets the definition of "farmland", it is not subject to the bright-line test.
13. "Farmland" is a defined term in s YA 1:

> **farmland** means land that—
> (a) is being worked in the farming or agricultural business of the land's owner:
> (b) because of its area and nature, is capable of being worked as a farming or agricultural business

14. The first limb (para (a)) of the definition of farmland focuses on the actual use of the land, while the second limb (para (b)) focuses on the qualities of the land. Whether land is farmland is determined at the time the bright-line test applies; that is, when the land is sold.
15. Farmland can include land that has a dwelling on it. When determining if the land is farmland, there is no apportionment between the area of land used for the dwelling and the area of land used for farmland. That is, land is either farmland or not farmland. Therefore, if a lifestyle block is farmland, it is not subject to the bright-line test because it is not residential land – even if it has a dwelling on it.

### When is a lifestyle block being worked in the farming or agricultural business of the seller?

16. Under the first limb of the definition, a lifestyle block will be farmland if it is being worked in a farming or agricultural business of the seller. This requires the seller to show that:
    - they are carrying on a farming or agricultural business; and
    - the lifestyle block is being worked in that business.
17. The Commissioner considers that in the context of the bright-line test and the definitions of residential land and farmland, a farming or agricultural activity is being carried on when a lifestyle block is being used for:
    - cultivating and growing crops, including horticulture and viticulture;
    - breeding or rearing livestock, including poultry and bee keeping; or
    - forestry.
18. In addition, the farming or agricultural activity must be carried on as a business.
19. Section YA 1 defines "business" as including any profession, trade, or undertaking carried on for profit. The leading case on the meaning of "business" is *Grieve v CIR* (1984) 6 NZTC 61,682 (CA). *Grieve* concerned a farming activity that, ultimately, did not generate profits. Richardson J interpreted "business" as meaning an activity carried on in an organised and coherent way with an intention to make a profit. A person's intention to make a profit will be evidenced by their conduct. Factors that are relevant for determining if a person is carrying on a business include:
    - the nature of the activity being engaged in;
    - the period over which the activity is engaged in;
    - the scale of operations;
    - the volume of transactions;
    - the commitment of time, money and effort;
    - the pattern of activity; and
    - the financial results.

20. Whether a lifestyle block is being worked in the seller's farming or agricultural business is a question of fact. Many owners of lifestyle blocks will keep animals or grow crops or trees on their land, but if the livestock or produce of the activity is not sold (or not intended to be sold), then there will be no business activity. Even if the livestock or produce is sold, the owner may not be able to demonstrate that they are carrying on that activity in an organised and coherent way with the intention to profit from the activity, as is required for the activity to be a business. For many lifestyle block properties, the size and nature of the property will limit the scale of operations that can be carried on, which will make it difficult to satisfy the business test.

21. The first limb of the definition of farmland requires that the land is "being worked in the farming or agricultural business **of the land's owner**" [emphasis added]. This means the seller of the lifestyle block must be engaged in a farming or agricultural business and the land must be worked in that business. The first limb of the definition can be satisfied if the lifestyle block is being worked by the seller in their business, either on its own or in conjunction with other land that is owned or leased by the seller. However, it would not be satisfied where the land is being rented to someone else who carries on a farming or agricultural business.

### When is a lifestyle block, because of its area and nature, capable of being worked as a farming or agricultural business?

22. The second limb of the definition of farmland includes land that, "because of its area and nature", is capable of being worked as a farming or agricultural business. It is necessary to consider both the area and the nature of the land together to determine if the land is capable of being worked as a farming or agricultural business.

23. The Commissioner considers, based on *CIR v Bruhns* (1989) 11 NZTC 6,075 (CA), that the words "is capable of being" in para (b) focus on the existing or present nature of the lifestyle block at the date of sale, rather than any unrealised potential in the lifestyle block. This means a lifestyle block that requires significant investment or modification to make it able to be worked as a farming or agricultural business does not have the present nature to make it capable of being used in that way, and the lifestyle block would not qualify as farmland.

24. The larger the area of a lifestyle block, the more likely it may be capable of being worked as a farming or agricultural business. This is because a larger area of land is more likely to allow for farming or agricultural activity on a scale that could constitute a business. A lifestyle block would not be capable of being worked as a farming or agricultural business if it was too small to be capable of producing a profit when used for farming or agricultural activities.

25. Whether the land being sold has an area and nature capable of being worked in a farming or agricultural business needs to be considered in isolation from other parcels of land. This means this requirement would not be satisfied if a person were selling a parcel of land only capable of being worked in a farming or agricultural business in conjunction with other land (for example an adjoining parcel of land).

26. The seller must be able to show that at the date of sale the lifestyle block has an area and nature presently capable of being worked as a farming or agricultural business and is, therefore, farmland not subject to the bright-line test.

27. The second limb of the definition of farmland may be relevant in situations where the owner of the land lives in a dwelling on the land and leases most of the land to someone else to farm. In this situation, all of the land, including the dwelling, will be farmland if it can be shown that the parcel of land as a whole is capable of being worked as a farming or agricultural business, even if some parts of it (eg, the dwelling) are not being used in that way. In this situation, the second limb of the definition of farmland may potentially be satisfied whether or not the lessee's activity amounts to a business. However, it will clearly be satisfied if the lessee's activity on the land does amount to a business.

## Can the main home exclusion apply to a lifestyle block?

28. Even if a lifestyle block is residential land (because it is not farmland), the main home exclusion from the bright-line test may apply. The main home exclusion will apply if the lifestyle block has been used predominantly, for most of the bright-line period, for a dwelling that was the seller's main home.[4]

29. The main home exclusion in s CB 16A(1) provides:

> **CB 16A Main home exclusion for disposal within 2 years**
>
> *Main home exclusion*
>
> (1) Section CB 6A does not apply to a person who disposes of residential land if the land has been **used predominantly, for most of the bright-line period, for a dwelling that was the main home** for—
>
> (a) the person; or
>
> (b) a beneficiary of a trust, if the person is a trustee of the trust and—
>
> (i) a principal settlor of the trust does not have a main home; or
>
> (ii) if a principal settlor of the trust does have a main home, it is that main home which the person is disposing of.
>
> *Modified rule for constructing main home*
>
> **(1)** **For the purposes of determining** under subsection (1) **whether residential land has been used for most of the bright-line period predominantly for a dwelling that was the main home** of the person or a beneficiary of a trust, as described in subsection (1), **the period in which the dwelling was constructed is ignored**.
>
> [Emphasis added]

30. The land in the lifestyle block must have been used predominantly for a dwelling that was the seller's **main home** for more than 50% of the seller's bright-line period. As noted at [1], a person's bright-line period is the period beginning on their bright-line start date and ending on their bright-line end date for the land.[5] When determining whether this requirement is met, any period in which the dwelling was constructed is ignored.

31. Section YA 1 defines "Main home":

> **main home** means, for a person, the 1 dwelling—
>
> (a) that is mainly used as a residence by the person (a **home**); and
>
> (b) with which the person has the greatest connection, if they have more than 1 home

32. There are three points to note about the definition of main home:
    - A person can have only one main home.
    - For a dwelling to be a person's "main home", it must be mainly used as a residence (ie, a home) by the person.
    - If the person has more than one home, the main home is the home with which the person has the greatest connection.

33. See **QB 24/01: If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test?** for assistance in determining which property the seller has the greatest connection with.

34. Land that is "**used … for a dwelling**" is not limited to the land on which the dwelling is situated or to the surrounding curtilage (like a yard and garden). Land used for a dwelling can also include other areas the seller uses frequently, repeatedly or customarily in connection with or for the benefit of the dwelling. In the Commissioner's view, for an area of land to be used for a dwelling, the land must be actually used for the dwelling. That is, it is the actual use of the land, rather than any intended use, that is relevant.

4 Provided none of the exceptions to the main home exclusion apply – see QB 25/14.

5 In a typical land purchase and sale, this will be the period starting on the date the land was transferred to the person and ending on the date an agreement to sell the land was entered into. However, there are different bright-line start dates and bright-line ends dates in some situations. For more information, see QB 25/11: When is the bright-line start date for the 2-year bright-line test?

35. The extent to which residential land is used **in connection with or for the benefit of a dwelling** is a question of fact that turns on the circumstances of each case. Factors that may indicate land is being used in connection with or for the benefit of a dwelling include the land being:
    - set aside exclusively for private residential purposes;
    - used for an activity that complements or adds to the enjoyment of the dwelling;
    - clearly identifiable as being used in connection with or for the benefit of the dwelling; and
    - incidental to the enjoyment of the dwelling.
36. In the case of a lifestyle block, examples of land that is used for a dwelling (other than the house and curtilage) are:
    - areas set aside for growing food for domestic use;
    - areas for pet animals; and
    - areas used to enhance the enjoyment or aesthetic value of the dwelling (eg, in the context of an average-sized (4-hectare) lifestyle block, a reasonable amount of park land or covenanted native bush that is used to provide a green vista, retaining or shelter would be an area that enhances the enjoyment of a dwelling).
37. Another example of land used for a dwelling is land used for hobby farming on a lifestyle block. For the purposes of this QWBA, hobby farming refers to a farming or agricultural activity undertaken by the seller on land that does not meet the definition of "farmland" (eg, because the area of the land used for the activity is too small to sustain a farming or agricultural business).
38. For the main home exclusion to apply, the land in the lifestyle block needs to have been **used predominantly** for a dwelling that was the seller's main home. This will generally involve comparing the physical area of land used for the dwelling and the total area of the land. If more than 50% of the total area is used by the seller for their main home, this will generally satisfy the "predominantly" requirement.
39. If the split between the seller's use of the land for their main home and other uses of the land is close, the nature and importance of the different uses may be relevant in determining which of the uses is the predominant use.
40. The leasing or licencing of part of the lifestyle block to another person does not necessarily mean that part is not used for the dwelling, so long as the other person's use of the land is complementary to the seller's enjoyment of the property (eg, where a neighbour has grazed some animals on the seller's land to keep the grass down) and the seller continues to use the land.
41. However, in some cases, the leasing or licensing of part of the lifestyle block may mean the seller is effectively excluded from using that part of the land. If that is the case, that part of the land would not be used for the seller's dwelling for the period of the lease or license.
42. The words "**for most of the time** the person owns the land" [emphasis added] require a comparison between the length of time the land was predominantly used for a dwelling by the seller and the length of time the seller owned the land. "Most" in this context means more than 50%.

### Exceptions to the main home exclusion

43. There are two exceptions that may prevent the main home exclusion applying (see s CB 16A(3)).
44. **QB 25/09** discusses these exceptions. Briefly, the exceptions are where:
    - the seller has already used the main home exclusion twice within the 2 years immediately preceding the bright-line end date; or
    - the seller has engaged in a regular pattern of acquiring and disposing of residential land that had their main home on it.
45. The regular pattern carve-out from the main home exclusion also applies to a group of persons who occupy all the relevant properties together. A 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.

## Examples | Tauira

46. The following examples assume that the property has been used as the seller's main home for all of the bright-line period and that the exceptions to the main home exclusion do not apply.

**Example | Tauira 1 – Land that because of its area cannot be used as farmland**

Marama has a 1-hectare property and sells it within 2 years of her bright-line start date. The property has a house that she uses as her main home. It also has a small area of grazing land and a larger area of native bush. Marama keeps a few sheep on the grazing land to keep the grass down.

The property is not farmland because:

- it is not being worked in a farming or agricultural business carried on by Marama – it is used as a hobby farm, rather than a business; and
- given the size of the property, it is not capable of being worked as a farming or agricultural business.

However, the main home exclusion is available to Marama because she uses the property entirely for the dwelling that is her main home. The grazing land is used for her hobby-farming activity, and the area of native bush is used to enhance her enjoyment and the aesthetic value of her dwelling. Therefore, the sale of Marama's property will not be taxed under the bright-line test.

**Example | Tauira 2 – Plot of land that is farmland**

Uri has a 5-hectare property that he uses for a commercial rose-growing business. He uses a small area of the land for his house and the garden around it.

The property is farmland because it is being worked in Uri's agricultural business. If Uri were to sell the property within 2 years of his bright-line start date, the sale of the property (including the house), would not be taxed under the bright-line test because the land is not residential land.

**Example | Tauira 3 – Part of property leased to an avocado grower**

Tom and Jess have a 2-hectare property that they sell within 2 years of their bright-line start date. The land includes 1.5 hectares of avocado trees with shelter belts. The balance of the land is used for a house that Tom and Jess use as their main home, as well as a flower garden, a vegetable garden and a paddock for grazing Jess's two horses. They lease the avocado trees to an avocado-growing company that looks after the trees, including spraying the trees, mowing between the rows of trees, and picking the fruit. The lease gives exclusive possession to the avocado-growing company and Tom and Jess do not go into the avocado orchard.

The property is not farmland because:

- it is not being worked in an agricultural business carried on by Tom and Jess (rather, it is being worked in the avocado-growing company's agricultural business); and
- given the size of the property, it is not capable of being worked as a farming or agricultural business. While the company is carrying on a business of growing avocados, it grows avocados on multiple parcels of land in the region. The avocado trees on Tom and Jess's property form only a small part of its business.

The main home exclusion is not available to Tom and Jess because only 25% of the area of the property is used for their dwelling. The dwelling, flower garden, vegetable garden and land for grazing the horses are all physically used for purposes in connection with the enjoyment of the dwelling, rather than for any other purposes. However, most of the land (75%) is leased to the avocado-growing company and is not used for Tom and Jess's dwelling. Therefore, the sale by Tom and Jess of the property within 2 years of their bright-line start date may be taxed under the bright-line test.

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, YA 1 ("business", "farmland", "main home" and "residential land")

### Case references | Tohutoro kēhi

*CIR v Bruhns* (1989) 11 NZTC 6,075 (CA)

*Grieve v CIR* (1984) 6 NZTC 61,682 (CA)

### Other references | Tohutoro anō

QB 24/01: If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test? *Tax Information Bulletin* Vol 36, No 6 (July 2024): 39
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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?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-09**

QB 25/11: When is the bright-line start date for the 2-year bright-line test?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-11**

QB 25/14: When does the business premises exclusion to the bright-line test apply?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-14**

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

Issued | Tukuna: 9 May 2025

This question we've been asked (QWBA) explains the business premises exclusion that applies for the purposes of the bright-line test. It will be of interest to anyone selling their business premises on what might be residential land.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A and YA 1

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

- **QB 19/13**: Income tax – When does the business premises exclusion to the bright-line test apply?

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

## Question | Pātai

**When does the business premises exclusion to the bright-line test apply?**

## Answer | Whakautu

**Land that has been used predominantly as business premises is not subject to the bright-line test, even if the land has a dwelling on it.**

**"Business premises" means land, typically including a building, together with any surrounding associated land, from which a person carries on a business. In some cases, land can be business premises even if there is no building on the land.**

**The requirement that land be used predominantly as business premises will usually be met if more than 50% of the land is used as business premises. However, if the split between business premises use of the land and other uses is close, the nature and importance of the different uses of the land may also be relevant. In addition, the land must have been used as business premises for more than 50% of the time the seller owned it.**

## Key terms | Kīanga tau tāpua

**Bright-line test** applies to tax sales of residential land occurring within a 2-year period.

**Business premises** means land, typically including a building, together with any surrounding associated land, occupied by a person mainly to carry on a business. However, in some cases, land without a building may also qualify as business premises.

**Business premises exclusion** means the carve-out from the definition of "residential land" for land used predominantly as business premises.

## Explanation | Whakamāramatanga

### The scope of this QWBA

1. This QWBA explains the business premises exclusion to the bright-line test. There are separate business premises exclusions that are relevant where the sale of land is potentially taxable under one of the other land sale rules in the Act (ss CB 6 to CB 11 and ss CB 12 and CB 13).
2. For a more detailed discussion of the business premises exclusion from ss CB 6 to CB 11, 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?**

### Bright-line test

3. The bright-line test under s CB 6A taxes the sale of residential land within a 2-year period.
4. The 2-year bright-line test applies when a person disposes of residential land on or after 1 July 2024, if their bright-line end date (which is typically the date the person enters into an agreement for disposal) is within 2 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, but this QWBA concerns only the current 2-year bright-line test.
5. The bright-line test under s CB 6A applies only where none of the land taxing rules in ss CB 6 to CB 12 apply (eg, s CB 6, which applies to the sale of land acquired for the purpose or with the intention of disposal).

### Definition of "residential land"

6. Section YA 1 defines "residential land" as follows:

> **YA 1 Definitions**
>
> In this Act, unless the context requires otherwise,—
>
> …
>
> **residential land**—
>
> (a) means—
>
> (i) land that has a dwelling on it, unless the land is farmland or is used predominantly as business premises:
>
> (ii) land for which the owner has an arrangement that relates to erecting a dwelling, unless the land is farmland or is used predominantly as business premises:
>
> (iii) bare land that may be used for erecting a dwelling under rules in the relevant operative district plan, unless the bare land is farmland or is used predominantly as business premises; and
>
> (b) includes land that has a dwelling on it, if it is used by a person predominantly as business premises for a business of supplying accommodation and the dwelling is not a main home for the person or 1 or more other persons referred to in section CB 16A(1) (Main home exclusion for disposal within 2 years)

7. "Residential land" does not generally include land "used predominantly as business premises".
8. However, there is a qualification to this exclusion for land that has a dwelling on it, if it is used predominantly as business premises for a business of supplying accommodation, and the dwelling is not the person's "main home". This means residential property used predominantly to provide short-stay accommodation (such as a property rented out through online platforms) is not within the business premises exclusion and may be subject to the bright-line test on disposal, unless the dwelling is the owner's main home.[1]
9. In most cases, a person selling business premises will not need to rely on the business premises exclusion because usually the land will not meet the requirements to be "residential land" for other reasons. This is because:
   - business premises land will not usually have a dwelling on it;
   - the landowner will not usually have an arrangement to erect a dwelling on the land; and
   - business premises land will not usually be "bare land" (which would come within the definition of "residential land" if it may be used for erecting a dwelling under the relevant council's operative district plan).

1 However, the main home exclusion may also be available if the person disposing of the land is a trustee of a trust, if (1) the dwelling was the main home of a beneficiary of the trust, and (2) no principal settlor of the trust has a main home, or if they do it is the home being disposed of.

10. Because most business premises land being sold will not meet the criteria to potentially be "residential land", the carve out for business premises will not usually need to be considered, and the land will not be subject to the bright-line test in s CB 6A.
11. One situation where the business premises exclusion needs to be considered is where a person sells land that has both a dwelling and business premises on it. The presence of a dwelling means the land may fall within the definition of "residential land" and potentially be subject to the bright-line test. However, if the land is used predominantly as business premises, it will not be "residential land" as defined.
12. Another situation where a person may need to consider the business premises exclusion is where business premises are on bare land that may be used for erecting a dwelling under the relevant operative district plan. Situations in which a person sells business premises land for which they have an arrangement to erect a dwelling are likely to be rare.

## Meaning of "dwelling"

13. A "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". However, for the purposes of s CB 6A and the definition of "residential land", a "dwelling" does not include any of the following, in whole or part:
    - a hospital;
    - a hotel, motel, inn, hostel or boarding house;
    - a serviced apartment in relation to which a resident does not have quiet enjoyment;[2]
    - a convalescent home, nursing home, or hospice;
    - a rest home or retirement village; or
    - a camping ground.

## Meaning of "business premises"

14. The Act does not define business premises for the purposes of the bright-line test or for the definition of "residential land". The *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York, 2011) defines "premises" as:

    > A house or building, together with its land and outbuildings, occupied by a business or considered in an official context.

15. At common law, "business premises" can refer to a variety of places from which a business is carried on, whether just buildings, buildings and associated land, or bare land.[3]
16. The Commissioner considers that while business premises will typically include a building, there may be instances where land without a building is business premises. For example, a quarry or a scrap metal yard may be business premises even if there is no building on the land. It will be up to the taxpayer to show that the land is business premises.
17. As noted above, "business premises" is a place from which a business is carried on. Whether there is a "business" is determined using the business test set out in *Grieve v CIR* (1984) 6 NZTC 61,682 (CA). "Carrying on" a business from a location, requires some or all of the activities of the business to be conducted continuously or habitually from there. For the purposes of the s CB 6A business premises exclusion, the business premises may be those of the landowner or of a third party such as a tenant or tenants.
18. Once the land is found to have business premises on it, the s CB 6A business premises exclusion requires that the land as a whole must have been **used predominantly** as business premises. This will generally involve comparing the physical area of land used by the seller as business premises with the total area of the land. If more than 50% of the total area is used by the seller as business premises, this will generally satisfy the "predominantly" requirement. Where a building has multiple storeys, the floor area of each storey is included in the calculation of total land area.
19. Where the split between the business premises use of the land and other uses is close, the nature and importance of the different uses of the land may be relevant in determining which of the uses is the predominant use.
20. In addition, the land must have been used as business premises for more than 50% of the time the landowner has owned the land.

2 As that term is used in s 38 of the Residential Tenancies Act 1986.

3 See, for example, *Case Y10* (2007) 23 NZTC 13,097 (TRA); *Thames Water Ltd v Hampstead Homes Ltd* [2003] 1 WLR 198 (CA); *Gardiner v Sevenoaks Rural District Council* [1950] 2 All ER 84 (QB); *C of T v Nightcaps Coal Company (Ltd)* (1909) 29 NZLR 885 (SC).

21. Because the definition of "business premises" requires the land to have been used "predominantly" as business premises, the Commissioner considers the exclusion applies on an all or nothing basis. Therefore, if the land is predominantly used as business premises, all of the land is excluded from the meaning of residential land. If the land is not used predominantly as business premises, the exclusion does not apply and all of the land is residential land and potentially subject to the bright-line test.

## Examples | Tauira

**Example | Tauira 1 – Business premises exclusion not relevant as requirements to be "residential land" not met**

On 1 April 2023, Raj, a dentist, purchases a property with a villa on it. The previous owner had lived in the villa for many years. Raj fits out the villa as a dental surgery and carries on his dentistry business from there. Then, 18 months later, Raj sells his dentistry practice and the villa and moves overseas. During the time Raj owned the villa, nobody lived in it, and Raj did not have an arrangement to erect a dwelling on the property.

Shortly after selling the villa, Raj hears about the bright-line test and asks his lawyer, Ruby, whether the sale might be subject to tax because the villa was previously a residential home.

Ruby explains that the sale of the villa is not subject to the bright-line test because the property does not meet the definition of "residential land". This is because:

- the property did not have a dwelling on it;
- Raj did not have an arrangement to erect a dwelling on the property; and
- the property was not "bare land" that may be used for erecting a dwelling under the relevant operative district plan.

Ruby explains that although the villa might look like a dwelling, it was fitted out as a dental surgery, not as a place of residence or abode. Ruby also notes there is a business premises exclusion to the definition of "residential land", but in Raj's case, this exclusion is not relevant because the property did not fall within the requirements to potentially be "residential land" in the first place.

**Example | Tauira 2 – Land with a building that is partly business premises and partly a dwelling excluded from the bright-line test as predominantly business premises**

Dave purchases a building in the suburbs that has a downstairs retail space and a single bedroom flat upstairs. The downstairs retail space is just over twice the size of the upstairs flat. Dave leases the retail space to Andy, who runs a florist business from it. He rents the upstairs flat to Mary under a residential tenancy.

A year later, Dave decides to move overseas and sells the building. The property meets the first requirement of the definition of "residential land" because the upstairs flat is a dwelling. However, the downstairs retail space is the florist's business premises. Because the business premises is more than twice the size of the upstairs flat, the property is used predominantly as business premises. For this reason, the property is not "residential land". Therefore, the sale of the property is not subject to the bright-line test.

**Example | Tauira 3 – Land with business premises and stand-alone residence excluded from the bright-line test as business premises**

Milk Mixer Ltd buys a large milk-processing factory. On the property is a small house where the factory's caretaker lives. Because there is a dwelling on the property (the house), the land is potentially "residential land", so potentially subject to the bright-line test. However, because the land is used predominantly as Milk Mixer Ltd's business premises, all of the land is excluded from the definition of "residential land". For this reason, the bright-line test would not apply if the property were sold within 2 years of Milk Mixer Ltd's bright-line start date.

**Example | Tauira 4 – Land with business premises and stand-alone residence excluded from the bright-line test as predominantly business premises**

Wayne buys a property that has a three-bedroom house and large stand-alone workshop on it. He lives in the house with his family and operates a surfboard-building business from the workshop. Wayne's workshop and associated land make up 60% of the total land area of the property and have been his business premises since he purchased the property. Because the property has a dwelling on it (the house), the property meets the initial definition of "residential land".

Wayne sells the property within 2 years of his bright-line start date. Although the property meets the first part of the definition of "residential land", it falls outside the definition because the land is predominantly used as business premises. This means the sale of the property is not caught by the bright-line test.

If the land was not predominantly used as business premises, it is possible that the property sale would nonetheless be excluded from the bright-line test under the "main home" exclusion (s CB 16A). For details on how the "main home" exclusion in s CB 16A applies, see **QB 25/12: How does the bright-line test apply to the sale of a subdivided section?**

**Example | Tauira 5 – Land with business premises and stand-alone residence not excluded from the bright-line test as not predominantly business premises**

Jerome buys an investment property with a stand-alone studio at the front and a three-bedroom house at the rear. Jerome rents the property to Denise. Denise uses the studio for her legal practice and lives in the house with her family. The studio makes up 30% of the total land area of the property and is used as Denise's business premises 100% of the time Jerome owns the property. Because the property has a dwelling on it (the house), the property meets the first part of the definition of "residential land".

Jerome sells the property within 2 years of his bright-line start date. Although the property is used as business premises, it is not used "predominantly" as business premises, as the business premises makes up only 30% of the total area of the land. Therefore, the property is not excluded from the definition of "residential land", so is caught by the bright-line test. Unlike Wayne in Example | Tauira 4, Jerome does not live in the house on the property. Accordingly, the "main home" exclusion (s CB 16A) is not available.

**Example | Tauira 6 – Land with business premises used for providing short-stay accommodation**

Apollo buys land with a dwelling on it and uses it as business premises to provide short-stay accommodation through Airbnb. Apollo sells the land within 2 years of his bright-line start date, and none of the other land sale rules apply.

Even though the land is used predominantly as business premises, it is residential land because it was used for a business of supplying accommodation. The land is not a "main home" because Apollo did not live in the dwelling. Therefore, the property is not excluded from the definition of residential land, so is caught by the bright-line test.

**Example | Tauira 7 – Main home with business premises used for providing short-stay accommodation**

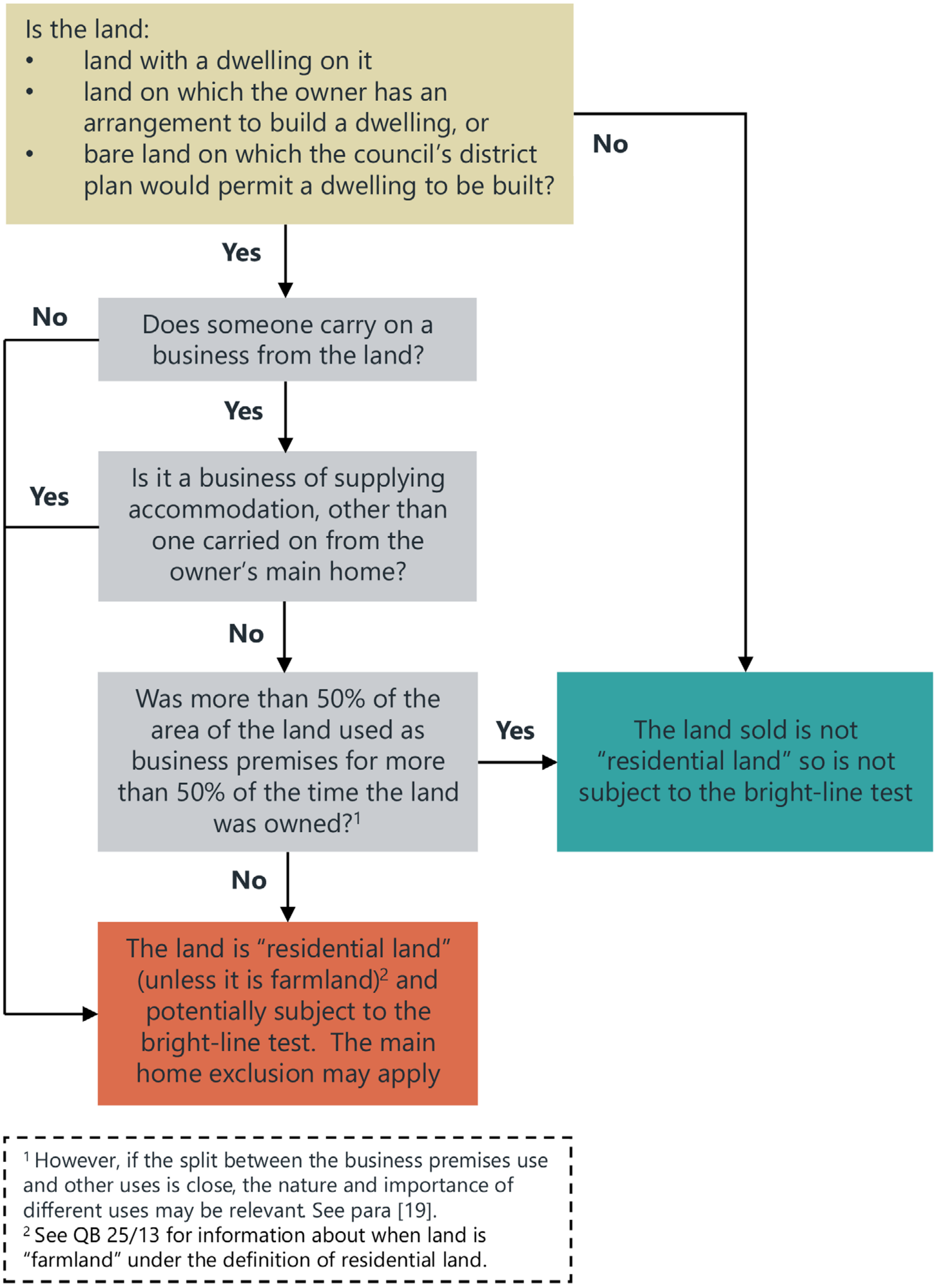
Maya buys land with a five-bedroom dwelling on it. She lives in the house and uses one of the bedrooms. Maya uses the other four bedrooms as business premises to provide short-stay accommodation through Airbnb. Maya sells the land within 2 years of her bright-line start date, and none of the other land sale rules apply.

The definition of residential land includes land with a dwelling on it, even if the land is used predominantly for a business, if the business is one of supplying accommodation, unless the dwelling is the main home of the person running the business. In this situation, the land is used predominantly for a business that provides accommodation. However, as Maya lives in the dwelling the entire time, the land is Maya's main home. Therefore, the land is not within the definition of residential land, so is not subject to the bright-line test.

## Appendix

Figure | Hoahoa 1 sets out the steps to determine whether the bright-line test and business premises exclusion apply to a sale of land within the 2-year period of the bright-line test.

**Figure | Hoahoa 1: Flowchart for determining whether land is residential land for the purpose of the bright-line test**



## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, CB 19, YA 1 ("dwelling", "residential land")

Residential Tenancies Act 1986, ss 38

### Case references | Tohutoro kēhi

*C of T v Nightcaps Coal Company (Ltd)* (1909) 29 NZLR 885 (SC)

*Case Y10* (2007) 23 NZTC 13,097 (TRA)

*Gardiner v Sevenoaks Rural District Council* [1950] 2 All ER 84 (QB)

*Grieve v CIR* (1984) 6 NZTC 61,682 (CA)

*Thames Water Ltd v Hampstead Homes Ltd* [2003] 1 WLR 198 (CA)

### Other references | Tohutoro anō

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

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? *Tax Information Bulletin* Vol 31, No 9 (Oct 2019): 75
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QB 25/12: How does the bright-line test apply to the sale of a subdivided section?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-12**

QB 25/13: When is the sale of a lifestyle block excluded from the bright-line test?
**taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-13**

# QB 25/15: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?

Issued | Tukuna: 9 May 2025

This question we've been asked explains how the bright-line test and rollover relief provisions apply to transfers of residential land between associated persons on or after 1 July 2024. It considers the effect of rollover relief and sets out the criteria that need to be met for rollover relief to apply.

**Key provisions | Whakaratonga tāpua**

Income Tax Act 2007 – ss CB 6A, CB 16A, FD 1, YB 2 to YB 13

## Question | Pātai

**How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons on or after 1 July 2024?**

## Answer | Whakautu

**Under the bright-line test, any amount a person derives from the disposal of residential land that they sold within 2 years of their "bright-line start date" is income unless one of the exclusions to the bright-line test applies.**

**The rollover relief provisions allow a transfer between certain persons to effectively be ignored for the purposes of the bright-line test. The rollover relief provisions can apply to a disposal regardless of whether the bright-line test applies to the transferor.**

**If rollover relief applies, for the purposes of the bright-line test:**

- **the transfer is treated as a disposal and acquisition for an amount equal to the transferor's cost;**
- **the transferee's bright-line start date for the land is the transferor's bright-line start date; and**
- **the transferor's use of the residential land is attributed to the transferee in determining whether the main home exclusion applies.**

**Rollover relief can apply to transfers between associated persons within one of two broad categories.**

**The first category deals with transfers of residential land between persons associated under any of the associated person tests contained in ss YB 2 to YB 13. The persons must meet the associated persons test both at the date of disposal and for at least 2 years before that date (s FD(1)(1)(a)).**

**The second category deals with transfers of residential land to a trustee of a trust in which all the beneficiaries (other than the transferor in their capacity as a beneficiary) are either (s FD (1)(1)(b)):**

- **associated with the transferor at the date of disposal and for at least 2 years before that date;[1] or**
- **a charitable organisation.**

Rollover relief can apply to transfers of residential land only once in a 2-year period.

1 There is an exception for persons who have become associated due to birth, adoption, marriage, civil union, or the start of a de facto relationship. They must be associated with the transferor since birth, adoption, marriage, civil union, or the start of the de facto relationship, as applicable.

## Key terms | Kīanga tau tāpua

**Associated persons** means persons associated under any of the categories of associated persons contained in ss YB 2 to YB 13.

**Bright-line end date** is the date that triggers the application of the bright-line test in s CB 6A. This date can vary but, in the context of transfers between associated persons it will commonly be the date on which the interest in land is disposed of.

**Bright-line period** is the period beginning with the bright-line start date for the land and ending with the bright-line end date for the land.

**Bright-line start date** is the date that the bright-line period starts. This date can vary, but it will typically be the date on which the instrument to transfer the land to the person was registered under the Land Transfer Act 2017.

## Explanation | Whakamāramatanga

### Introduction

1. The bright-line test taxes a person's disposal of residential land if their bright-line end date is within 2 years of their bright-line start date (s CB 6A).[2]
2. Generally, a person's bright-line start date will be the date the transfer of the land is registered to the person under the Land Transfer Act 2017. However, there are different start dates for specific circumstances, for example, where property is acquired off the plans. For more information, see **QB 25/11: When is the bright-line start date for the 2-year bright-line test?**
3. Rollover relief from the bright-line test is available for certain transfers of residential land. Rollover relief ensures the disposal is not taxed under the bright-line test at the time of the disposal. It defers the taxing point until a later disposal of land occurs that does not qualify for rollover relief. The transferee essentially steps into the shoes of the transferor, so the bright-line clock and cost base do not reset.
4. The bright-line test applies only where none of the other land sale rules in ss CB 6 to CB 12 applies.
5. Rollover relief applies to a disposal regardless of whether the bright-line test applies to the transferor. A person cannot elect out of the rollover relief provisions.
6. This question we've been asked (QWBA) explains how rollover relief for associated persons (s FD 1) applies to the bright-line test.
7. This QWBA does not consider ss FD 2 and FD 3, which deal with the relief available for Māori rollover trusts and certain transfers of residential land included in Treaty of Waitangi settlements. See **IR1229: Bright-line property tax – for residential property sold from 1 July 2024** for further details on these provisions.
8. All legislative references are to the Income Tax Act 2007 unless otherwise stated.

### Rollover relief

9. Rollover relief under s FD 1 will apply to transfers between associated persons within one of two broad categories.
10. The first category deals with the disposal of residential land by a person (the transferor) to another person (the transferee) where the persons are associated under any of ss YB 2 to YB 13 both at the date of transfer and for at least 2 years before that date.
11. The second category deals with transfers of residential land by a transferor to a trustee of a trust in which all the beneficiaries, other than the transferor in their capacity as a beneficiary, are either:
    - associated with the transferor at the date of transfer and for at least 2 years before that date;[3] or
    - an association, club, institution, society, organisation or trust that is not carried on for the private profit of any person and whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere.

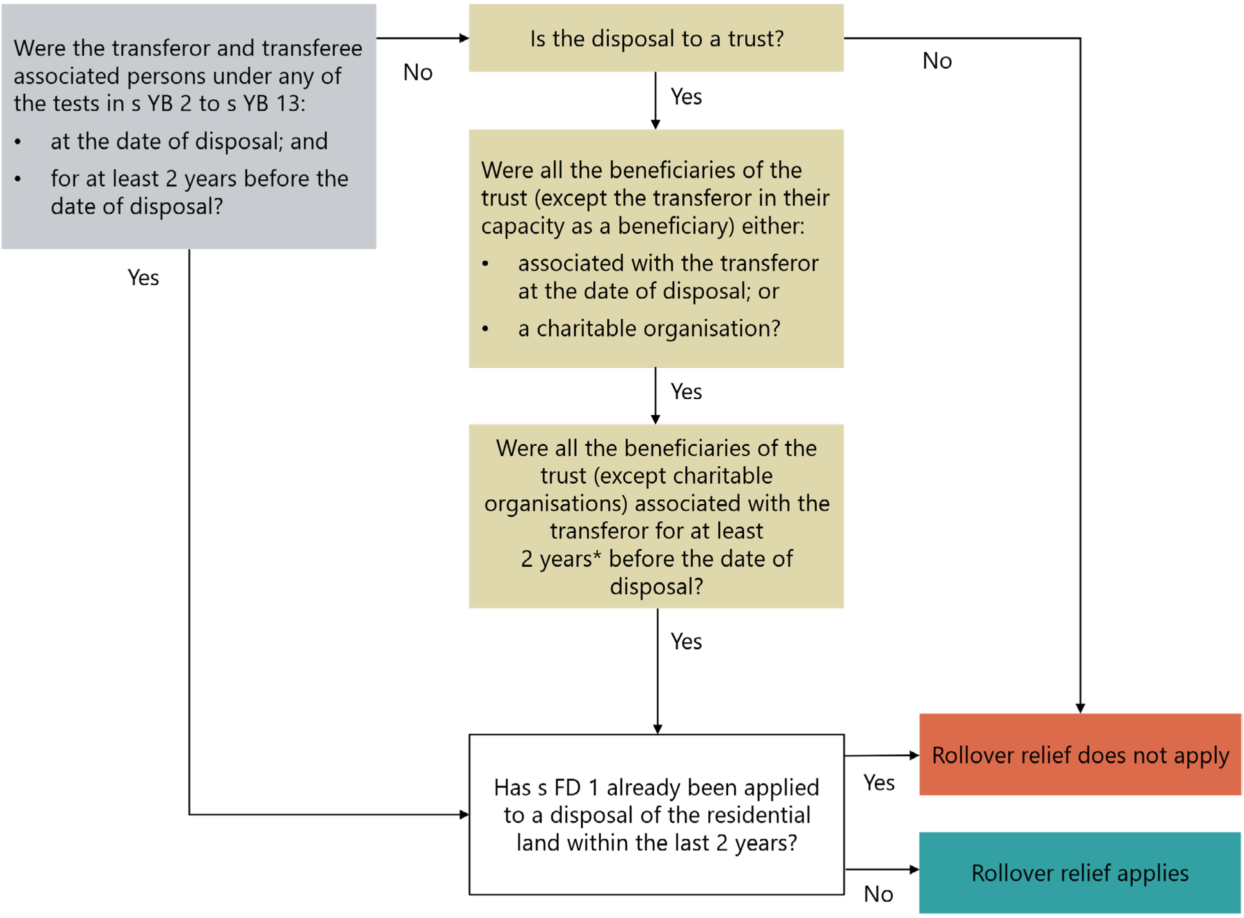
2 This item applies to transfers of residential land on or after 1 July 2024. For disposals of residential land that occurred before 1 July 2024, you should consider the previous 5-year or 10-year bright-line tests and the rollover relief provisions that applied to those tests.

3 There is an exception for persons who have become associated due to birth, adoption, marriage, civil union, or the start of a de facto relationship. In those circumstances, they must be associated with the transferor since birth, adoption, marriage, civil union, or the start of the de facto relationship as applicable.

12. For a discussion of each of these broad categories, see [28] and [34] respectively.

13. Figure | Hoahoa 1 shows how to work out whether the rollover relief provisions apply to a transfer of residential land.

**Figure | Hoahoa 1 – Determining whether the bright-line rollover relief provision for transfers between associated persons applies**




*Other than persons who have become associated due to birth, adoption, marriage, civil union or de facto relationship, who need only to have been associated since the birth, adoption, marriage, civil union or the start of the de facto relationship, as applicable.

## Effect of rollover relief

14. Rollover relief affects both the transferor's and the transferee's treatment of the transfer of residential land.

15. If s FD 1 applies to a transfer of residential land, for the purposes of the bright-line test:

- the transfer is treated as a disposal and acquisition for an amount equal to the transferor's cost;
- the transferee's bright-line start date for the land is the transferor's bright-line start date; and
- the transferor's use of the residential land is attributed to the transferee in determining whether the main home exclusion (s CB 16A) applies.

16. Each of these situations is discussed below.

**Transfer for an amount equal to transferor's cost**

17. If s FD 1 applies, the transfer is treated as a disposal and acquisition for an amount equal to the transferor's cost.

18. That is, the transferor is treated as having disposed of the residential land for what it cost them. This cost includes the amount they purchased the land for and the cost of any capital improvements. If the bright-line test applies, this is the amount of income the transferor is treated as deriving. However, under the bright-line test, a person is allowed a deduction for their cost (s DB 23).[4] Therefore, if the transfer is within the bright-line test but rollover relief applies, the transferor will not make a net gain on the transfer. This is because they are able to claim a deduction for the cost of the residential land which offsets the amount of income they are treated as deriving.

19. Although the transferor will not make a net gain, they must complete and file an IR833: **Bright-line residential property sale information** form showing their property sale income and costs, with their income tax return.

20. The transferee will be treated as acquiring the residential land for an amount equal to the transferor's cost. Rollover relief does not provide the transferee with an uplift in the acquisition cost of the residential land. This is the case even if the transferee purchased the residential land for more than what the transferor paid for it. While the transferee is treated as acquiring the residential land for an amount equal to the transferor's cost, if the transferee subsequently makes any capital improvements to the residential land, those capital improvements will be part of the transferee's cost.

**Transferee takes on transferor's bright-line start date**

21. If s FD 1 applies, the transferee is treated as taking on the transferor's bright-line start date for the purpose of the bright-line test. This means that the time the transferor owned the residential land is taken into account in determining whether the bright-line test applies to a disposal by the transferee. That is, the 2-year bright-line clock does not reset.

22. Generally, the transferor's bright-line start date is the date on which the instrument to transfer the land to them was registered under the Land Transfer Act 2017. However, the transferor's bright-line start date will be a different date if one of the specific conditions listed in the Act applies (s CB 6A(2)). For further discussion on the bright-line start date, see QB 25/11.

23. The following transitional rules apply if the transferor acquired the land before 1 July 2024:
    - If the transferor acquired the residential land before 27 March 2021, the bright-line start date the transferee takes on is 27 March 2021.
    - If the transferor acquired the residential land before 1 July 2024 and on or after 27 March 2021, the transferor's bright-line acquisition date is the date that the transferee takes on as their bright-line start date. This means if the transferor received rollover relief under an earlier bright-line test, the benefit of any earlier rollover relief continues under the current bright-line test.

**Transferor's use of residential land attributed to transferee**

24. If s FD 1 applies, the transferor's use of the residential land is attributed to the transferee in determining whether the main home exclusion in s CB 16A applies.

25. The main home exclusion provides that the bright-line test for residential land does not apply if the land was used predominantly for a dwelling that was the person's main home. That is, the person must use the land as their main home for more than 50% of the bright-line period (ie, the period starting on the bright-line start date and ending on the bright-line end date).

26. The transferor's use of the residential land being attributed to the transferee means that if the transferor used the residential land as their main home when they owned it, the transferee receives the benefit of this use (see Example | Tauira 2 – Rollover relief for sale of main home). Potentially the transferee stands to benefit even if the transferor does not satisfy the main home exclusion (eg, because the residential land was the transferor's main home for less than 50% of the bright-line period). However, if the residential land was not the transferor's main home for some or all of the time they owned it, the attribution of the transferor's use may be detrimental to the transferee.

4 Land that on disposal gives rise to income under the bright-line test is a category of revenue account property. Under s DB 23, a person is allowed a deduction for expenditure that they incur as the cost of revenue account property.

27. There may be situations where co-owners have different uses of the residential land. The residential land may be used as the main home for one co-owner but not for the other co-owner(s). It has been suggested that if the cumulative area used as a main home by the co-owners is more than 50% of the total area, then the transferee is attributed this main home use for the whole residential land. The Commissioner does not agree with this interpretation. A transferee will be attributed the use of the residential land by each of the transferors (co-owners) in the proportion of the transferor's share in the residential land. For example, if there are two transferors whose shares in the residential land are 65% and 35% respectively, the transferee will be attributed each transferor's use of the residential land in the same proportion as the transferors' 65% and 35% shares. The transferee will need to separately track the attributed use of each transferor.

## Transfers between two associated persons

28. The first category of associated persons (s FD 1(1)(a)) consists of transfers between persons associated under any of ss YB 2 to YB 13.
29. **IR620**: **A guide to associated persons definitions for income tax purposes** explains the associated persons tests in detail. However, in general terms the relevant classes of relationships are:
    - two companies with 50% or more common ownership (s YB 2);
    - a company and a person other than a company if the person has a 25% or more voting interest in the company (s YB 3);
    - two relatives within two degrees of blood relationship (s YB 4);
    - a person and a trustee of a trust if a relative of the person is a beneficiary of the trust (s YB 5);
    - a trustee of a trust and a person who has benefited or is eligible to benefit under the trust (s YB 6);
    - a trustee of a trust and a trustee of another trust if the same person is a settlor of both trusts (s YB 7);
    - a trustee of a trust and a settlor of the trust (s YB 8);
    - a settlor of a trust and a person who has benefited or is eligible to benefit under the trust (s YB 9);
    - a trustee of a trust and a person who has a power of appointment or removal of the trustee (s YB 11);
    - a partnership and a partner in the partnership (s YB 12); or
    - a look-through company and a person who has a look-through interest for the look-through company and who is a director or employee for the look-through company (s YB 13).
30. Some of the above associated person relationships are modified or do not apply for the "land provisions". For example, s YB 2(5) contains a specific aggregation rule for the purposes of the "land provisions". Any modification or exclusion that refers to the "land provisions" **does not apply to the bright-line test**. The Act specifically defines the term "land provisions" and the definition **does not include the bright-line test**.
31. The transferor and transferee must be associated under one of the tests at [29] both:
    - at the date of transfer; and
    - for at least 2 years before that date.
32. The second condition is relevant if either the transferor or transferee was formed or incorporated within 2 years before the date of transfer[5] (see Example | Tauira 1 – Rollover relief for transfer between associated persons), or if the persons both existed but were not associated for the 2 years immediately before the transfer.
33. If the transferor and transferee have not been associated for at least 2 years before the date of transfer, rollover relief under this category will not apply (see Example | Tauira 3 – Rollover relief and co-ownership). There is no exception to the 2-year period for persons who have become associated due to birth, adoption, marriage, civil union, or the start of a de facto relationship, as there is for the test for transfers to trustees (see [36]).

5 However, s FD 1(1)(b) may apply to transfers to the trustees of a trust – see at [34].

**Example | Tauira 1 – Rollover relief for transfer between associated persons**

A Co Limited and B Co Limited were both incorporated on 10 August 2021. Sophie has owned all the shares in A Co Limited and B Co Limited since they were incorporated.

A Co Limited acquired residential land in Auckland. The transfer for the residential land was registered under the Land Transfer Act 2017 on 15 April 2022.

A Co Limited decided to transfer the residential land to B Co Limited. The transfer was completed on 1 August 2024. This is A Co Limited's bright-line end date. A Co Limited's bright-line start date was 15 April 2022 – the date the land transfer to A Co Limited was registered (s CB 6A(2), row 1).

The bright-line test does not apply to A Co Limited because A Co Limited's bright-line end date (1 August 2024) was not within 2 years of its bright-line start date (15 April 2022).

Rollover relief applies because A Co Limited and B Co Limited are associated persons (two companies with 50% or more common voting interests) and were associated at the date of transfer and for more than 2 years before the date of transfer.

The effect of rollover relief, for the purposes of the bright-line test, is as follows:

- B Co Limited is treated as acquiring the residential land for an amount equal to A Co Limited's cost.
- B Co Limited's bright-line start date is 15 April 2022 (A Co Limited's bright-line start date).

B Co Limited transfers the residential land to Robin on 15 February 2025.

B Co Limited's bright-line end date (15 February 2025) is not within 2 years of its bright-line start date (15 April 2022). As such, B Co Limited will not be taxed for the disposal of the residential land under the bright-line test.

If the disposal from A Co Limited to B Co Limited had been within 2 years of A Co Limited's bright-line start date, the bright-line test would have applied and A Co Limited would have been treated as deriving an amount of income equal to the cost of the residential land to it. However, this would have been offset by A Co Limited being allowed a deduction for the cost of the residential land (s DB 23). As such, there would have been no tax consequences for A Co Limited under the bright-line test (though A Co Limited would have needed to complete and file an **IR833** with its income tax return).

**Example | Tauira 2 – Rollover relief for sale of main home**

Erin purchased a residential property in Hanmer Springs. The transfer to Erin was registered on the title under the Land Transfer Act 2017 on 28 February 2023.

The property in Hanmer Springs was Erin's main home and she lived in the home from 28 February 2023 until 31 August 2024.

On 24 August 2024, Erin entered into an agreement to sell the property to her brother, Thomas. The sale was settled, and transfer was registered on the title under the Land Transfer Act 2017 on 31 August 2024.

Erin's bright-line end date (31 August 2024) is within 2 years of her bright-line start date (28 February 2023). However, rollover relief applies to the transfer from Erin to Thomas as they are associated persons (within two degrees of blood relationship)[6] and were associated at the date of transfer and for more than 2 years before the date of transfer.

The effect of rollover relief, for the purposes of the bright-line test, is as follows:

- Erin is treated as disposing of the land for an amount that equals the cost of the property. However, as Erin meets the criteria for the main home exclusion, this amount would not be income under the bright-line test. If Erin was not able to use the main home exclusion, she would be treated as deriving an amount of income equal to the cost of the property to her, but this would be offset by a deduction Erin is allowed for the cost of the residential land (s DB 23). As such there would be no tax consequences for Erin under the bright-line test, even if she was not able to use the main home exclusion.
- Thomas is treated as acquiring the residential land for an amount equal to Erin's cost.
- Thomas' bright-line start date is 28 February 2023 (Erin's bright-line start date).
- Thomas is attributed Erin's use of the Hanmer Springs property as her main home from 28 February 2023 to 31 August 2024.

Thomas used the Hanmer Springs property as a holiday home and it was not his main home. Thomas sells the Hanmer Springs property, and his bright-line end date is 31 January 2025.

Thomas' bright-line end date (31 January 2025) is within 2 years of his bright-line start date (28 February 2023). Thomas will be subject to tax on the disposal of the Hanmer Springs property unless an exclusion to the bright-line test applies.

The main home exclusion will apply if the Hanmer Springs property was used predominantly as Thomas' main home for more than 50% of the bright-line period (ie, the time beginning with the bright-line start date and ending on the bright-line end date).

The effect of rollover relief is that Thomas owned the Hanmer Springs property for 23 months (28 February 2023 to 31 January 2025) and it is treated as his main home for 18 months (28 February 2023 to 31 August 2024) due to the attribution of Erin's use.

Because the Hanmer Springs property is treated as Thomas' main home for more than 50% of the bright-line period (18 of the 23 months), the main home exclusion will apply, and Thomas will not be taxed under the bright-line test on the disposal of the Hanmer Springs property.



6 See from [28].

**Example | Tauira 3 – Rollover relief and co-ownership**

Steven purchased residential land in Auckland for $850,000. The transfer of the land was registered under the Land Transfer Act 2017 on 7 February 2020.

In September 2024, Steven decided to sell the residential land to his daughter, Maeve and son-in-law, Ezra for market value ($1,200,000). Maeve and Ezra were married on 13 September 2024 and had been in a de facto relationship for the 6 months prior.

On 17 September 2024 the agreement for sale and purchase was entered into and the transfer was completed on 30 September 2024. This is Steven's bright-line end date. Stephen's bright-line start date was 7 February 2020 – the date the land transfer to him was registered (s CB 6A(2), row 1).

The bright-line test does not apply to Steven as his bright-line end date is not within 2 years of his bright-line start date.

Rollover relief applies to the transfer from Steven to Maeve because Steven and Maeve were associated persons both at the date of transfer and for more than 2 years before the date of transfer.

The effect of rollover relief, for the purposes of the bright-line test, is as follows:

- Maeve is treated as acquiring a ½ share in the residential land for an amount equal to ½ of Steven's cost ($425,000).
- Maeve's bright-line start date is 27 March 2021 as Steven acquired the land before 27 March 2021.

Rollover relief will not apply to the ½ share in the residential land that Steven transferred to Ezra. Steven and Ezra were not associated for the 2-year period before the date of transfer.

The effect of the transfer of the ½ share to Ezra, for the purposes of the bright-line test, is as follows:

- Ezra's bright-line start date for his ½ share of the residential land is 30 September 2024.
- Ezra has acquired his ½ share of the residential land for $600,000.

If the transfer had been within 2 years of Steven's bright-line start date, Steven would have had the following tax outcomes:

- There would be no tax consequences for Steven under the bright-line test with respect to the ½ share of the residential land that he transferred to Maeve. Steven would be treated as deriving $425,000 (equal to the cost of a ½ share of the land), but this would be offset by the provision allowing Steven to have a deduction for $425,000 (½ the cost of the land) (s DB 23).
- Steven would have net income of $175,000 from the sale of the ½ share of land to Ezra. Steven would derive $600,000 from the sale of the ½ share, but this would be partly offset by Steven being allowed a deduction under s DB 23 for $425,000 (½ the cost of the land).

## Transfers to trustees of a trust

34. The second category of associated persons (s FD 1(1)(b)) deals with disposals to the trustees of a trust (see Example | Tauira 4 – Rollover relief for transfer to trust). This category provides rollover relief only for transfers **to** the trustees of a trust, not for transfers **from** a trust.

35. Rollover relief will apply to transfers to the trustees of a trust if all the beneficiaries (other than the transferor in their capacity as a beneficiary) of the trust are either:
    - persons associated with the transferor at the date of transfer and for at least 2 years before the date of transfer (subject to the exception noted at [36]); or
    - charitable organisations.

36. An exception applies to the requirement that the persons were associated for at least 2-years before the transfer for persons who have become associated due to birth, adoption, marriage, civil union or the start of a de facto relationship. In those situations, they must be associated with the transferor since birth, adoption, marriage, civil union or the start of the de facto relationship, as applicable.

37. This category can apply to newly settled trusts as the 2-year period of association requirement applies to only the transferor and the beneficiaries of the trust; there is no 2-year period of association requirement involving the trustees.

**Example | Tauira 4 – Rollover relief for transfer to trust**

Wang Mei is one of the trustees of the Wang Family Trust. The beneficiaries of the Wang Family Trust are Mei, her adult children and her grandchildren.

Mei owns residential land in Wellington that was transferred to her on 1 May 2020.

Mei decided to transfer the land to the trustees of the Wang Family Trust and the transfer was completed on 31 October 2024. This is Mei's bright-line end date. Mei's bright-line start date was 1 May 2020 – the date the land transfer to her was registered (s CB 6A(2), row 1).

The bright-line test does not apply to Mei because her bright-line end date (31 October 2024) was not within 2 years of her bright-line start date (1 May 2020).

Rollover relief applies to the transfer from Mei to the Wang Family Trust because all the beneficiaries (other than Mei) were associated with Mei at the date of transfer (31 October 2024) and for at least 2 years before that.

The effect of rollover relief, for the purposes of the bright-line test is as follows:

- The Wang Family Trust is treated as acquiring the residential land for an amount equal to Mei's cost.
- The Wang Family Trust's bright-line start date is 27 March 2021 (as Mei acquired the land prior to 27 March 2021).

Subsequently the trustees decided to dispose of the land and the transfer was completed on 4 February 2025. This is the Wang Family Trust's bright-line end date.

The Wang Family Trust's bright-line end date (4 February 2025) is not within 2-years of its bright-line start date (27 March 2021). Therefore, the Wang Family Trust will not be taxed on the disposal of the Wellington property.

If the transfer had been within 2 years of Mei's bright-line start date, Mei would have been treated as deriving an amount of income equal to the cost of the property to her, but this would have been offset by a deduction Mei would have been allowed for the cost of the residential land (s DB 23). As such there would have been no tax consequences for Mei under the bright-line test (though Mei would have needed to complete and file an **IR833** with her income tax return).

## Limitation on rollover relief

38. Rollover relief can apply to a transfer of residential land only once in a 2-year period. This means that if rollover relief had previously been applied to a transfer of a specific area of residential land, rollover relief cannot apply to a subsequent transfer of the residential land unless 2 years had passed from the date of the first transfer (see Example | Tauira 5 – Rollover relief does not apply due to limitation).

**Example | Tauira 5 – Rollover relief does not apply due to limitation**

Oliver transferred residential land to his brother, Kiwa, on 5 November 2024. Oliver's bright-line start date was 15 July 2024.

Rollover relief applies to the transfer from Oliver to Kiwa as they are associated persons (within two degrees of blood relationship) and were associated at the date of transfer for more than 2 years before the date of transfer.

The effect of rollover relief, for the purposes of the bright-line test, is as follows:

- Oliver is treated as disposing of the land for an amount that equals the cost of the land to him. However, Oliver's income would be offset by a deduction he is allowed for the cost of the residential land (s DB 23). As such there would be no tax consequences for Oliver under the bright-line test (though he would need to complete and file an **IR833** with his income tax return).
- Kiwa is treated as acquiring the residential land for an amount equal to Oliver's cost.
- Kiwa's bright-line start date is 15 July 2024 (Oliver's bright-line start date).

Kiwa has a 50% partnership share in a limited partnership. Kiwa and his friend formed the limited partnership in January 2020. Kiwa and the limited partnership are associated persons as Kiwa has more than a 25% share in the limited partnership.

Kiwa decides to sell the residential land to the limited partnership. The sale and purchase agreement is entered into on 10 April 2025 and the transfer is registered under the Land Transfer Act 2017 on 30 April 2025.

As rollover relief can apply only once to residential land in a 2-year period, rollover relief does not apply to the transfer by Kiwa to the limited partnership.

The bright-line test will apply, as Kiwa's bright-line end date (30 April 2025) is within 2 years of his bright-line start date (15 July 2024). The amount of income Kiwa is treated as deriving is the sale price or the market value of the land if the sale was for less than market value (s GC 1). Kiwa is treated as acquiring the property from Oliver for an amount equal to the cost of the property to Oliver, and Kiwa is allowed a deduction for that amount (s DB 23). As such, Kiwa will be taxed under the bright-line test on any gain in value from the time Oliver acquired the property to the time the property was sold to the limited partnership (s CB 6A).

The limited partnership's bright-line start date will be 30 April 2025.

# References | Tohutoro

## Legislative references | Tohutoro whakatureture

**Income Tax Act 2007**

Sections CB 6A, CB 6 to CB 12, CB 16A, DB 23, FD 1, FD 2, FD 3, GC 1, YB 2 to YB 13

**Land Transfer Act 2017**

## Other references | Tohutoro anō

A guide to associated persons definitions for income tax purposes – IR620 (guide, Inland Revenue, 2024)
**ird.govt.nz/managing-my-tax/associated-persons**

Bright-line property tax – for residential property sold from 1 July 2024 – IR1229 (guide, Inland Revenue, 2024)
**ird.govt.nz/property/buying-and-selling/when-you-need-to-pay/the-brightline-test/ownership-transfers-and-rollover-relief**

QB 25/11: When is the bright-line start date for the 2-year bright-line test?
**https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2025/qb-25-11**

# LEGAL DECISION – CASE SUMMARIES

This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, Court of Appeal, and the Supreme Court.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

## CSUM 25/05: NZTCRA rejects argument that an interest amount paid under a relationship property agreement was deductible as an expense under the Income Tax Act 2007

Decision date: 17 April 2025

### Case

***A v CIR [2025] NZTCRA 02***

### Legislative References

Income Tax Act 2007, ss DB 6, DA 1, and DA 2(2)

### CASE LAW References

*Public Trustee v Commissioner of Taxes* [1938] NZLR 436 (CA)

*Williams v Commissioner of Inland Revenue* (1988) 10 NZTC 5,078 (HC)

*Fahey v MSD Speirs Ltd* [1975] 1 NZLR 240 (PC)

*Re Securitibank Ltd (No 2)* [1978] 2 NZLR 136 (CA)

*Colonial Mutual Life Assurance Society Ltd v Commissioner of Inland Revenue* (2000) 19 NZTC 15,614 (CA)

*Pacific Rendezvous Ltd v Commissioner of Inland Revenue* [1986] 2 NZLR 567 (CA)

*Eggers v Commissioner of Inland Revenue* [1988] 2 NZLR 365 (CA)

*Commissioner of Inland Revenue v Brierley* [1990] 3 NZLR 303 (CA)

*Reid v Commissioner of Inland Revenue* (1990) 12 NZTC 7,153 (HC)

*Commissioner of Inland Revenue v Haenga* [1986] 1 NZLR 119 (CA)

## Summary

Mr A sought to deduct interest expenses of $18,069.31 in his 2016 income tax return. This amount related to interest Mr A was required to pay his ex-wife under a relationship property agreement. The Authority held there was an insufficient nexus between the interest payments and Mr A's assessable income and disallowed the deduction.

## Impact

The decision adopts the well-established rules relating to determining a nexus between interest expenditure and derivation of income.

## Facts

The facts were presented through an agreed statement of facts and oral evidence. Before, during, and after their marriage, Mr A had interests in several successful companies. On 5 April 2006, Mr A and Ms B entered into a relationship property agreement and a parenting plan agreement. Mr A was to keep his business interests and half of the proceeds from the sale of the family home. Ms B was to receive $1.3 million from the sale of the family home towards her half share of the total settlement figure.

The family home was sold in April 2007. In July 2007 Ms B offered to forgo interest if Mr A paid the balance due in a lump sum before 30 September 2007. In the alternative Ms B would require penalty interest to be paid.

On 21 October 2015, Ms B received a High Court judgement that Mr A owed her $210,355 and penalty interest of $12,988.70. Ultimately, Mr A paid Ms B interest of $249,249.23 and a capital payment on 5 November 2015. Mr A sought to adjust his tax position to take account of the interest paid. He justified the interest deduction on the basis he had effectively borrowed the funds and was required to pay interest to Ms B so as to avoid having to sell his income producing assets to pay Ms B or borrow money from a third party to retain his income earning assets.

In the Taxation and Charities Review Authority Mr A argued, through his tax agent, he incurred interest expenses arising from the relationship property agreement, there was sufficient nexus between the interest incurred and his income earning process, and he was therefore entitled to deduct these interest payments under DB 6 and DA 1(1) of the Income Tax Act 2007 (**ITA**).

The Commissioner's submission was the interest payments were not deductible under s DB 6 as they lacked the nexus and therefore did not meet general permission in s DA 1. Furthermore, the private limitation in s DA 2(2) would apply as they were private or domestic in nature.

## Issues

Whether there was sufficient nexus between the interest payments and Mr A's income earning activities.

## Decision

The Authority found that Mr A's relationship property obligations to Ms B arising from their settlement were without doubt distinct from his income earning activities. His income did not alter whether or not he paid Ms B, he derived no income from her and there was no business or income earning element in making the payments to her.

The reason for making the interest payments was deferral and default on Mr A's relationship property obligation; the obligation and the default had no direct, practical or necessary connection with Mr A's income earning activities. There was no underlying borrowing to which the interest payments related. His income was not affected by whether he paid the interest or not. As such there was not a sufficient nexus between the payments and Mr A earning income and the amount was not deductible.

The Authority looked at authorities dealing with borrowing for the purpose of asset retention first. The Authority distinguished the cases of *Public Trustee v Commissioner of Taxes*[1] and *Williams v CIR*[2] which were relied on by Mr A. In both cases, a taxpayer borrowed money and paid interest on that borrowing. These cases can be distinguished from the facts of the Mr A's case as Mr S did not pay money he owed, and interest obligations accrued due to not paying relationship property obligations as they fell due.

1 *Public Trustee v Commissioner of Taxes* [1938] NZLR 436 (CA).

2 *Commissioner of Inland Revenue* (1988) 10 NZTC 5,078 (HC).

The Authority then turned to authorities regarding the nexus between expenditure and derivation of income, looking first at the character of the expenditure. The Authority identified comments from Richardson J in *Colonial Mutual Life Assurance Society Ltd v CIR*[3] as material. This case held where interest was related to delay in making a payment of a particular character, the interest would be readily ascribed that same character.

Applying these principles, the Authority concluded the interest was related to Mr A's relationship property obligations and his failure to pay the money owed at the agreed times. There was no borrowing to which the interest related, and accordingly no capital funding could be related to retention of assets or have any nexus with Mr A's income earning companies.

The Authority then turned to interest deductibility under ss DB 6, DA 1 and DA 2(2) and reiterated there was no borrowing and therefore the principles that relate to deductibility of interest do not apply in this case. The Authority nevertheless highlighted the three principal authorities regarding the interest deductibility provisions relating to interest on borrowing. These are *Pacific Rendezvous Ltd v CIR*,[4] *Eggers v CIR*,[5] and *CIR v Brierley*.[6] The Authority placed particular emphasis on the "use" test arising from *Pacific Rendezvous*. The Authority held that while the "use" test, as it relates to borrowing and interest paid on it, and the nexus with the application of the borrowed funds is not directly applicable (because as stated above there were no borrowed funds in this case) the principle of focusing on the nexus between the interest, the reason for paying the interest, and the character of the thing to which the interest relates, does apply. Applying this to the present facts, the relationship property obligation to which the interest relates was not concerned with Mr A's income earning activities. It was Mr A's default and delay in meeting his obligations – not his business interests – that caused Mr A's obligation to pay interest.

Applying ss DB 6 and DA 1 of the ITA, the Authority held the payments in contention do not come within the general permission, due to an absence of nexus with Mr A's income or income earning process.

The Authority finally considered the private limitation under s DA 2(2) of the ITA, although it was not the determinative issue. It found that as Mr A's circumstances failed to meet the general permission, there was no need to consider the private limitation further.



3 *Colonial Mutual Life Assurance Society Ltd v Commissioner of Inland Revenue* (2000) 19 NZTC 15,614 (CA).

4 *Pacific Rendezvous Ltd v Commissioner of Inland Revenue* [1986] 2 NZLR 567 (CA).

5 *Eggers v Commissioner of Inland Revenue* (1988) 2 NZLR 365 (CA).

6 *Commissioner of Inland Revenue v Brierley* [1990] NZLR 303 (CA).

# CSUM 25/06: NZTCRA finds work to convert retail space to office space in commercial building was capital in nature

Decision date: 17 April 2025

### Case

***P Ltd v CIR [2025] NZTCRA 03***

### Legislative References

Income Tax Act 2007 (ITA), ss DA1(1), DA2(1), DB22B.

### Legal terms

Deductible expenditure; Capital limitation, Repairs and maintenance, renewal of substantially the whole, change in character.

Win for the Commissioner of Inland Revenue (Commissioner).

## Summary

The Taxation and Charities Review Authority (TCRA) found in favour of the Commissioner, confirming assessments made in relation to the income tax years ending 31 March 2017 to 2019. The assessments disallowed deductions for construction and finishing work on a commercial property on the basis the payments were capital in nature. The TCRA found the evidence supported the Commissioner's position that the work was capital in nature and upheld the Commissioner's assessments.

## Impact

The outcome of this case turns on its facts with the TRCA finding the work was an integral part of a major capital project and altered the character of the property.

## Facts

The disputant owned large parts of a large commercial property constructed in 1986/87. From its construction until 2014, the property was leased to a major commercial retailer. When that first tenant vacated, the disputant spent $13,585,869 on construction and finishing work to accommodate a second tenant requiring office space. The second tenant entered into an agreement to lease that had options for renewal for up to 32 years (12 years with two 10-year rights of renewal).

There were several dimensions to the work carried out including:

- New building façade modernising the building appearance;
- Seismic (earthquake) strengthening;
- New and extended bathroom facilities;
- New atrium;
- Upgraded/safer glazing;
- Strengthening car park panels;
- Replacing some walls with windows.

The disputant filed Notices of Proposed Adjustment (NOPA's) proposing to adjust their income tax returns to include the costs of the work as deductible expenditure in their 2017 to 2019 income tax returns on the basis it was repairs and maintenance. The Commissioner considered the costs incurred were non-deductible as capital expenditure and rejected the disputant's proposed adjustments.

The disputant and the Commissioner agreed on categorising all but two aspects of the work prior to the hearing. Only the seismic strengthening and the ground level glass façade remained in dispute and was the subject of the litigation.

## Issues

Whether the expenditure in relation to the glass façade and the seismic strengthening were appropriately categorised as repairs and deductible in the years it was incurred.

## Decision

The TCRA noted the principles relating to the categorisation of work into deductible and capital expenditure is well settled. However, these principles require a substantial element of evaluation of the characteristics of the work and the asset on which the work was carried out, then considering matters of degree and proportion. Factors that may be considered included:

- Identifying the relevant asset on which the work was performed;
- Whether the work can be divided into categories or must be viewed as a whole;
- The scope of the work in relation to the asset as a whole;
- The appropriate accounting treatment for the work; and
- How the work changed the asset.

*Relevant Asset*

The TCRA found the relevant asset to consider was the property. The work on the glass façade and the seismic strengthening was part of a larger refurbishment and could not be separated from its other components. They were undertaken to achieve the objects of the project which was to modernise the property and convert it from retail to office space.

*Extent of work*

The TCRA considered the work went beyond the scope of repairs and improved or altered the character of the asset. The glass façade was replaced with a superior product functionally and aesthetically. It was an integral part of the building and contributed fundamental changes to its character improving its function and appearance.

Similarly, the Seismic strengthening was an important structural improvement making the property a far more useable and sounder asset. It created a safe lettable building from one that was not safe and likely not suitable in the market for its former use.

*Other considerations*

The project to refurbish the building was split into multiple contracts. The TCRA did not consider the separate contractual arrangements relating to the glass façade or the seismic work important in characterising the work. What was important was the coordinated way in which all the work was professionally structured and managed with proper cost control and allocation.

The disputant claimed the expenses were 'black hole' expenses if they were not deductible. The TCRA found a fundamental difficulty with that argument was that capital gains were not always taxed and that potentially applied to the disputant's property. The outcome was not demonstrably inequitable and was a result of deliberate tax policy choices.

During the dispute phase, the disputant and the Commissioner agreed that some of the works could be categorised as commercial fit out. Base works and commercial fit out have different tax treatment – the former non depreciable capital and the latter depreciable (see section DB 22B of the ITA). The disputant alleged it was the commercial fit out that altered the character of the property not the work completed before the fit out, however the TCRA did not accept the evidence supported that position. The work created substantial changes which accommodated the commercial fit out. While commercial fit outs could change with tenants this was of no significance to the issue to be decided.

To affect a repair, it may be necessary to use an improved component, either due to regulatory requirements or only new/improved parts being available (for example, owing to the passage of time). The TCRA did not see this factor as having any effect on its analysis. While improved standards may be necessary the consideration is on the extent of the improvement and scope of work. The reasons for improvements and better function are not particularly significant – it is the reality and extent of improvement and amount of work required that is the issue.

*Conclusion*

The TCRA accepted the expenditure on the glass façade and the seismic strengthening work were not repairs/maintenance that were deductible for income tax purposes but capital expenditure as the work was an integral part of a major capital project and the work altered the character of the property as a whole.

# CSUM 25/07: NZTCRA finds remediation work on unit was capital in nature

Decision date: 22 April 2025

## Case

***P v Commissioner of Inland Revenue [2025] NZTCRA 04***

## Legislative References

Income Tax Act 2007, ss DA1(1), DA2(1)

Tax Administration Act 1994, s138P

## Legal terms

Deductible expenditure; capital limitation; weathertightness; repairs and maintenance; change in character; one project.

## Summary

The Taxation and Charities Review Authority (**TCRA**) confirmed the Commissioner's assessments for the income tax years ending 31 March 2015 and 2017 disallowing deductions claimed for remedial work undertaken on the disputant's unit. The remedial work to fix weathertightness issues changed the character of the asset and was capital in nature.

## Impact

The outcome of this case turns on its facts with the TCRA finding the remediation work was substantial and changed the character of the asset.

## Facts

The disputant owned a unit (the **Unit**), one of 13 residential units in a multi-level building.

In 2011 water leaks appeared in the Unit causing damage, which was greatly accelerated by defective building techniques including the direct monolithic cladding that was not installed correctly and poor construction detailing of the plaster clad deck and deck exterior wall junctions. There were also issues with a defective fire-rated barrier with the adjoining unit.

The remedial work on the Unit included removal of the direct-fix monolithic cladding and replacing it with a monolithic plaster finished fibre cement sheet cladding system on a cavity on a rigid air barrier, replacement of water damaged timber framing and treatment of undamaged timber framing, removal of tiles and the membrane underneath on the decks and replaced with trafficable membrane instead of re-tiling, removal of the planter box and replaced with a glazed balustrade. The existing doors and windows were also removed while work was completed and re-flashed and reinstalled.

The disputant claimed the costs of the remediation work as deductible expenditure in his 2015 and his 2017 income tax returns based on the expenditure being for repairs to the unit.

The Commissioner says the work was of a capital nature as it substantially improved the Unit from being a defective, leak prone unit to a watertight, safe and secure unit.

## Issues

The main issue to be determined was whether the expenditure incurred was for work that changed the character of the Unit and therefore capital in nature and not deductible.

## Decision

In addressing the primary issue of whether the work is a repair or a non-deductible capital expense, the relevant asset on which the work was performed must be identified. The parties agreed that the asset in question was the Unit, not the whole building. The TCRA agreed that was the appropriate approach.

The TCRA concluded that the remediation work on the Unit was substantial and went beyond the scope of repairs in the following ways:

- The work was significant in terms of cost;
- The work changed important parts of the structure. The replacement of the cladding was significant not only in being a critical component of the building, but also the replacement was a great improvement;
- The work included restoration of part of the structural framing;
- The decking area involved substantial replacement of materials incorporated into the unit there were poorly designed. And constructed so as not to achieve acceptable weathertightness; and
- The result of the work is a fully functional unit, that will have the longevity, function and legal status it should have had from the time of its construction; however, as constructed it was seriously defective.

The work on the external wall cladding, framing, deck surface, deck balustrade and planter were all a single project. The project required major work on the Unit and replacement of inferior and unacceptable systems with effective ones. These were necessarily addressed simultaneously for reasons of cost, efficiency and ensuring all components were effective in achieving full weathertightness.

This work went beyond repairing wear and tear and improved and altered the character of the asset. The Unit was remediated with the result that all the defects were addressed and the Unit put into a sound watertight condition. The Unit was greatly superior to its state when constructed.

The disputed expenditure was non-deductible capital expenditure because that work was an integral part of a substantial capital project and the work itself extended beyond the scope of repair, altering the character of the unit.

# TECHNICAL DECISION SUMMARIES

Technical decision summaries (TDS) are summaries of technical decisions made by the Tax Counsel Office. As this is a summary of the original technical decision, it may not contain all the facts or assumptions relevant to that decision. A TDS is made available for information only and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs**. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

## TDS 25/08: Disposal of shares following amalgamation

Decision date | Rā o te Whakatau: 20 December 2024

Issue date | Rā Tuku: 14 April 2025

### Subjects | Kaupapa

Amalgamation of companies; disposal of shares held on capital account; whether taxable

### Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007

### Summary of facts | Whakarāpopoto o Meka

1. The Arrangement was the amalgamation of several related companies (the Applicants) which collectively held shares in E Ltd and the sale of those shares after amalgamation. A Ltd continued as the amalgamated company.
2. The shares in E Ltd had been acquired over a number of years and as long-term, open-ended investments and were held on capital account by the Applicants. The Applicants entered into an agreement to sell those shares to P Ltd prior to amalgamating.

### Issues | Take

3. The main issues considered in this ruling were:
   - Whether the amalgamation of the Applicants was a "resident's restricted amalgamation" as defined in s FO 3;
   - Whether A Ltd (as the amalgamated company) was treated as having acquired the shares in E Ltd on the same date as they were acquired by the amalgamating company, for the same amount, and with the same intention and purpose;
   - Whether the amount that A Ltd (as the amalgamated company) derived from the disposal of the shares in E Ltd was taxable income under any of ss CA 1(2), CB 1, CB 3, CB 4 or CB 5.

### Decisions | Whakatau

4. TCO concluded:
   - The amalgamation of the Applicants (with A Ltd continuing as the amalgamated company) was a "resident's restricted amalgamation" as defined in s YA 1 and s FO 3.
   - Pursuant to s FO 10, A Ltd (as the amalgamated company) is treated as having acquired the shares in E Ltd which were held by other applicants on the same date those other applicants acquired them and for the sum of the amounts paid or incurred by them (relating to the shares in E Ltd) referred in s FO 10(4)(a), (b) and (c).
   - The amount that A Ltd derived from the disposal of the shares in E Ltd after amalgamation was not taxable income under any of ss CA 1(2), CB 1, CB 3, CB 4 or CB 5.
5. The conclusion was subject to conditions that the administrative requirements of the Inland Revenue Acts were met by the Applicants.

## Reasons for decisions | Pūnga o ngā whakatau

### Issue 1 | Take tuatahi: Resident's restricted amalgamation

6. This issue concerned the requirements of a "resident's restricted amalgamation" as defined in FO 3.
7. TCO concluded that the proposed amalgamation met the requirements to qualify as a "resident's restricted amalgamation" as defined in s FO 3 because:
   - The amalgamation met the definition of "amalgamation" in s YA 1.
   - A resident's restricted amalgamation is an amalgamation between New Zealand resident companies that do not solely derive exempt income, except income under ss CW 9 and CW 10. The Applicants met these requirements, and this was stated in the description of Arrangement.
   - Special rules which apply to qualifying companies were irrelevant as the relevant companies were not qualifying companies.
8. This conclusion was subject to the conditions that the administrative requirements of the Inland Revenue Acts were met by the Applicants.

### Issue 2 | Take tuarua: Purpose of deemed acquisition under s FO 10

9. This issue concerned the interaction between s CB 4 and s FO 10. In particular, whether undertaking the amalgamation would cause s CB 4 to apply to the subsequent sale of the shares in E Ltd to P Ltd. This is because at the time of the amalgamation, A Ltd had already entered into an agreement to dispose of the shares in E Ltd.
10. Section CB 4 provides that an amount that a person derives from disposing of personal property is income of the person if they acquired the property for the purpose of disposing of it.
11. Section FO 10 sets out the tax consequences where property passes on a resident's restricted amalgamation from an amalgamating company to an amalgamated company. Generally, it treats the amalgamated company as having acquired the property on the date the amalgamating company originally acquired the property, for the same cost. While s FO 10 deems an amalgamating company to acquire certain property, it does not specify the purpose of that deemed acquisition.
12. TCO considered that there was some ambiguity on the plain words as to how s CB 4 should apply in the context of the acquisition deemed to occur by s FO 10. TCO considered that the following interpretations were possible:
    - the amalgamated company had no purpose for the acquisition,
    - the amalgamated company's purpose should be treated as being the same purpose as that of the amalgamating company (at the time of the original acquisition),
    - the acquisition is deemed to occur for the purposes of s FO 10, but not for the purposes of s CB 4, or
    - the amalgamated company's purpose should be based on its state of mind at the time of the amalgamation.
13. TCO was of the view that the purposes of ss CB 4 and FO 10 did not support that the amalgamated company's purpose for the acquisition was based on the state of mind of the amalgamated company at the time of the amalgamation as:
    - Section CB 4 refers to the person's intention as at the date of acquisition. The date of acquisition under s FO 10(3) and (4) is on the same date the amalgamating company originally acquired the property and is not the date of amalgamation.
    - It is arguable that as the acquisition effected by s FO 10(3) is a deemed acquisition, it may not have been entered into for any purpose.
    - The principle of continuance is more consistent with the amalgamated company adopting the purpose of the amalgamating companies with respect to property.
    - The provisions relating to land that passes on amalgamation (s FO 17) directly address the treatment of land that is held on capital account by an amalgamating company and revenue account by an amalgamated company.
    - However, the provisions relating to personal property (s FO 10) in the same circumstances do not directly address this even though similar policy concerns would arise.
    - The background to the amalgamation rules shows that where property passes on amalgamation it was intended that the outcome should be the same as property that passes between members of a consolidated group.

14. Considering the above, TCO concluded that s FO 10(3) would not cause the disposal of the shares in E Ltd by A Ltd (as the amalgamated company) to be treated differently under s CB 4 than the same disposal would have been treated if the disposal occurred pre-amalgamation.

## Issue 3 | Take tuatoru: ss CA 1(2), CB 1, CB 3, CB 4 and CB 5

15. This issue concerned the application of ss CA 1(2), CB 1, CB 3, CB 4 and CB 5.
16. Sections CA 1(2), CB 1, CB 3, CB 4 and CB 5 address:
    - Income under ordinary concepts.
    - Amounts derived from business.
    - Amounts derived from a profit-making undertaking or scheme.
    - Amounts derived from the disposal of personal property which was acquired for the purpose of disposal.
    - Amounts derived from a business of dealing in personal property.
17. In summary, TCO considered that:
    - The relevant case law[1] concerning s CA 1(2), s CB 1, s CB 3, s CB 4 and s CB 5 and the capital revenue test suggested that, if the amount A Ltd (as the amalgamated company) received from the sale of the shares in E Ltd was capital in nature, it would not be caught by s CA 1(2), s CB 1, s CB 3, s CB 4 or s CB 5.
    - As the application of s FO 10 did not mean A Ltd (as the amalgamated company) was treated as having acquired shares in E Ltd for the purpose of disposal, s CB 4 did not apply.
    - The Applicants had acquired the shares in E Ltd over a number of years as long-term, open-ended investments and held these shares on capital account.
    - Therefore, the amount derived from disposal of these shares by A Ltd (as the amalgamated company) was not caught by s CA 1(2), s CB 1, s CB 3, s CB 4 or s CB 5.

### Section CA 1(2) – Income under ordinary concepts

18. Section CA 1(2) provides that "an amount is also income of a person if it is their income under ordinary concepts".
19. The phrase "under ordinary concepts" is not defined. However, the courts have considered the meaning of what is income "under ordinary concepts" in several cases.[2]
20. It is implicit in the wording of s CA 1(2) and Richardson J's judgment in *Reid* that an amount that is capital in nature will not constitute income under ordinary concepts for the purposes of s CA 1(2).[3]

### Whether the amount is capital or revenue in nature

21. The factors to consider when determining where an amount is capital or revenue in nature include (but are not limited to):
    - The scope of the recipient's business.
    - Periodicity, recurrence, or regularity.
    - The consideration provided for the receipt.
    - The purpose or reason for which the money is received.
    - The accounting treatment.
22. It was the view of TCO that the factors indicated that the shares in E Ltd which were held by amalgamating companies would be capital property of A Ltd (as the amalgamated company) after amalgamation. This was because:
    - Each of the amalgamating companies and A Ltd were holding companies established for the purpose of holding the parent company's investments.
    - By the very nature of the transaction it could not be recurring.
    - The shares in E Ltd were acquired over a prolonged period of time.

1 Including *Reid v CIR* (1985) 7 NZTC 5,176 and *Grieve v CIR* (1984) 6 NZTC 61,682 (CA).
2 *Reid v CIR* (1985) 7 NZTC 5,176.
3 *Case S86* (1996) 17 NZTC 7,538.

23. Therefore, TCO concluded that the amount derived on disposal of the shares in E Ltd by A Ltd (as the amalgamated company) would not be income under s CA 1(2).

### Section CB 1 – Amount derived from a business

24. Section CB 1 provides that an amount that a person derives from a business is income of the person unless the amount is of a capital nature (s CB 1(2)).
25. As TCO concluded the disposal was capital in nature, s CB 1(2) applied and the amount derived on disposal of the shares in E Ltd by A Ltd (as the amalgamated company) would not be income under s CB 1.

### Section CB 3 – Profit-making undertaking or scheme

26. Section CB 3 includes in a taxpayer's assessable income amounts derived from the carrying on or carrying out of an undertaking or scheme entered into for the purpose of making a profit.
27. A number of cases have considered what constitutes an "undertaking or scheme". The key points are that:
    - An undertaking or scheme is some plan or purpose which is coherent and has some unity of conception. It does not need to be precise. The assessment of any profit-making purpose is made at the time the scheme is entered into and property which is already held can become part of a later formulated scheme. There must be a nexus between the undertaking or scheme and any gain derived.
    - For s CB 3 to apply, the scheme must produce assessable income. The mere realisation of a capital asset to the best advantage is not an undertaking or scheme.
    - The courts have also held that any purpose of making a profit (under s CB 3) must be the dominant purpose. In this regard, "purpose" is construed in the same manner as it is construed in relation to s CB 4 (Personal property acquired for purpose of disposal), which is discussed further below. A taxpayer's subjective purpose needs to be established, but this is objectively assessed. The time at which the dominant purpose is applied is when an undertaking or scheme is entered into.
28. While it was clear A Ltd had a "purpose", at the time of the amalgamation which involved disposing of the shares in E Ltd for a profit; this involved the realisation of a capital asset. Therefore, it was not an undertaking or scheme to which s CB 3 is concerned.

### Section CB 4 – Personal property acquired for purpose of disposal

29. TCO concluded in issue 2 that A Ltd (as the amalgamated company) either had no purpose of acquisition in relation to the shares in E Ltd deemed to be acquired on amalgamation or the same purpose of acquisition as the other Applicants had at the time of original acquisition. In either case, no income arises under s CB 4 on disposal of the shares in E Ltd.

### Section CB 5 – Business of dealing in personal property

30. Section CB 5 states that an amount derived by a person from disposing of personal property is income to that person if it was their business to deal in property of that kind.
31. TCO concluded that amounts derived from the disposal of the shares in E Ltd by A Ltd subsequent to amalgamation (as the amalgamated company) was not income under s CB 5. This is because the shares in E Ltd were held on capital account.

# TDS 25/09: Distribution and resettlement of trusts

Decision date | Rā o te Whakatau: 18 December 2024

Issue date | Rā Tuku: 30 April 2025

## Subjects | Kaupapa

Income tax: disposal of trust assets; capital receipts; distribution of trust assets; settlement of trust assets; FIF income; FIF income calculation method

## Taxation laws | Ture tāke

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

## Summary of facts | Whakarāpopoto o Meka

1. The Arrangement in this ruling involves the distribution and resettlement of assets from several family trusts (the Old Trusts) on to new family trusts (the New Trusts).
2. The Old Trusts were set up by the settlor for the benefit of their children (the Siblings) and the Siblings' family members.
3. The Old Trusts have no gifting settlor who is not a natural person or deceased person. And at all relevant times, the Old Trusts will be complying trusts (other than a community trust) and mainly for the benefit of a natural person for whom the gifting settlors of the trust had natural love and affection.
4. The assets held by the Old Trusts include:
   - New Zealand shares (NZ Shares), including shares in companies, units in unit trusts, and shares or units in portfolio investment entities (PIEs);
   - ASX-listed shares (ASX Shares) – Australian listed shares that are exempt from being a foreign investment fund (FIF) attributing interest under s EX 31;
   - cash;
   - FIF Shares - shares that are direct income interests in foreign companies under s EX 30 and do not qualify for FIF exemptions in s EX 30 to s EX 43;
   - interests in New Zealand limited partnerships (NZ LP Interests); and
   - New Zealand and overseas fixed-interest investments (Debt Investments).
5. The Old Trusts' equity investments have the following features:
   - Their investment philosophy is to be a long-term investor, to preserve inter-generational capital and to generate income.
   - Investments are generally held on a long-term basis – some have been held for up to 30 years.
   - The Old Trusts have invested in accordance with long-term investment policy statements.
   - The average number of share sale transactions over a four-year period for each of the Old Trusts is less than 10.
   - Some of the shares in the portfolio are interests in managed funds.
   - The Old Trusts invest for dividends and yield and do not actively seek out immediate returns or pursue short-term capital gains on shares.
6. The New Trusts will be settled by the Siblings for the benefit of themselves and their family members.

TECHNICAL DECISION SUMMARIES

7. To settle the assets held in the Old Trusts on the New Trusts, a series of steps will occur, which involve the following:
   - The Old Trusts selling assets on the open market into cash.
   - Distribution of assets (comprising cash and unsold assets, including shares and limited partnership interests) from the Old Trusts to the Siblings.
   - Settlement of assets by the Siblings on the New Trusts.
   - The use of the fair dividend rate (FDR) or comparative value (CV) method under the FIF regime in the income year of resettlement by the Old and the New Trusts.
   - The New Trusts investing in PIEs from the settlement assets.
8. The Applicants have advised the reasons for the restructure are:
   - Simplify the existing structure and to provide better financial security and certainty for the family members.
   - Protect assets against potential creditor and relationship property claims.
   - The New Trusts will have modern trust deeds consistent with current best practice.
   - Settlement will simplify investment thereby reducing administration and compliance costs.

## Issues | Take

9. The issues considered in this ruling were whether:
   - the disposal of the NZ Shares, ASX Shares and NZ LP Interests (to the extent the limited partnership owned shares) (Shares) by the Old Trusts will give rise to income for the Old Trusts under any of ss CA 1, CB 1, CB 3, CB 4 or CB 5;
   - any income derived by the Old Trusts from the disposal of the FIF Shares will be excluded income under s CX 57B;
   - to the extent the distributions from the Old Trusts do not comprise a distribution of beneficiary income, the distributions will be exempt income for the Siblings under s CW 53;
   - to the extent that the Siblings derive income under s CB 4 from the Shares that they settle on the New Trusts, they can deduct the market value of the property under s DB 23;
   - any income arising to the Siblings from the disposal of the FIF Shares to the New Trusts is excluded income under ss CX 57B and EX 59(2);
   - the New Trusts can choose to apply either the FDR method or the CV method to the FIF Shares under s EX 44 in the income year of the resettlement;
   - the "opening value" component of the formula in s EX 51 or s EX 52 is zero for the Siblings and the New Trusts in relation to the FIF Shares acquired by the Siblings and the New Trusts; and
   - s BG 1 applies to the Arrangement.

## Decisions | Whakatau

10. The Tax Counsel Office (TCO) concluded:
    - The disposal of the Shares will not give rise to income for the Old Trusts under ss CA 1, CB 1, CB 3, CB 4 or CB 5.
    - Any income arising to the Old Trusts from the disposal of the FIF Shares will be excluded income under ss CX 57B and EX 59(2).
    - To the extent the distributions from the Old Trusts do not comprise a distribution of beneficiary income, the distributions will be exempt income for the Siblings under ss CW 53 and HC 20.
    - To the extent that the Siblings derive income under s CB 4 from the Shares that they settle on the New Trusts, a deduction for the market value of the Shares under ss DB 23 and FC 2(1) will be allowed.
    - Any income arising to the Siblings from the disposal of the FIF Shares to the New Trusts will be excluded income under ss CX 57B and EX 59(2).
    - The New Trusts can choose to apply either the FDR method or the CV method to the FIF Shares under s EX 44 and that choice is not limited by ss EX 46, EX 47, EX 47B, EX 48 or EX 62, in the income year of settlement.
    - The "opening value" component of the formula in s EX 51 or s EX 52 is zero for the Siblings and the New Trusts in relation to the FIF Shares acquired by the Siblings and the New Trusts.
    - Section BG 1 does not apply to the Arrangement.

## Reasons for decisions | Pūnga o ngā whakatau

### Issue 1 | Take tuatahi: Income

11. In this issue, TCO considered whether the disposal of the Shares by the Old Trusts, either by way of a realisation or on distribution to the Siblings, will give rise to income for the Old Trusts under the relevant provisions.

12. As a preliminary issue, TCO considered that the effect of s HG 2(1) is that a disposal of the NZ LP Interests is treated as being a disposal of the underlying partnership property, being shares. The Arrangement description also recorded that the limited partnerships of the NZ LP Interests hold the underlying property of the limited partnerships on capital account.

#### Section CB 1 - Business income

13. Under s CB 1(1), an amount derived from a business is income of a person. However, if the amount is of a capital nature it is excluded by s CB 1(2).

14. The essential question in determining whether an amount is income from a business is whether the amount was derived from the current operations of the business, and not merely connected to the fact that the business existed.[1]

15. Case law provides guidance for what factors are relevant to determining whether the activities of a taxpayer involved in share investment constitute a business.[2] These factors include:
    - profit making intention of the taxpayer;
    - nature and pattern of the activity;
    - period over which the activity is carried on;
    - volume and frequency of transactions;
    - the exercise of an activity in an organised and coherent way and one which is directed to an end result;
    - whether sales are an integral part of an investment business or part of the taxpayer's normal operations in the course of making profits;
    - whether there has been regular or continuous monitoring of the share portfolio by the taxpayer; and
    - whether the activities are carried on in a similar manner to other similar businesses.

16. TCO considered two possible types of businesses that are relevant to the Old Trusts:
    - A share trading business. The Old Trusts would be carrying on a share trading business if they acquired shares with a purpose of disposing them at a profit such that the shares are trading stock of the business.
    - An investment business. If the Old Trusts were carrying on an investment business and held their shares as investments, amounts derived from the share disposals would be income if the disposals were not merely a realisation of an investment, but an act done in carrying on the business.[3] To determine whether this was the case, it was necessary to consider whether share disposals were an integral part of a business.[4]

17. TCO concluded that the Old Trusts acquired the Shares as long-term investments with a purpose of producing income and enhancing the capital value of the trust funds. The Shares were not acquired with a purpose of disposal at a profit, nor were the share disposals an integral part of a business. As such, the Shares are being held on capital account and amounts received from their disposal will be capital receipts and will not give rise to income of the Old Trusts under s CB 1. The matters that supported this conclusion were:
    - The Old Trusts' asset portfolios are managed in accordance with long-term investment principles.
    - The periods of time the Shares are held are consistent with long term investment.

1 *CIR v City Motor Service Ltd; CIR v Napier* Motors *Ltd* [1969] NZLR 1010.

2 *Grieve v CIR* [1984] 1 NZLR 101; (1984) 6 NZTC 61,682 (CA); *Calkin v CIR* (1984) 6 NZTC 61,781; *National Distributors Limited v CIR* (1987) 9 NZTC 6,135; *Estate of King v CIR* [2007] NZCA 474; *Rangatira Ltd v Commissioner of Inland Revenue* (1994) NZTC 11,197 (HC), (1995) 17 NZTC 12,182 (CA), (1996) 17 NZTC 12,727 (PC); *FCT v Radnor Pty Limited* 91 ATC 4,689; *London Australia Investment Company Ltd v F C of T* (1974) 4 ALR 44 (HCA).

3 *Californian Copper Syndicate (Limited and* Reduced*) v Harris (Surveyor of Taxes)* 5 TC 159.

4 *London Australia.*

TECHNICAL DECISION SUMMARIES

- The low volume of share transactions does not suggest a trading activity being carried on or that share disposals are an integral part of a business.
- Some of the Shares are interests in managed funds. The nature of these interests is such that they are ordinarily held as long-term passive investments and not traded for profit.
- When shares are sold, the reasons for the sales indicate a change of investment rather than a profit-making operation.
- Each of the Old Trusts has one overall activity of owning and managing a range of investment types and the Shares are a part of that activity.
- The Old Trusts are family trusts concerned with the preservation and/or enhancement of the trust fund and the provision of income to beneficiaries on an inter-generational basis.
- The limited partnership interests are by their nature relatively illiquid as there is no significant secondary market for them, and they are not usually traded for profit.



### Section CB 3 – profit-making undertaking or scheme

18. Section CB 3 provides that an amount that a person derives from carrying on or carrying out an undertaking or scheme entered into for the purpose of making a profit is income of the person.
19. For s CB 3 to apply, the acquisition and sale must exhibit features that give it the character of a business deal. If a receipt is capital in nature, it will not be income under s CB 3.[5]
20. As TCO had already concluded that the Old Trusts held the Shares on capital account, any amount derived from the disposal of the Shares will be a capital receipt and will not give rise to income under s CB 3.

### Section CB 4 – Acquired with a purpose of disposal

21. Section CB 4 provides that an amount that a person derives from disposing of personal property is income if they acquired the property for the purpose of disposing of it.
22. It was concluded earlier that the Old Trusts did not acquire the Shares with a purpose of resale but acquired them as long-term investments with a purpose of producing income and preserving or enhancing their capital.
23. Further, the Old Trusts' investment policies are such that sales may be contemplated at the time of acquisition, but there is nothing in the Old Trusts' policies or activities that indicate a clear purpose of disposal at that time.
24. Therefore, TCO concluded that the disposal of the Shares will not give rise to income under s CB 4.

### Section CB 5 – Business of dealing in shares

25. Section CB 5 provides that an amount that a person derives from disposing of personal property is income of the person if their business is to deal in property of that kind.
26. TCO had already concluded that the Old Trusts were not carrying on a business of buying and selling shares for a profit for the purposes of s CB 1. However, the case *Piers & Ors v CIR (1995) 17 NZTC 12,283* suggests that a person who is not carrying on a business under s CB 1 may nevertheless be carrying on a dealing business under s CB 5.
27. TCO did not need to resolve the question of whether the principle in *Piers* applied, because even if s CB 5 could apply there were insufficient share transactions carried out by the Old Trusts to constitute a dealing business under s CB 5.
28. Therefore, the disposal of the Shares will not give rise to income under s CB 5.

### Section CA 1(2) – Income under ordinary concepts

29. Section CA 1(2) provides that an amount is income of a person, if it is their income under ordinary concepts.
30. For an amount to be "income under ordinary concepts", the amount must be something that comes in to a person and is in money or money's worth.[6] However, receipts that are on capital account are not income according to ordinary concepts.[7]
31. Given TCO's previous conclusion that the Old Trusts held the Shares on capital account, any amount derived from the disposal of the Shares will be a capital receipt and will not give rise to income under s CA 1(2).

5 *Duff v Commissioner of Inland Revenue* (1982) 5 NZTC 61,131 (CA).

6 *Tennant v Smith* [1892] AC 150, *CIR v Parson (No. 2)* [1968] NZLR 574

7 *Case S86* (1996) 17 NZTC 7,538

## Issue 2 | Take tuarua: FIF income

32. This issue considered whether any income derived by the Old Trusts from the disposal of the FIF Shares will be excluded income under ss CX 57B and EX 59(2).

33. The relevant FIF rules are such that where a person is using one of the FIF calculation methods listed in s EX 59(1) for a FIF interest in a period, an actual amount derived by the person from that FIF interest (other than deemed FIF income) is excluded income under ss EX 59(2) and CX 57B. The listed methods include the FDR method and the CV method.

34. A person who has an attributing interest in a FIF has FIF income (s CQ 5). A direct income interest in a foreign company is an attributing interest, and a direct income interest includes shares in a foreign company (ss EX 29 and EX 30). Given the Old Trusts have an attributing interest in the FIF Shares, and that they calculate their FIF income or loss using the FDR or CV method in respect of the FIF Shares, TCO concluded that any income arising to the Old Trusts from the disposal of the FIF Shares will be excluded income under ss CX 57B and EX 59(2).

## Issue 3 | Take tuatoru: Trust distribution

35. TCO considered whether, to the extent the distributions from the Old Trusts do not comprise a distribution of beneficiary income under s HC 6, the distributions will be exempt income for the Siblings under ss CW 53 and HC 20.

36. The effect of ss HC 20 and CW 53 is that to the extent a distribution from a complying trust (other than a community trust) is not beneficiary income, it is exempt income.

37. Given the Old Trusts are complying Trusts other than community trusts, any distributions from the Old Trusts that are not beneficiary income will be exempt income to the Siblings.

## Issue 4 | Take tuawhā: Deduction of cost of investments

38. TCO considered whether to the extent the Siblings derive income under s CB 4 from resettling the Shares from the Old Trusts on the New Trusts, they are allowed a deduction under s DB 23 for the cost of the Shares.

39. Under s DB 23, a person is allowed a deduction for expenditure they incur as the cost of revenue account property. Relevantly, "revenue account property" is defined in s YA 1 to include property that would produce income for the person if it was disposed of for valuable consideration.

40. To the extent the Siblings derive income under s CB 4 when they dispose of the Shares, such Shares will be revenue account property. It follows that s DB 23 applies to allow a deduction for any expenditure incurred as a cost of the Shares.

41. Even though the Siblings will not pay for the Shares, a distribution of property by a trustee to a beneficiary (s FC 1(1)(c)) is treated as a disposal of property at market value and an acquisition by the transferee at market value (s FC 2(1)). As such, the Siblings will have a cost of revenue account property equal to the market value of the Shares and will be entitled to deduct this amount under s DB 23.

## Issue 5 | Take tuarima: Distribution of FIF Shares

42. This issue considered whether any income arising to the Siblings from the disposal of the FIF Shares to the New Trusts is excluded income under s CX 57B. This is relevant to the extent that the FIF Shares are distributed to the Siblings in specie by the Old Trusts.

43. Given the Siblings will have an attributing interest in the FIF Shares and the FIF income or loss will be calculated using the FDR or CV method, TCO concluded that any income arising to the Siblings from the disposal of the FIF Shares to the New Trusts will be excluded income under ss CX 457B and EX 59(2). This is based on the same reasoning as discussed in [33]-[34].

## Issue 6 | Take tuaono: Choice of FIF method for New Trusts

44. In this issue, TCO considered whether the New Trusts can choose to apply either the FDR or CV method to the FIF Shares under s EX 44 in the income year of resettlement.

45. Under s EX 44, a person can choose one of the five FIF income or loss calculation methods, but the choice is limited by ss EX 46, EX 47, EX 47B, EX 48 and EX 62. TCO concluded that the New Trusts can choose to use the FDR or CV calculation method under s EX 44 because the choice is not limited by the above limitations.

## Issue 7 | Take tuawhitu: Opening value of FIF interests

46. This issue considered whether the "opening value" component of the formula in s EX 51 or s EX 52 is zero for the Siblings and the New Trusts in relation to the FIF Shares acquired by the Siblings and the New Trusts.

47. The "opening value" component of the comparative value formula in s EX 51 (1) is defined in s EX 51(5). Under that definition, the opening value of a person's FIF interest for a particular income year is zero if the person did not hold the interest at the end of the previous income year. To the extent the distributions consist of FIF Shares, the Siblings and the New Trusts will not have held those shares at the end of the previous income year. Consequently, the "opening value" of their FIF interests for the purposes of the CV method will be zero.
48. The "opening value" component of the FDR formula in s EX 52(3) is defined in s EX 52(5). Under that definition, the opening value for a particular person and a particular income year is the total of the market values of the FDR interests held by the person at the start of the year, provided they are not direct income interests that meet the requirements of s EX 52(5)(a)-(c)) (which they are not). To the extent the distributions consist of FIF Shares, the Siblings and the New Trusts will not have held those shares at the start of the income year of resettlement. Consequently, the "opening value" of their FDR interests for the purposes of the FDR method will be zero.

## Issue 8 | Take tuawaru: Section BG 1

49. Section BG 1(1) provides that a "tax avoidance arrangement" is void as against the Commissioner. Section GA 1 enables the Commissioner to make an adjustment to counteract a tax advantage obtained from or under a tax avoidance arrangement.
50. The Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289 considered it desirable to settle the approach to applying s BG 1. This approach is referred to as the Parliamentary contemplation test, which is an intensely fact-based inquiry. *Ben Nevis* has been followed in subsequent judicial decisions.
51. TCO's approach in making this decision is consistent with Interpretation Statement: IS 23/01 Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (3 February 2023) (IS 23/01). IS 23/01 will not be replicated in this TDS but in summary the steps are as follows:
    - Understanding the legal form of the arrangement. This involves identifying and understanding the steps and transactions that make up the arrangement, the commercial or private purposes of the arrangement and the arrangement's tax effects.
    - Determining whether the arrangement has a tax avoidance purpose or effect. This involves:
        - Identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement.
        - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts. Artificiality and contrivance are significant factors.
        - Considering the implications of the preceding steps and answering the ultimate question under the Parliamentary contemplation test: Does the arrangement, when viewed in a commercially and economically realistic way, make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?
    - If the arrangement has a tax avoidance purpose or effect that is not the sole purpose or effect of the arrangement, consider the merely incidental test. The merely incidental test considers many of the same matters that are considered under the Parliamentary contemplation test.
52. Taking into account all of the relevant facts and circumstances (noting that as this is a summary it may not contain all the facts or assumptions relevant to the decision and, therefore, cannot be relied on) TCO concluded as follows.

### The Arrangement

53. The Arrangement for s BG 1 purposes includes the following steps and transactions:
    - the disposal of assets of the Old Trusts;
    - the distribution of assets (including cash and shares) from the Old Trusts to the Siblings;
    - the settlement of assets (including cash and shares) by the Siblings on the New Trusts;
    - the use of the FDR or CV method by the Siblings and the Old and New Trusts; and
    - the New Trusts investing in PIEs using the settlement assets.

54. According to the Applicants, the commercial or private purposes of the Arrangement are:
    - Simplify the existing structure and to provide better financial security and certainty for the Siblings and their family members.
    - Protect assets against potential creditor and relationship property claims.
    - The New Trusts will have modern trust deeds consistent with current best practice.
    - Settlement will simplify investment thereby reducing administration and compliance costs.
55. The Arrangement will give rise to the following tax effects:
    - In relation to the realisation of assets in the Old Trusts for cash:
        - The realisation of NZ Shares and ASX Shares will result in capital receipts.
        - The disposal of any Debt Investments will result in all income and expenditure under the relevant instrument brought to tax under the financial arrangement rules.
        - Income from the FIF Shares will be returned under the FDR or CV method.
    - In relation to the distribution of assets by the Old Trusts to the Siblings:
        - The distribution of assets in specie will be deemed to take place at market value, with the same overall tax outcomes arising as for the assets that are realised.
        - The distribution of cash and assets in specie will constitute a capital distribution from the Old Trusts.
        - Any amounts allocated as beneficiary income will have tax paid at the Siblings' marginal tax rates.
    - In relation to the New Trusts:
        - The settlement of cash and assets on the New Trusts will be a deemed disposal by the Siblings at market value. To the extent the assets are viewed as having been acquired for the purposes of disposal they will be on revenue account. However, because the assets will be transferred to the New Trusts immediately for the same value, no net income will arise for the Siblings.
        - The New Trusts will use the settlement assets to invest in PIEs, which will suffer tax at a PIR of 28% on the PIEs income. This will be a final tax so the New Trusts will not suffer tax at the top trustee tax rate of 39%.
    - The use of the FDR or CV method by the Old Trusts, New Trusts and the Siblings mean that no other income arises to them outside of the FIF regime. Further, the FIF income will be limited to the lesser of the amount arising under the FDR or CV method.

### Parliamentary contemplation

56. TCO considered the above tax effects do not give concerns from a s BG 1 perspective because the legislation is working as intended. In particular:
    - The disposal of the Shares by the Old Trusts will not give rise to income of the Old Trusts because they are capital items. This is consistent with Parliament's purpose that capital receipts are not taxed.
    - In terms of the trust rules in subpart HC, Parliament intends that the only distributions from a complying trust that are taxed are distributions of beneficiary income (s HC 5, s HC 6 and s CV 13(a)). Consequently, trust corpus, capital profits, and tax paid accumulated income may be distributed tax free (s HC 20 and s CW 53).
    - In terms of the FIF rules, Parliament intends that if a person calculates their FIF income using the FDR method and derives another amount from the FIF during the income year, that amount is excluded under s EX 59. This is the same for the CV method. The exclusion of other amounts in s EX 59 shows Parliament intends that the calculation methods are a code for the calculation of FIF income. The effect of this is that the only income that is taxable is income determined under a calculation method and any dividends or gains from disposing of the person's FIF interest will be tax free.
    - An aim of the PIE rules is for PIEs to be taxed on collective investment income on a similar basis to individual investors. Parliament contemplated that some investors could pay less tax if they invested through a PIE than if they invested personally.

### Commercial and economic reality

57. TCO considered the relevant factors to determine the commercial and economic reality of the Arrangement and concluded the following:
    - The stated commercial or private purposes of the Arrangement made commercial and economic sense being directed toward better asset protection and succession planning outcomes.
    - The economic and commercial effects of the Arrangement are consistent with the legal form of the Arrangement. The Arrangement is carried out in such a way that there are effective transfers of the Old Trusts assets to the New Trusts, either in specie or in cash, and the New Trusts acquire new investments and hold and manage them on behalf of their beneficiaries. In addition, the Old Trusts will come to an end and the New Trusts will manage their assets under new trust deeds, the terms of which are drafted with a purpose of achieving the asset protection, succession planning and other outcomes desired under the Arrangement.

### Conclusion

58. TCO concluded that the Arrangement, when viewed in a commercially and economically realistic way, makes use of the Act in a manner that is consistent with Parliament's purpose. This is because:
    - The Arrangement does not exhibit artificiality, contrivance, pretence or any of the indicators of tax avoidance.
    - The commercial and economic outcomes under the Arrangement are consistent with its commercial purposes and legal form.
59. Therefore, the Arrangement does not have a tax avoidance purpose or effect, and s BG 1 does not apply to the Arrangement.

# TDS 25/10: Source of income and foreign tax credits

Decision date | Rā o te Whakatau: 28 November 2024

Issue date | Rā Tuku: 1 May 2025

## Subjects | Kaupapa

Source of income; entitlement to foreign tax credits

## Taxation laws | Ture tāke

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

## Summary of facts | Whakarāpopoto o Meka

1. This dispute concerned two individual taxpayers (Taxpayers) who were shareholder employees and directors of a New Zealand registered company (Company) that provided services in New Zealand.
2. The dispute related to an income year during which the Taxpayers resided overseas. There is no Double Tax Agreement between New Zealand and the country where the Taxpayers resided, so this did not prevent New Zealand from taxing the income.
3. Customer and Compliance Services, Inland Revenue (CCS) agreed that the Taxpayers were not New Zealand residents for tax purposes in that income year.
4. The dispute concerned whether, for that income year, the Taxpayers' PAYE income and shareholder salaries (Income) had a source in New Zealand under ss YD 4(18) (any other source in New Zealand) and YD 4(4) (Personal services in New Zealand). The Taxpayers raised an argument that the Income did not have a source in New Zealand under s YD 4(3) (Contracts made and performed in New Zealand). CCS did not dispute that. The Tax Counsel Office (TCO) briefly considered s YD 4(3).
5. If the Income had a New Zealand source, it was assessable for tax in New Zealand.
6. The dispute also concerned whether the Taxpayers had shown they were entitled to foreign tax credits for tax paid overseas (under s LJ 2 (Tax credits for foreign tax)).

## Issues | Take

7. The issues considered in this dispute were:
    - Whether the Income had a New Zealand source under ss YD 4(18), YD 4(4) and YD 4(3).
    - If the Income had a New Zealand source, whether the Taxpayers were entitled to foreign tax credits under s LJ 2.
8. There was also a preliminary issue on the onus and standard of proof.

## Decisions | Whakatau

9. TCO decided that:
    - The Income had a New Zealand source under:
        - s YD 4(18), as income derived directly or indirectly from any other source in New Zealand, and
        - s YD 4(4), as employment income earned in New Zealand.
    - The Taxpayers were not entitled to foreign tax credits under s LJ 2.

## Reasons for decisions | Pūnga o ngā whakatau

### Preliminary issue | Take tōmua: Onus and standard of proof

10. Except for proceedings relating to evasion or similar act or obstruction, the onus of proof is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[2]
11. The standard of proof required is the balance of probabilities.[3]
12. It is appropriate that the same onus and standard of proof be applied in the disputes process as in challenge proceedings. TCO considered whether the Taxpayers had discharged the onus of proof in the context of the issues raised by the parties to the dispute, based on the documentary evidence before it. If the dispute proceeds, the Taxation Review Authority or a court may reach a different conclusion after hearing the evidence of the Taxpayers and that of any other witnesses the Taxpayers may choose to call.

### Issue 1 | Take tuatahi: Whether the Income had a source in New Zealand

13. Income may have a source in New Zealand under any one or more of ss YD 4(3), YD 4(4), and YD 4(18).[4]
14. TCO considered the issue first under s YD 4(18) and s YD 4(4). This approach was consistent with the cases analysed by TCO, where the courts considered the location of the "source" of income first (relevant to s YD 4(18)) and the place where the income was "earned" (relevant to s YD 4(4)) after that.
15. TCO considered s YD 4(3) last because the extent to which income has a source in New Zealand under s YD 4(3) may depend on whether the income also has a source in New Zealand under ss YD 4(4) and YD 4(18).

#### Section YD 4(18)

16. Under s YD 4(18), income derived directly or indirectly from any other source in New Zealand has a source in New Zealand.
17. The Taxpayers argued the Income did not have a New Zealand source under s YD 4(18) because it was not derived directly or indirectly from a source in New Zealand. CCS disagreed and referred to the Taxpayers being entitled to the Income under the Companies Act 1993 and the Employment Relations Act 2000.
18. The test for determining the source of employment income was not in dispute. Both the Taxpayers and CCS considered:
    - The relevant factors are where the employment was obtained, where the services were performed, and where the remuneration was paid.
    - In the absence of special circumstances, where the services were performed is the most important factor.
19. Nor was it disputed the Taxpayers obtained their employment in New Zealand, they performed the services overseas, and the Income was paid in New Zealand. What was disputed was whether there were special circumstances so that where the services were performed was not the most important factor in determining the source of the Income.
20. After analysing relevant cases, TCO noted that:[5]
    - The "source" of income is its originating cause. The test for determining the source of income is what a practical person would regard as the real source of the income. This is a matter of fact.
    - Ordinarily, in the case of an employee earning their salary month by month by doing their work, the all-important factor will be where the work is done. In other cases, where the right to remuneration is not dependent on the performance of services, where the employment is obtained and where the remuneration is paid may be more significant.

1 Section 149A(2) of the Tax Administration Act 1994 (the TAA). See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC), and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

2 Section 138P(1B) of the TAA.

3 *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028, and *Case X16* (2005) 22 NZTC 12,216.

4 *Tillard v C of T* [1938] NZLR 795 (SC), at 801 and 802, and see also *Case H6* (1986) 8 NZTC 147 and *Case H46* (1982) 5 NZTC 59,277. Further, s YD 5, which deals with apportionment of income derived partly in New Zealand, contemplates that income may come within more than one source rule in s YD 4.

5 *C of T (NSW) v CAM and Sons Ltd* (1936) 4 ATD 32 (SC); *FCT v French* (1957) 11 ATD 288 (HCA); *FCT v Mitchum* (1965) 13 ATD 497 (HCA); *FCT v Efstathakis* 79 ATC 4,256 (FC); *Case E46* (1982) 5 NZTC 59,277; *Case H6* (1986) 8 NZTC 147; and *Robertson v FCT* (1937) 57 CLR 147 (HCA).

- Cases where remuneration is not dependent on the performance of services may include where remuneration is paid independently of the services provided or an employee is engaged for their knowledge and experience rather than to perform a particular task.
- The terms of employment must be examined to determine whether the right to remuneration depends upon the performing of services.

21. TCO concluded that the Income had a source in New Zealand under s YD 4(18). This was because:
    - The Taxpayers obtained the employment in New Zealand and their Income was paid in New Zealand. The Taxpayers performed the services overseas.
    - The Taxpayers' circumstances were special, making the place where they performed the services less important in determining the source of the Income than the place where they obtained their employment and where their remuneration was paid.
    - The Taxpayers were not ordinary employees earning their income month by month by doing their work. There was evidence they were employed for their knowledge and experience and that the services they provided to the Company were largely of a non-routine nature. The evidence supported that their services had contributed to the Company's unique intangibles and enabled the company to earn "super profits". Their shareholder salaries were determined and paid differently from remuneration paid to ordinary employees. The Taxpayers' association with the Company meant they would not have been accountable in the same way as ordinary employees for failing to provide services. The Taxpayers were not like overseas-based employees holding shares in their employer under employee share schemes. Nor were they like non-shareholder employees who had worked in New Zealand for their employer before transferring overseas.
    - Having regard to all the circumstances, a practical person would regard New Zealand as the real source of the Taxpayers' Income.

### Section YD 4(4)

22. Under s YD 4(4) employment income has a source in New Zealand if it is earned in New Zealand.
23. The Taxpayers argued the Income did not have a New Zealand source under s YD 4(4) because it was remuneration for services performed outside New Zealand. They argued there were no special circumstances making it inappropriate to rely on the place where the services were performed as the primary factor determining the source of the remuneration. CCS argued there were special circumstances making where the services were performed the most important factor.
24. After analysing relevant cases, TCO noted that:[6]
    - "Earn" means to obtain money in return for services.
    - Employment income, the entitlement to which arises in New Zealand, is earned in New Zealand.
25. TCO concluded the Income had a New Zealand source under s YD 4(4) as employment income earned in New Zealand because the Taxpayers' entitlement to the Income arose from New Zealand. Relevantly, the Taxpayers:
    - had established the Company and had control over its business, including their employment and remuneration. Under the Companies Act 1993, as the Taxpayers were directors of the Company, the board of the Company was required to authorise the amount of remuneration the Company paid them for services they provided in the capacity of employees. The Employment Relations Act 2000 seemed less relevant.
    - were employed for their knowledge and experience and that, fundamentally, contributed to the Company's profits which were earned in New Zealand. New Zealand was where the Company carried on its business and earned the profit from which the Taxpayers were paid. The services the Taxpayers provided were fundamental in the establishment and operation of the Company's business.

### Section YD 4(3)

26. The Taxpayers argued the Income did not have a New Zealand source under s YD 4(3) because they did not have written contracts with the Company.
27. CCS did not argue the Income had a New Zealand source under s YD 4(3).

6 *Case E46*, *Case* H6, and *Case P17* (1992) 14 NZTC 4,115.

28. TCO concluded that it was unnecessary to reach a conclusion on whether the Income was derived from a contract made in New Zealand with a source in New Zealand under s YD 4(3). This was because whether s YD 4(3) applied was not in dispute.

29. However, TCO made the following observations in case the dispute proceeded further:

- Under s YD 4(3), income derived by a person from a contract made in New Zealand has a source in New Zealand – except to the extent the person performs the contract outside New Zealand, and the income is apportioned to a source outside New Zealand under s YD 5.
- However, income derived from a contract made in New Zealand that also has a source in New Zealand under s YD 4(4) or under s YD 4(18) will not be apportioned to a source outside New Zealand under s YD 5. Section YD 5 does not apply to income derived by a person under a contract to the extent the income is also income referred to in ss YD 4(4) or YD 4(18).
- A contract need not be in writing and may be implied from the conduct of the parties.[7]

30. Relevantly, in TCO's view, the Taxpayers performed services for the Company, and both the Taxpayers and the Company treated payments the Company made to the Taxpayers as remuneration for those services. TCO concluded that it could be inferred from this conduct there were concluded bargains between the Taxpayers and the Company for the provision of services in return for payment.

## Issue 2 | Take tuarua: Entitlement to foreign credits under s LJ 2

31. Subpart LJ allows a person a tax credit for foreign income tax paid on income that is also assessable for tax in New Zealand.[8] To be entitled to the tax credit, a person must be tax resident in New Zealand when they derived the income, and the income must not have a source in New Zealand.

32. The Taxpayers argued that, if the Income had a New Zealand source, they should be entitled to foreign tax credits under s LJ 2. CCS argued the Taxpayers had not shown they paid any foreign income tax in the income year in question or that they were entitled to foreign tax credits under s LJ 2.

33. TCO concluded that the Taxpayers were not entitled to foreign tax credits as they were not resident in New Zealand when they derived the Income, and the Income had a New Zealand source. The Taxpayers had also not shown they paid any foreign income tax on the Income. Accordingly, the requirements under s LJ 2 were not met.

7 *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 (CA) at [53]; *LSG Sky Chefs New Zealand Ltd v Prasad* [2018] NZCA 256; *Meates v Attorney-General* [1983] NZLR 308 (CA), at 377. See also Burrows, Finn and Todd, *Law of Contract in New Zealand* (7th ed, LexisNexis, Wellington, 2022), at [3.1] and [3.6]; and *Ayson v C of T* [1938] NZLR 282 (SC), at 286.

8 Sections BC 2, BC 4, and BC 5, BD 1(4) and (5), and YA 1.

# TDS 25/11: Deductions, zero-rating and shortfall penalties

Decision date | Rā o te Whakatau: 17 February 2025

Issue date | Rā Tuku: 8 May 2025

## Subjects | Kaupapa

Whether the Taxpayer was entitled to input tax and income tax deductions it claimed (including whether one of the transactions was zero-rated). Whether the Taxpayer was required to return GST output tax on refunds and dishonoured supply payments. Whether the Taxpayer was liable for shortfall penalties.

## Taxation laws | Ture tāke

All legislative references are to the Goods and Services Tax Act 1985 (GSTA) unless otherwise stated.

## Summary of facts | Whakarāpopoto o Meka

1. The Taxpayer was a company registered for GST on a payments basis. The Taxpayer had one shareholder and two directors.
2. There was another company (S Co) with the same shareholder and the same two directors as the Taxpayer. S Co purchased land and began to set up a business.
3. After a while, the Taxpayer purchased the business from S Co. S Co issued a document purporting to be a tax invoice for the purchase price. The purchase price essentially reimbursed S Co for amounts it had incurred on business assets and other business related set up costs (set up costs).
4. The Taxpayer filed its GST return for the period in which the purchase took place and claimed (among other things) an input tax deduction for the GST content of the purchase price (which included the set up costs). CCS argued that no input tax deduction could be claimed for the set up costs because:
   - those costs were incurred by S Co, and
   - the transfer of the business was a going concern (ie, should have been zero-rated).
5. Similarly, the Taxpayer filed its income tax return for the year in which the purchase took place and claimed (among other things) a deduction for the set up costs. CCS argued that set up costs were capital in nature because they were for the acquisition of the business from S Co.
6. The Taxpayer began to run the business and filed monthly GST returns and annual income tax returns. The Taxpayer claimed input tax and income tax deductions for expenditure on various goods and services. CCS argued that some of the expenditure was private in nature and/or the Taxpayer had not provided adequate business records to support the deductions.
7. In some of its GST returns, the Taxpayer included GST outputs on refunds and supply payments that had been dishonoured. CCS argued that the output tax in relation to these amounts were not true outputs and had been accounted for by adjusting the underlying input claims in the respective periods.
8. CCS proposed to assess the Taxpayer with shortfall penalties for gross carelessness under s 141C of the Tax Administration Act 1994 (TAA) in relation to the tax positions taken. In the alternative, CCS proposed shortfall penalties for not taking reasonable care under s 141A of the TAA.

## Issues | Take

9. The issues considered in this dispute were:
   - Whether the Taxpayer was entitled to the GST input tax deductions claimed in the periods in dispute.
   - Whether the Taxpayer was entitled to income tax deductions claimed in the income years in dispute.
   - Whether the Taxpayer was required to return GST output tax on refunds and dishonoured supply payments in the periods in dispute.
   - Whether the Taxpayer was liable for shortfall penalties for gross carelessness in taking its tax positions (s 141C of the TAA). Alternatively, whether the Taxpayer was liable for shortfall penalties for not taking reasonable care in taking its tax positions (s 141A of the TAA).
10. There was also a preliminary issue on the onus and standard of proof.

## Decisions | Whakatau

11. The Tax Counsel Office (TCO) decided:
   - The Taxpayer was entitled to an input tax deduction for the purchase price of the business (including the amount attributable to set up costs) in the relevant GST period.
   - It could not be definitively concluded which input tax deductions claimed by the Taxpayer in remaining GST periods in dispute were valid. However, not all of the input tax deductions claimed by the Taxpayer were valid.
   - The Taxpayer was not entitled to an income tax deduction for the purchase price of the business (or any part of it) because it was capital expenditure.
   - It could not be definitively concluded which deductions claimed by the Taxpayer for income tax purposes were valid. Not all of the deductions claimed by the Taxpayer were valid.
   - The adjustments proposed by CCS to output tax for refunds and dishonoured supply payments should be made.
   - The Taxpayer was not liable for any shortfall penalty in relation to input tax deduction claimed for the set up costs. This was because the Taxpayer was allowed the deduction (ie, no tax shortfall).
   - The Taxpayer was liable for the remaining gross carelessness shortfall penalties proposed by CCS.

## Reasons for decisions | Pūnga o ngā whakatau

### Preliminary issue | Take tōmua: Onus and standard of proof

12. Except for proceedings relating to evasion or similar act or obstruction, the onus of proof is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[2]
13. The standard of proof required is the balance of probabilities.[3]
14. It is appropriate that the same onus and standard of proof be applied in the disputes process as in challenge proceedings. TCO considered whether the Taxpayer has discharged the onus of proof in the context of the issues raised by the parties in the dispute, based on the documentary evidence put before it.

### Issue 1 | Take tuatahi: GST input tax deductions

15. The amount paid by the Taxpayer to S Co was consideration for the purchase of the business in the relevant GST period. That the invoice issued by S Co referred to set up costs and/or the purchase price for the business was calculated with reference to (and sought to recover) costs incurred by S Co did not change this conclusion.

1 Section 149A(2) of the TAA. See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC), and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

2 Section 138P(1B) of the TAA.

3 *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028, and *Case X16* (2005) 22 NZTC 12,216.

16. The zero-rating provision in s 11(1)(m) did not apply in this case because:
    - All of the requirements of s 11(1)(m) must be satisfied before a transaction can be zero-rated. Even if it could be established that the supply was of a going concern, there was no evidence that the Taxpayer and S Co agreed that the supply was of a going concern and recorded their agreement in a document.
    - The Taxpayer's tax agent's description of the transaction as the sale of the "business, lock, stock and barrel" was not sufficient to support the view that the Taxpayer and S Co agreed that the supply was of a going concern and recorded their agreement in a document.
17. The input tax deductions claimed in the remaining GST periods were not valid because the expenditure was private in nature and/or the Taxpayer did not provide sufficient business records to support the deductions. The Taxpayer acknowledged that it was not entitled to some of the input tax deductions claimed. CCS had provided details of other input tax deductions which the Taxpayer was not entitled to claim. The Taxpayer had not satisfied the onus of proof.
18. The effect of s 138P(1B) of the TAA was that the Taxpayer may be entitled to some of the input tax deductions claimed if it could provide sufficient evidence to support its entitlement to those deductions. However, no such evidence had been produced by the Taxpayer.

## Issue 2 | Take tuarua: Income tax deductions

19. The evidence supported the view that the amounts deducted in the first income year were for the purchase of the business from S Co. This expenditure was capital in nature because it concerned the structure of the business (being an amount paid to acquire the business) and was of a once and for all nature producing assets or advantages which were of an enduring benefit to the Taxpayer (being a business that it could further develop and operate to derive income).[4]
20. The deductions claimed by the Taxpayer in later income years were not valid because the expenditure was private in nature and/or the Taxpayer did not provide sufficient business records to support the deductions. CCS had provided details of deductions claimed for private expenditure. The Taxpayer had not satisfied the onus of proof.
21. The effect of s 138P(1B) of the TAA was that the Taxpayer may be entitled to some of the input tax deductions claimed if it could provide sufficient evidence to support its entitlement to those deductions. However, no such evidence had been produced by the Taxpayer.

## Issue 3 | Take tuatoru: GST output tax

22. The adjustments to output tax for the refunds and dishonoured supply payments reduced the Taxpayer's output tax and were in the Taxpayer's favour.

## Issue 4 | Take tuawhā: Shortfall penalties

23. The Taxpayer took the tax positions by filing tax returns.
24. With the exception of the first GST period, the Taxpayer's tax positions were not correct and there were tax shortfalls.
25. The Taxpayer was grossly careless when it took the tax positions for the following reasons:
    - At the time the tax positions were taken, the Taxpayer's director was aware of the record keeping requirements.
    - Taking tax positions without records and continuing with this conduct even after it had been put on notice that its record keeping was inadequate created a high risk of tax shortfalls.
    - The risk was a serious and obvious one that would have been foreseen by a reasonable person in the circumstances.
    - The Taxpayer's director had a complete or high level of disregard for the consequences by taking the tax positions.
    - The Taxpayer's director did not seek advice on the deductibility of costs related to the acquisition of the business. This was a significant transaction (the acquisition of its entire business structure) and for a significant amount.
26. The requirements for shortfall penalties for not taking reasonable care were also met. However, the shortfall penalty for gross carelessness applied because it was the higher penalty (s 149(2) and (3) of the TAA).
27. The resulting shortfall penalties were reduced by 50% under s 141FB(2) of the TAA.

4 *BP Australia Ltd v Commissioner of Taxation for the Commonwealth of Australia* [1966] AC 224 (PC) at 261, 264-264 and 271.

# TDS 25/12: Deductions and shortfall penalties

Decision date | Rā o te Whakatau: 17 February 2025

Issue date | Rā Tuku: 8 May 2025

## Subjects | Kaupapa

Whether the Taxpayer was entitled to input tax deductions it claimed. Whether the Taxpayer was required to return GST output tax on refunds. Whether the Taxpayer was liable for shortfall penalties.

## Taxation laws | Ture tāke

All legislative references are to the Goods and Services Tax Act 1985 (GSTA) unless otherwise stated.

## Summary of facts | Whakarāpopoto o Meka

1. The Taxpayer was a company registered for GST on a payments basis. The Taxpayer had one shareholder and two directors. The Taxpayer purchased land and began to set up a business.
2. There was another company (Y Co) with the same shareholder and the same two directors as the Taxpayer.
3. After a while, the Taxpayer sold the business to Y Co. The purchase price for the business was inclusive of GST and included an amount reimbursing the Taxpayer for business related set up costs (set up costs).
4. The Taxpayer filed GST returns for two periods (which included the period in which the sale took place). In those returns the Taxpayer claimed a range of inputs for which Customer and Compliance Services (CCS) argued:
   - The Taxpayer failed to provide receipts or other documents requested to support the input tax deductions.
   - The Taxpayer failed to keep tax invoices.
   - The Taxpayer had not satisfied the onus of proving that the input tax deductions were in relation to the Taxpayer's taxable activity and were not private or exempt in nature.
5. In its GST returns the Taxpayer included GST outputs on:
   - refunds from suppliers, and
   - the consideration for the transfer of the business to Y Co.
6. CCS argued that the output tax in relation to the refunds were not true outputs and had been accounted for by adjusting the underlying input claims in the respective periods.
7. CCS argued that no GST output tax was required on the portion of the sale price of the business that related to the set up costs. This was because:
   - The set up costs related to the Taxpayer's operation of the business and had been claimed as inputs by the Taxpayer.
   - The sale of the business by the Taxpayer to Y Co was the supply of a going concern.
8. CCS proposed to assess the Taxpayer with shortfall penalties for gross carelessness under s 141C of the Tax Administration Act 1994 (TAA) in relation to the tax positions taken. In the alternative, CCS proposed shortfall penalties for not taking reasonable care under s 141A of the TAA.

## Issues | Take

9. The issues considered in this dispute were:
   - Whether the Taxpayer was entitled to the GST input tax deductions claimed in the periods in dispute.
   - Whether the Taxpayer was required to return GST output tax on refunds and set up costs in the periods in dispute.
   - Whether the Taxpayer was liable for shortfall penalties for gross carelessness in taking its tax positions (s 141C of the TAA). Alternatively, whether the Taxpayer was liable for shortfall penalties for not taking reasonable care in taking its tax positions (s 141A of the TAA).
10. There was also a preliminary issue on the onus and standard of proof.

## Decisions | Whakatau

11. The Tax Counsel Office (TCO) decided:
   - It could not be definitively concluded which input tax deductions claimed by the Taxpayer in the GST periods in dispute were valid. However, not all of the input tax deductions claimed by the Taxpayer were valid.
   - The adjustments proposed by CCS to output tax for the refunds should be made.
   - The adjustment proposed by CCS to output tax for the set up costs should not be made.
   - The Taxpayer was liable for the gross carelessness shortfall penalties proposed by CCS.

## Reasons for decisions | Pūnga o ngā whakatau

### Preliminary issue | Take tōmua: Onus and standard of proof

12. Except for proceedings relating to evasion or similar act or obstruction, the onus of proof is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[2]
13. The standard of proof required is the balance of probabilities.[3]
14. It is appropriate that the same onus and standard of proof be applied in the disputes process as in challenge proceedings. TCO considered whether the Taxpayer has discharged the onus of proof in the context of the issues raised by the parties in the dispute, based on the documentary evidence put before it.

### Issue 1 | Take tuatahi: GST input tax deductions

15. The input tax deductions claimed were not valid because the expenditure was private in nature and/or the Taxpayer did not provide sufficient business records to support the deductions. CCS had provided details of input tax deductions which the Taxpayer was not entitled to claim. The Taxpayer had not satisfied the onus of proof.
16. The effect of s 138P(1B) of the TAA was that the Taxpayer may be entitled to some of the input tax deductions claimed if it could provide sufficient evidence to support its entitlement to those deductions. However, no such evidence had been produced by the Taxpayer.

### Issue 2 | Take tuarua: GST output tax

17. The adjustments to output tax for the refunds reduced the Taxpayer's output tax and accordingly were in the Taxpayer's favour.
18. The amount paid by the Y Co to the Taxpayer was consideration for the sale of the business in the relevant GST period. That the invoice issued by the Taxpayer referred to set up costs and/or the purchase price for the business was calculated with reference to (and sought to recover) costs incurred by the Taxpayer did not change this conclusion.

1 Section 149A(2) of the TAA. See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC), and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

2 Section 138P(1B) of the TAA.

3 *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028, and *Case X16* (2005) 22 NZTC 12,216.

19. The zero-rating provision in s 11(1)(m) did not apply in this case because:
    - All the requirements of s 11(1)(m) must be satisfied before a transaction can be zero-rated. Even if it could be established that the supply was of a going concern, there was no evidence that the Y Co and the Taxpayer agreed the supply was of a going concern and recorded their agreement in a document.
    - Y Co's tax agent's description of the transaction as the sale of the "business, lock, stock and barrel" was not sufficient to support the view that the Y Co and the Taxpayer agreed that the supply was of a going concern and recorded their agreement in a document.

## Issue 3 | Take tuatoru: Shortfall penalties

20. The Taxpayer took the tax positions by filing tax returns.
21. The Taxpayer's tax positions were not correct and there were tax shortfalls.
22. The Taxpayer was grossly careless when it took the tax positions for the following reasons:
    - The Taxpayer's director was an experienced business person with accounting experience. The director had previously dealt with IR in relation to the deductibility of expenses similar in nature to those considered here.
    - At the time the tax positions were taken, the Taxpayer's director (on behalf of the Taxpayer) was aware of the type of expenses able to be claimed as GST inputs, the need to apportion business expenses that contained a private component and to have records to support the treatment of expenses.
    - Taking tax positions without records to support those positions created a high risk of tax shortfalls. The risk was a serious and obvious one that would have been foreseen by a reasonable person in the circumstances. The Taxpayer's director (on behalf of the Taxpayer) had a complete or high level of disregard for the consequences by taking the tax positions.
23. The requirements for shortfall penalties for not taking reasonable care were also met. However, the shortfall penalty for gross carelessness applied because it was the higher penalty (s 149(2) and (3) of the TAA).
24. The resulting shortfall penalties were reduced by 50% under s 141FB(2) of the TAA.

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