



# **Taxation (Bright-line Test for Residential Land) Act 2015**

Public Act 2015 No 111  
Date of assent 16 November 2015  
Commencement see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Taxation (Bright-line Test for Residential Land) Act 2015.

**2 Commencement**

This Act comes into force on the day on which this Act receives the Royal assent, except Part 1 comes into force on 1 October 2015.

## Part 1

### Amendments to Income Tax Act 2007

#### 3 Income Tax Act 2007

This Part amends the Income Tax Act 2007.

#### 4 New section CB 6A inserted (Disposal within 2 years: bright-line test for residential land)

(1) Before section CB 6, insert:

#### **CB 6A Disposal within 2 years: bright-line test for residential land**

##### *Disposal within 2 years*

(1) An amount that a person derives from disposing of residential land is income of the person, if the bright-line date for the residential land is within 2 years of—

- (a) the date on which the instrument to transfer the land to the person was registered—
  - (i) under the Land Transfer Act 1952; or
  - (ii) under foreign laws of a similar nature to the Land Transfer Act 1952, if the land is outside New Zealand; or
- (b) their date of acquisition of the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date.

##### *Subdivision*

(2) Despite subsection (1), an amount that a person derives from disposing of residential land that results from the person subdividing other land (the **undivided land**) is income of the person if the bright-line date for the residential land is within 2 years of—

- (a) the date on which the instrument to transfer the undivided land to the person was registered—
  - (i) under the Land Transfer Act 1952; or
  - (ii) under foreign laws of a similar nature to the Land Transfer Act 1952, if the land is outside New Zealand; or
- (b) their date of acquisition of the undivided land, if the land is not registered as described in paragraph (a) at the bright-line date.

##### *Leases with perpetual right of renewal*

(3) Despite subsection (1), an amount that a person derives from disposing of a freehold estate in land, acquired as the owner of a leasehold estate with a perpetual right of renewal, is income if the bright-line date for the freehold estate is within 2 years of the grant of the leasehold estate.

*Contingent interest*

(4) Despite subsection (1), an amount that a person derives from disposing of a freehold estate in land, acquired as the result of the completion of a land development or subdivision, is income if the bright-line date for the freehold estate is within 2 years of the person acquiring an interest, in relation to the land, that is contingent upon the completion of the land development or subdivision.

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

(5) This section does not apply to an amount that an executor or administrator described in section FC 1(1)(a) (What this subpart does), or a beneficiary described in section FC 1(1)(b), derives from disposing of residential land that was transferred to them on the death of a person.

*Relationship with subject matter*

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

*Some definitions*

(7) In this section and section CB 16A,—

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

(a) the earliest of—

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

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

**date of acquisition** means the latest date on which the person acquires the estate or interest in the residential land.

Defined in this Act: amount, bright-line date, date of acquisition, dispose, estate, income, interest, land, mortgage, person, residential land, year

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**5 Section CB 13 amended (Disposal: amount from major development or division and not already in income)**

(1) In section CB 13(1)(a), replace "sections CB 6" with "sections CB 6A".

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**6 Section CB 14 amended (Disposal: amount from land affected by change and not already in income)**

(1) In section CB 14(1)(a), replace "sections CB 6" with "sections CB 6A".

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**7 Section CB 15B amended (When land acquired)**

(1) In section CB 15B(1), replace "For the purposes of this subpart" with "For the purposes of this subpart except section CB 6A".

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**8 New section CB 16A inserted (Main home exclusion for disposal within 2 years)**

(1) Before section CB 16, insert:

**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 time the person owns the land, 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.

*When this section does not apply*

(2) The exclusion in subsection (1) does not apply to a person who disposes of residential land if—

- (a) the exclusion has been used by the person 2 or more times within the 2 years immediately preceding the bright-line date for the residential land;
- (b) the person has engaged in a regular pattern of acquiring and disposing of residential land.

*A definition*

(3) In this section, **principal settlor** means, for a trust, a settlor whose settlements for the trust are the greatest or greatest equal, by market value.

Defined in this Act: beneficiary, bright-line date, dispose, dwelling, land, main home, person, principal settlor, residential land, settlement, settlor, trustee, year

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**9 Section CB 23B amended (Land partially sold or sold with other land)**

(1) In section CB 23B, replace "CB 6" with "CB 6A".

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**10 New sections DB 18A and DB 18AB inserted**

(1) Before section DB 18, insert:

**DB 18A Ring-fenced allocations: disposal of residential land within 2 years***When this section applies*

(1) This section applies to an amount of a person's deductions (**bright-line deductions**) under section DB 23, for an income year, that relate to residential land for which the person derives income solely under section CB 6A (Disposal within 2 years: bright-line test for residential land).

*Basis for allocation of deductions: formula*

(2) The amount of bright-line deductions allocated to an income year, including an amount that has been carried forward and allocated under subsection (4), is no more than the amount calculated by the formula—

$$\text{bright-line income} + \text{land net income}.$$

*Definition of items in formula*

(3) In the formula,—

- bright-line income** is income derived solely under section CB 6A;
- land net income** is the amount of net income for the year that the person would have if the only income they derived was from the disposal of land under sections CB 6 to CB 14 (which relate to income from land).

*Excess allocations: carried forward and reinstated next year*

(4) Any excess deductions not allocated to the income year because of subsection (2) are carried forward and treated as—

- deductions under section DB 23 that relate to residential land for which the person derives income solely under section CB 6A; and

(b) allocated to the next income year.

*Restriction on reinstating excess allocations: continuity for companies*

(5) Despite subsection (3), the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year for the excess, if sections IA 5 and IP 3 (which relate to the carrying forward of tax losses for companies) would not have allowed the excess to be carried forward to that next income year in a loss balance, treating the excess as a tax loss component arising on the last day of the income year.

Defined in this Act: deduction, dispose, income, income year, land, loss balance, net income, residential land, tax loss component

## **DB 18AB Deduction cap: disposal of residential land within 2 years to associated persons**

*When this section applies*

(1) This section applies to a person (**person A**) if, for an income year,—

- (a) person A derives income solely under section CB 6A (Disposal within 2 years: bright-line test for residential land) from disposing of residential land to an associated person; and
- (b) person A has deductions for expenditure or loss in relation to the disposal of the land (**residential land deductions**).

*Deduction cap for person A and transfer to associated person*

(2) The total residential land deductions that person A is allowed are no more than the amount of income they derive under section CB 6A from the disposal of the land. Deductions not allowed to person A under this section are treated as expenditure that the associated person has in relation to acquiring the land.

Defined in this Act: associated person, deduction, dispose, income, income year, land, person, residential land

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

## **11 Section DB 29 amended (Apportionment when land acquired with other property)**

(1) In section DB 29, replace "CB 6" with "CB 6A".

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

## **12 New section FB 3A inserted (Residential land)**

(1) Before section FB 3, insert:

**FB 3A Residential land***When this section applies*

(1) This section applies for the purposes of section CB 6A (Disposal within 2 years: bright-line test for residential land) and Part D (Deductions) when residential land is transferred on a settlement of relationship property.

*Transfer at cost*

(2) The transfer is treated as a disposal and acquisition for an amount that equals the total cost of the residential land to the transferor at the date of transfer.

*Date of acquisition*

(3) The transferee is treated as having acquired property in the residential land on the relevant date, for the transferor's acquisition, in section CB 6A(1)(a) or (b).  
Defined in this Act: date of transfer, dispose, residential land, settlement of relationship property

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**13 Section FC 3 amended (Property transferred to spouse, civil union partner, or de facto partner)**

(1) After section FC 3(2), insert:

*Relationship with subject matter*

(3) Section FC 9 overrides this section for certain transfers of residential land.

(2) In section FC 3, in the list of defined terms, insert "residential land".

(3) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**14 Section FC 4 amended (Property transferred to charities or to close relatives and others)**

(1) After section FC 4(2), insert:

*Relationship with subject matter*

(3) Section FC 9 overrides this section for certain transfers of residential land.

(2) In section FC 4, in the list of defined terms, insert "residential land".

(3) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**15 New section FC 9 inserted (Residential land transferred to executor, administrator, or beneficiary on death of person)**

(1) After section FC 8, insert:

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

*What this section applies to*

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

*Residential land*

(2) Section CB 6A (Disposal within 2 years: bright-line test for residential land) does not apply to the transfer of the residential land, including any intervening transfer to an executor or administrator.

*Cost of residential land*

(3) If the residential land is transferred to a person who disposes of it, and the person derives income, the cost of the land to the person is—

- (a) the cost of the land incurred by the deceased person; and
- (b) all other expenditure incurred by the person, the deceased person, or the administrator or executor of the deceased person, as applicable, for which no deduction has been allowed.

Defined in this Act: deduction, dispose, income, land, person, residential land

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**16 Section FO 10 amended (When property passes on resident's restricted amalgamation)**

(1) In section FO 10(6), replace "the 10-year rule in sections CB 9 to CB 11 and CB 14" with "the 2-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14".

(2) Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015.

**17 Section FO 17 amended (Land)**

Replace section FO 17(2) and (3) with:

*Disposal at market value*

(2) The amalgamating company is treated as having disposed of the land to the amalgamated company at the market value of the land at the date of the amalgamation if—

- (a) the land is not revenue account property of the amalgamating company, and the disposal of the land would give rise to income for the amalgamated company under any of sections CB 6A to CB 14 (which relate to the disposal of land):

(b) the land is revenue account property of the amalgamating company but not merely because of the 2-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14, and the land is, or may be, revenue account property of the amalgamated company because of the 2-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14.

*Disposal of land within 2-year bright-line test or 10-year rule*

(3) If the land is, or may be, revenue account property of the amalgamating company because of the 2-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14, and the amalgamated company disposes of the land within the relevant 2-year or 10-year period after the amalgamating company acquired it, an amount derived from the disposal is income of the amalgamated company under whichever is applicable of sections CB 6A to CB 14.

## 18 New heading and new sections GB 52 and GB 53 inserted

After section GB 51, insert:

### *Arrangements involving residential land*

#### **GB 52 Arrangements involving residential land: companies' shares**

*When this section applies*

(1) This section applies when—

- (a) a company owns residential land directly or indirectly for which the relevant date in sections CB 6A(1)(a) or (b) (Disposal within 2 years: bright-line test for residential land) is within 2 years of a disposal of shares that paragraph (c) of this section applies to (**company residential land**); and
- (b) residential land owned directly or indirectly by the company makes up 50% or more, by market value, of the assets of the company; and
- (c) 50% or more of the shares in the company, by market value, are disposed of within a 12-month period, with a purpose or effect of defeating the intent and application of section CB 6A.

*Disposal at cost, reacquisition at market*

(2) The company is treated as disposing of the relevant shareholder portion of company residential land to the relevant shareholder for an amount of consideration equal to the total cost to the company of the portion, and the shareholder is treated as acquiring the portion for that total cost and then disposing of it, back to the company, for an amount of consideration equal to the market value of the portion. The company is treated as reacquiring the portion for the market value.

*A definition*

(3) In this section, **shareholder portion** means the proportion that the market value of the shares disposed of by a shareholder bears to the total market value of the shares in the company.

Defined in this Act: company, dispose, residential land, share, shareholder

**GB 53 Arrangements involving residential land: trusts***When this section applies*

(1) This section applies when—

- the trustees of a trust own residential land directly or indirectly (**trust residential land**); and
- trust residential land makes up 50% or more, by market value, of the assets of the trust; and
- the trust's trust deed changes, a decision-maker under the trust deed changes, or an arrangement under the trust changes, with a purpose or effect of defeating the intent and application of section CB 6A (Disposal within 2 years: bright-line test for residential land).

*Market value disposal*

(2) The trustees are treated as disposing of the trust residential land affected by a change described in subsection (1)(c) for an amount of consideration equal to the market value of the land at the time of the change.

Defined in this Act: amount, arrangement, dispose, land, residential land, trustee

**19 Section YA 1 amended (Definitions)**

(1) This section amends section YA 1.

(2) Insert, in appropriate alphabetical order:

**bright-line date** is defined in section CB 6A (Disposal within 2 years: bright-line test for residential land) for the purposes of that section and section CB 16A (Main home exclusion for disposal within 2 years)

(3) Insert, in appropriate alphabetical order:

**date of acquisition** is defined in section CB 6A (Disposal within 2 years: bright-line test for residential land) for the purposes of that section and section CB 16A (Main home exclusion for disposal within 2 years)

(4) In the definition of **dispose**, in paragraph (a), replace “CB 6” with “CB 6A”.

(5) In the definition of **dwelling**—

(a) in paragraph (b), replace “any of the following” with “any of the following, in whole or part”:

(b) after paragraph (b), insert:

(c) despite paragraph (b)(iii) and (v), for the purposes of section CB 16A (Main home exclusion for disposal within 2 years) and the definition of **residential land**—

- (i) includes a serviced apartment described in paragraph (b)(iii);
- (ii) does not include, in whole or part, a rest home or retirement village

(6) Replace the definition of **estate** with:

**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 121A(1) of the Land Transfer Act 1952);
  - (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

(7) Insert, in appropriate alphabetical order:

**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

(8) In the definition of **interest**, replace paragraph (d) with:

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

(9) Insert, in appropriate alphabetical order:

**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

(10) Insert, in appropriate alphabetical order:

**principal settlor** is defined in section CB 16A (Main home exclusion for disposal within 2 years) for the purposes of that section

(11) Insert, in appropriate alphabetical order:

**residential land**—

(a) means—

- (i) land that has a dwelling on it;
- (ii) land for which the owner has an arrangement that relates to erecting a dwelling;
- (iii) bare land that may be used for erecting a dwelling under rules in the relevant operative district plan; but

(b) does not include land that is—

- (i) used predominantly as business premises;
- (ii) farmland

(12) In the definition of **settlement**,—

- (a) in paragraph (b), replace “the settlement” with “the settlement; but”;
- (b) after paragraph (b), insert:
- (c) in the definition of **principal settlor** in section CB 16A(3) (Main home exclusion for disposal within 2 years), does not include either services provided to a trust for less than market value, or a transfer of value except if that value is transferred by 1 or more of the following:
  - (i) a beneficiary;
  - (ii) a trustee;
  - (iii) a person with power of appointment or removal of trustees;
  - (iv) a person with a contingent interest in the trust property, in the case that the trust fails;
  - (v) a decision-maker under the trust

(13) Insert, in appropriate alphabetical order:

**shareholder portion** is defined in section GB 52 (Arrangements involving residential land: companies’ shares) for the purposes of that section

(14) In the definition of **trading stock**, in paragraph (b)(v), replace “CB 6” with “CB 6A”.

(15) In the definition of **trust rules**, replace paragraph (h) with:

(h) sections 43B, 59, and 93B of the Tax Administration Act 1994

## Part 2

### Amendments to Tax Administration Act 1994

**20 Section 3 of the Tax Administration Act 1994 amended (Interpretation)**

In section 3(1) of the Tax Administration Act 1994, insert, in its appropriate alphabetical order:

**professional trustee**, in section 43B, means a person whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others

**21 New section 43B of the Tax Administration Act 1994 inserted (Non-active trusts may be excused from filing returns)**

After section 43A of the Tax Administration Act 1994, insert:

**43B Non-active trusts may be excused from filing returns**

- (1) A trustee of a trust is not required to furnish a return of income for the trust for a tax year if—
  - (a) throughout that tax year; the trust is—
    - (i) a non-active trust; and
    - (ii) a complying trust as described in section HC 10 of the Income Tax Act 2007; and
  - (b) a trustee of the trust has made and furnished to the Commissioner, in a form approved by the Commissioner,—
    - (i) a declaration that the trust is a non-active trust, and that it will notify the Commissioner if it stops being a non-active trust; and
    - (ii) a statement of such other matters as the Commissioner may require; and
  - (c) the trust has not since the making of the declaration stopped being a non-active trust.
- (2) For the purposes of this section, a trust is a non-active trust for a tax year if, throughout that tax year, the trustee of the trust—
  - (a) has not derived or been deemed to have derived any income; and
  - (b) has no deductions; and
  - (c) has not been a party to or perpetuated or continued with any transactions with assets of the trust which, during the tax year,—
    - (i) give rise to income in any person's hands; or
    - (ii) give rise to fringe benefits to any employee or to any former employee.
- (3) In determining whether a trust complies with the requirements of subsection (2), no account shall be taken of any—
  - (a) reasonable fees paid to professional trustees to administer the trust; or
  - (b) bank charges or other minimal administration costs totalling not more than \$200 in the tax year; or
  - (c) interest earned on trust assets in any bank account during the tax year, to the extent to which the total interest does not exceed \$200; or

(d) insurance, rates, and other expenditure incidental to the occupation of a dwelling owned by the trust and incurred by the beneficiaries of the trust.

(4) Where at any time any paragraph of subsection (2) ceases to apply to a trust for which a declaration under this section has been made, a trustee of the trust must notify the Commissioner that the trust has ceased to be a non-active trust.

(5) Despite subsection (1), trustees of a non-active trust shall furnish a return of income if required by the Commissioner to do so.

### Legislative history

24 August 2015	Introduction (Bill 59–1)
8 September 2015	First reading and referral to Finance and Expenditure Committee
20 October 2015	Reported from Finance and Expenditure Committee (Bill 59–2)
3 November 2015	Second reading
10 November 2015	Committee of the whole House
12 November 2015	Third reading
16 November 2015	Royal assent

This Act is administered by the Inland Revenue Department.