

Taxation (Bright-line Test for Residential Land) Bill

Commentary on the Bill

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CONTENTS

Bright-line test for residential land	1
Overview	3
Two-year bright-line test	5
Residential land	8
Main home	11
Inheritance	15
Relationship property	17
Rollover for land transferred under a resident's restricted amalgamation	19
Deductions	20
Losses	21
Land-rich companies and trusts	22
Consequential and remedial amendments	25
Definition of "land"	27
Clarifying treatment of land transferred under a resident's restricted amalgamation	28
Non-active trusts may be excused from filing returns	30

Bright-line test for residential land

OVERVIEW

This bill proposes a new objective “bright-line” land sale test for residential land, to improve compliance with the current land sale rules. The bright-line test will require income tax to be paid on any gains from the disposal of residential land that is acquired and disposed of within two years, subject to some exceptions.

The Government announced plans to introduce a new land sale rule to supplement the “intention test” in the current land sale rules, as part of Budget 2015. The “intention test” makes gains from the sale of land taxable when bought with an intention or purpose of resale. This intention test is difficult to enforce due to its subjectivity. The bright-line test is intended to deal with the problem by supplementing the current intention test with an objective test. Proposals for the bright-line test were consulted on in an officials’ issues paper, *Bright-line test for sales of residential property*, released on 29 June 2015.

The two-year period for the bright-line test runs from the date of acquisition of the land to the date of disposal. The date of acquisition is the latest date on which the person acquires an estate or interest in the land. Generally, this will be the date the title to the land is registered for the purchase of the property. The date of disposal is generally the date that a person enters into an agreement for the sale of the property. An additional rule applies for sales “off the plan”.

The bright-line test applies only to the disposal of “residential land”. Residential land includes land where the owner has an arrangement to build a dwelling on it as well as bare land that is capable of having a dwelling on it. Residential land does not include business premises or farmland.

A disposal of property that is the main home of the owner will be excluded from the bright-line test when the property has been used predominantly, for most of the time that the person has owned the property, as their main home. When a person has two or more homes, their “main home” is the property with which they have the greatest connection. The main home exception can apply to properties held in trust; there are rules preventing trusts being used to obtain the exception for multiple properties. A person cannot use the main home exception if they have already used the exception twice in the previous two years.

Taxpayers are allowed deductions for property subject to the bright-line test according to ordinary tax rules.

Losses arising only as a result of the bright-line test are ring-fenced so they can only be used to offset gains on other land sales that are taxable under any of the land sale provisions. A person cannot recognise a loss under the bright-line test arising from a transfer of property to an associated person.

Anti-avoidance rules will prevent land-rich companies or trusts being used to circumvent the bright-line test.

The proposed bright-line test will apply to land for which an agreement for sale and purchase is entered into on or after 1 October 2015, and which is subsequently disposed of. When the land is acquired other than by way of sale, the proposed bright-line test will apply when registration of title occurs on or after 1 October 2015.

TWO-YEAR BRIGHT-LINE TEST

(Clauses 4, 15(2), (3) and (4))

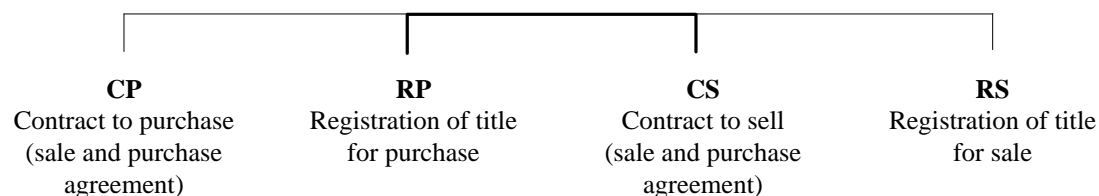
Summary of proposed amendment

The bill proposes that an amount a person derives from disposing of residential land is income of the person if it is disposed of within two years from acquisition. The bill proposes to define the acquisition and disposal dates for the two-year bright-line period depending on the nature of the transaction.

Key features

Standard sales of land

For most standard sales of land there are four relevant dates:



For standard sales of land, the proposed start date for the bright-line period is the date the transfer of the land is registered to the person under the Land Transfer Act 1952. The proposed end date is the date that a person enters into an agreement to dispose of the land.

There are a number of situations when land is acquired that do not follow the standard land sale-process. For these situations, there are separate rules for when the bright-line period starts and ends.

Start dates

Type of acquisition	Start date of bright-line test
Standard purchase of land	Registration
Sales “off the plan”	Date of entry into a contract to purchase
Other sales where no registration	Latest date property acquired (according to ordinary rules)
Subdivided land	The original date of registration for the undivided land

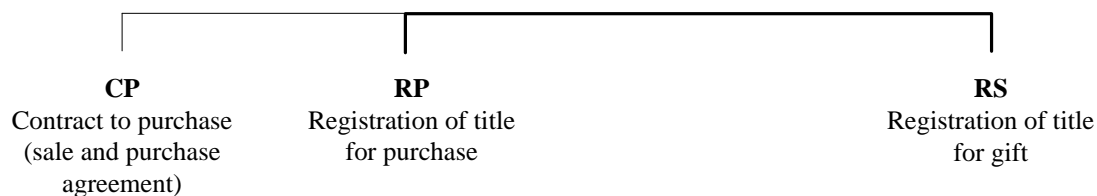
Type of disposal	End date of bright-line period
Standard purchase of land	Date of entry into agreement for sale
Gift	Date of gift (generally registration of title)
Compulsory acquisition	Date of compulsory acquisition
Mortgagee sale	Date land disposed of by mortgagee
Other disposals where no contract to sell	Date of disposal according to ordinary rules

Gifts

For gifts, the proposed end date for the bright-line period is the date the person makes the gift of the residential land. This will be the date when the donor has done everything necessary to be done in order to transfer the property and render the settlement binding.

For a gift of a registrable interest in land, this will mean the end date for the bright-line period is the date the interest is registered.

Gifts – start and end dates



Compulsory acquisition

Where the land is compulsorily acquired by the Crown, the proposed end date of the bright-line period is the date that the land is compulsorily acquired. This will generally be 14 days after the proclamation taking the land is published in the *Gazette*.¹

Mortgagee sale

When land is disposed of by a mortgagee exercising their right to dispose of the property, the proposed end date for the bright-line period is the date when the land is disposed of by the mortgagee.

Other sales

If there is another type of disposal of land, the date of disposal is the date that the land is disposed of according to ordinary rules.

¹ Public Works Act 1981, section 26(3).

RESIDENTIAL LAND

(Clause 15(5), (7) and (11))

Summary of proposed amendment

The proposed bright-line test will only apply if the land disposed of is residential land at the date of disposal.

Key features

The proposed definition of “residential land” is land that:

- has a dwelling on it; or
- the seller of land is a party to an arrangement that relates to erecting a dwelling on it; or
- is bare land and because of its area and nature is capable of having a dwelling erected on it.

The first criterion includes land that has a dwelling on it. The definition of “dwelling” is the same as that currently used in the Income Tax Act 2007 and Goods and Services Tax Act 1985. However, two new adjustments are proposed to the definition for the purposes of the bright-line test. The two adjustments are to include serviced apartments within the definition of “residential land” and exclude all rest homes and retirement villages from the definition.

The second criterion is intended to ensure that the bright-line test covers land that does not have a dwelling on it at present but there is a plan or understanding to build a dwelling on it. For example, this criterion would apply when the owner of a commercial office has an arrangement to convert it into dwellings.

The third criterion is intended to ensure the bright-line test applies to bare land that, because of the characteristics of the land, is likely to have a dwelling on it in the future. This would include bare land zoned as residential under the relevant unitary or district plan.

Example: Development

Andrew buys an empty plot of land. He plans to develop the plot by subdividing it into four lots and building houses on each lot.

Andrew sells Lot 1 off the plan to Bob. One month later, Bob sells Lot 1 to Carla. Lot 1 is residential land as it is bare land that, because of its area and nature, is capable of having a dwelling on it. Therefore, Bob would be subject to the bright-line test.

Business premises or farmland

Residential land does not include land used predominantly as business premises or farmland.

Business premises

“Business premises” has its ordinary meaning as within the rest of the Income Tax Act 2007. Properties rented out for residential purposes are not “business premises”. However, properties rented out to other businesses to use as premises are covered by the exclusion.

Example: Bed and breakfast

Mary owns a bed and breakfast. She provides food to the residents, room service and cleans the rooms she lets out every day.

The land has a dwelling on it so meets the first criterion for “residential land.” However, the land would not be residential as it is used predominantly as the business premises for the bed and breakfast.

Farmland

Farmland is defined as “land that because of its area and nature is capable of being worked as an economic unit as a farming or agricultural business”.

A farming or agricultural business includes forestry, horticultural and pastoral businesses.

To be capable of being worked as an economic unit as a farming or agricultural business, the land must be capable of producing revenue sufficient to cover all costs of holding and operating the land. This includes the cost of capital employed and a reasonable recompense for the proprietor’s labour.

Example: Lifestyle block

Marama purchases a lifestyle block with a house and a small area of farmland. A small number of sheep are kept on the land to keep the grass down.

The farming exclusion will not apply as the land is not capable of being worked as an economic unit as a farming business. It is a hobby farm rather than a genuine farming business.

If the area of farmland was larger and capable of being used as an economic unit for farming purposes, it would likely be covered by the farming exclusion.

MAIN HOME

(Clauses 6, 15(5), (10) and (11))

Summary of proposed amendment

The bill proposes to generally exclude the sale of a person's main home from the bright-line test. The main home exception is proposed to be based to some extent on the current residential exclusion in section CB 16 of the Income Tax Act 2007.

Key features

Requirements for the main home exception

It is proposed that for a property to qualify for the "main home" exception, the land must have been used predominantly, for most of the time the person owns the land, for a dwelling that was the main home of the person or a beneficiary of the trust that owns the property (subject to some limitations).

Used predominantly as person's main home

The proposed requirement that the land is used predominantly as the person's main home means that most of the area of the land must have been actually used for the home. The test is based on a person's actual use of the property and not the person's intended use of the property.

In some circumstances, a person will be required to determine the area of land used for their private residential purposes and the area of land used for other purposes. For example, when a single property has been used by the owner partly as a residential home and partly as a rental property, the relative areas will need to be determined. In many cases, a taxpayer will have determined the relative areas in working out the tax deductions (insurance and rates, for example) that can be claimed. The determination of the areas includes any land used for the relevant purposes (for example, a backyard for the home).

It is proposed that the main home exception either applies or it does not apply; it does not apply on a proportionate basis. As a result, when the property is used less than 50 percent for the main home of the person then the main home exception will not apply.

Used for most of the time as their main home

It is proposed that the land must have been used for most of the time that the person owns the land as their main home. This requires the property to have been used more than 50 percent of the time as their main home for the period the person owns the land. The land does not need to have been used without interruption as their main home. For example, a main home can be rented out for short periods while the owner is on vacation or prior to settlement of the sale of the property, as long as the time is less than the private residential use.

It is also proposed that the owner, or a beneficiary of a trust that owns the property (subject to some limitations), must have resided in the property as their main home. As a result, it is proposed that the exception will not apply when only a family member has used the property as their main home (and not the owner or relevant beneficiary). Further, if the owner of a property does not reside in New Zealand, they cannot use the main home exception.

Trusts

The bill proposes that a trustee of a trust can use the main home exception when they sell a property if it is the main home of a beneficiary (subject to some limitations). However, a trustee cannot use the main home exception when:

- the principal settlor of the trust owns a main home that is not the property being sold; or
- the principal settlor of the trust is a beneficiary of a trust that owns the settlor's main home (and that is not the property that the trustee is disposing of).

The principal settlor is the one settlor that has settled the most property, by value, on the trust.

Example: Student flat

Dave has two properties, a family home which he lives in, and a student flat which his son lives in while studying. Dave settles the student flat on a trust and makes his son a discretionary beneficiary of the trust.

The trust cannot use the main home exception because the principal settlor of the trust (Dave) has another main home.

More than one home – “greatest connection” test

If a person has two homes, the bill proposes that the “greatest connection” test will determine which of the two properties is the person's main home. In other words, the “greatest connection” test operates only as a tie-breaker when a person has more than one home.

The “greatest connection” test determines, on an objective basis, which property is the person's main home. The test does not allow a person to elect their main home. Various factors may be relevant in determining which property the person has the greatest connection with, including:

- the time the person occupies the dwelling;
- where their immediate family (if any) live;
- where their social ties are strongest;
- the person's use of the dwelling;
- the person's employment, business interests and economic ties to the area where the dwelling is located; and

- whether the person’s personal property is in the dwelling.

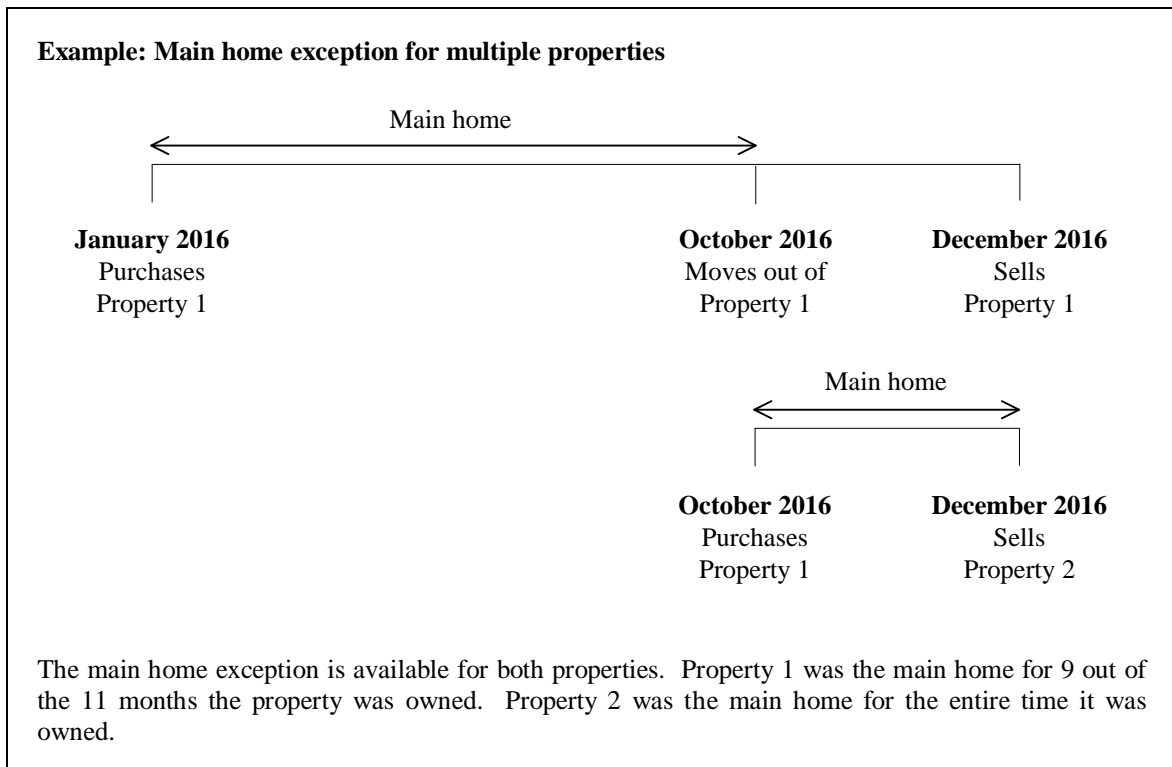
These factors are similar to those used to determine if a person has a permanent place of abode under current tax law. Therefore, existing guidance on the “permanent place of abode” test could assist in determining which property the person has the greatest connection with.

Using the main home exception for two properties

The bill proposes that, in limited circumstances, a person may use the main home exception for two properties sold at the same time.

An example is when a person lives in a home for less than one year as their home, and moves into a new home while trying to sell the original home. The original home may satisfy the requirements to be the person’s main home (as discussed above) for the period before moving into the new home. The new home may also satisfy the requirements to be the person’s main home for the subsequent period.

The ownership overlap of the properties will not mean the original home fails to satisfy the requirements to be a main home for the previous period. If the two properties were sold at the same time, the owner will be able to use the main home exception for both properties (if they both satisfied the requirements to be a main home for the different periods).



Different owners can have different main homes

It is proposed that co-owners of property can have different main homes. For example, a person living in one city may have a different main home from their spouse living in another city. The bright-line test is proposed to apply to the extent the property is not the main home of an owner on disposal.

Habitual sellers

The bill proposes that a person cannot use the main home exception if they have already used the exception twice in the previous two years. An example is when a person habitually buys property to renovate and sell, and lives in the property while they undertake the renovations. The person will only be able to use the main home exception twice in a two-year period. If they sell a third property in the two-year period they will not be able to claim the main home exception for that property.

INHERITANCE

(Clauses 4(3) and 11)

Summary of proposed amendment

When a person dies, their property may be sold or transferred to a beneficiary, who may subsequently sell the property. The bill proposes that those transfers and disposals will not be subject to tax under the bright-line test.

Background

When a taxpayer dies, an estate can be dealt with in several ways, depending on whether a will exists. A will usually provides for the appointment of one or more executors. In the absence of a will, a court will appoint someone to administer the deceased's estate (an administrator).

The executor or administrator is vested with legal and beneficial ownership of the deceased's property from the time of death to the end of the period of executorship or administration. The beneficiaries have a right to have the deceased's estate administered properly during this period but do not have a legal or beneficial interest in the assets.

The duties of the executor or administrator are to collect the assets of the deceased, pay all debts, testamentary expenses and taxes and to distribute the legacies. At the end of the period of executorship or administration, the executor or administrator becomes a trustee of the residual assets on behalf of the beneficiaries.

Property that has been bequeathed or devised under a will may be gifted as a specific legacy, general legacy or residuary gift. Specific legacies are treated as taking effect from the date of transfer to take effect from the date of death, so income arising from the property is derived by the beneficiary from the date of death. A general or residuary legacy vests in a beneficiary at the time of distribution.

Detailed analysis

The bright-line test proposes rollover relief for all transfers following a death and an exemption for any disposals by the executor or administrator or subsequent disposals by the beneficiaries.

The rollover relief is achieved by deeming the transfers from the deceased person to the executor or administrator, and from the executor or administrator to the beneficiary, as a disposal and acquisition of the property at the total cost of the land to the deceased person at the date of transfer (rather than at the land's market value). The effect of this is that no tax liabilities under the bright-line test arise under the transfers.

Disposals by a beneficiary, executor or administrator of residential land transferred to them on the death of a person are specifically excluded from the bright-line test. However, the disposals may still be subject to tax under the current land sale rules.

RELATIONSHIP PROPERTY

(Clause 10)

Summary of proposed amendment

When a relationship breaks down, property may be transferred between the spouses or partners. The property may then subsequently be sold. Transfers of property under a relationship property agreement are proposed to be excluded from the bright-line test. However, any subsequent sale of the transferred property will be subject to the bright-line test.

Background

During a marriage, civil union or de facto relationship, the parties hold any property according to the conventional laws relating to property. As a result, the parties are free to deal with their property during the relationship without regard to the provisions of the Property (Relationships) Act 1976.

When a relationship breaks down, the Property (Relationships) Act 1976 may be invoked by a court order or an agreement between the parties. When the statutory regime is invoked, new property rights operate from the date of the court order or agreement. The property of the spouses or partners is reapportioned between them under principles derived from the statutory regime. Each item of property is divided into one of two statutory categories:

- relationship property; and
- separate property.

The fact that a particular item of property is placed within one of these two categories then produces a *prima facie* result in the way it is treated as between the two spouses or partners. *Prima facie*, all relationship property is divided in equal shares, while separate property is retained by the owner.

Rollover relief

A transfer of property under a relationship property agreement will be entitled to the current rollover relief that applies to such transfers. This will mean that no tax liability under the bright-line test arises for the transfer of the property under the relationship property agreement. However, the person to whom the relationship property has been transferred may be liable under the bright-line test for any subsequent disposal of the property. A tax liability will arise if the property is disposed of within two years of the registration date on the acquisition by the person who transferred the property (and the property was not their main home).

Example: Scenario

Jack and Jill get married in June 2015 and purchase a house and a rental property together on 15 December 2015. Six months into the marriage they decide to separate. Jill gets the house and the investment property under the relationship property agreement. The transfers of property to Jill under the relationship property agreement will not be subject to the bright-line test. Jill continues to live in the house as her main home. She decides to sell the house and the investment property in July 2016 (that is, within two years of purchasing the properties).

Jill will not be taxable on the sale of the house because it has been her main home for the period she has owned the property (either jointly or subsequently on her own). The sale of the rental property will be subject to the bright-line test because it has been bought and sold within two years.

ROLLOVER FOR LAND TRANSFERRED UNDER A RESIDENT'S RESTRICTED AMALGAMATION

(Clause 12)

Summary of proposed amendment

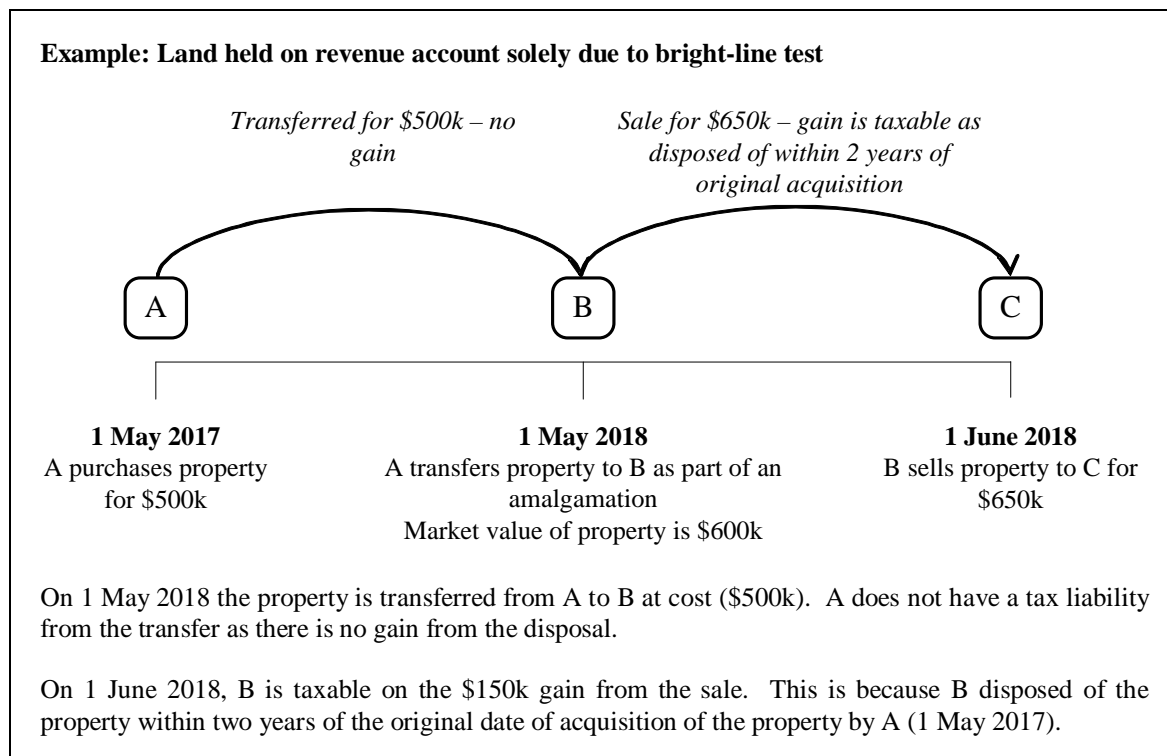
The bill proposes to extend the current rollover relief for amalgamations to property that is revenue account property of an amalgamating company due to the application of the new bright-line test.

The amalgamation rules in the Income Tax Act 2007 contain a rollover provision for property transferred as a result of an amalgamation.²

The rules provide that where property is held on revenue account by an amalgamating company solely due to the application of a 10-year rule in sections CB 9 to CB 11 and CB 14, the property is transferred to the amalgamated company at cost.

If the amalgamated company disposes of the property within 10 years of the original date of acquisition of the property by the amalgamating company, any gain from the sale is taxable.

The bill proposes to extend this rollover relief to property that is revenue account property of an amalgamating company due to the application of the bright-line test.



² That meets the criteria to be a “resident’s restricted amalgamation” under section FO 3.

DEDUCTIONS

(No clause)

For property that is liable for tax under the bright-line test, it is proposed that taxpayers will be able to deduct expenditure according to the ordinary tax rules.

The cost of the property can be deducted

A person who sells property that is subject to the bright-line test will be allowed a deduction for the cost of the property at the time of sale.

The cost of the property includes the amount that was paid to acquire the property (the initial acquisition price of the property). The cost of the property also includes any expenditure related to the acquisition. As a result, the costs of lawyers, valuers, surveyors and real estate agents are deductible. The incidental costs of disposing of the property are also deductible as part of the cost of the property. The cost of the property also includes any capital improvements to the property made after acquisition, such as renovations.

Holding costs deductible to the extent sufficient nexus and not private in nature

While a property is owned there will be periodic holding costs (of a non-capital nature) such as interest, insurance, rates and repairs, and maintenance expenses.

To be deductible as incurred, the holding costs must satisfy the normal deduction requirements. In other words, the holding costs are deductible to the extent they have a nexus with income and are not private in nature (or otherwise subject to any of the general limitations on deductions).

A deduction will be considered to be of a private nature if it is exclusively related to living as an individual. This will be determined by the specific facts of any given situation. However, interest costs can automatically be deducted if the property is owned by a company (subject to some limitations).

For example, when the property is part of a business or profit-making undertaking or scheme, and there is no private use, it is likely that the nexus would be satisfied. Further, when the property is rented out there would likely be a nexus between the holding costs and the rental income. However, if a person purchases a bach for family use, but sells the bach within two years, the holding costs would not be deductible because of the private limitation.

LOSSES

(Clause 8)

Summary of proposed amendment

The bill proposes that losses from deductions that are claimable solely against bright-line income (bright-line deductions) will be ring-fenced, so they can only be offset against gains on other land sales that are taxable under any of the land sale provisions.

Key features

The amount of bright-line deductions allowed in any income year is proposed to be limited to the amount of bright-line income and land net income for that year. Land net income is the amount of net income for the year as if the person's only income they derived was from the disposal of land under sections CB 6 to CB 15.

Any excess deductions not allocated to the income year will be treated as the cost of revenue account property and carried forward to the next income year. However, any excess deductions will not be able to be carried forward if the general continuity requirements for carrying forward tax losses are not satisfied.

Losses from transfers to associated persons

It is proposed that a person will not be able to recognise a loss under the bright-line test arising from a transfer of property to an associated person.

LAND-RICH COMPANIES AND TRUSTS

(Clause 14)

Summary of proposed amendment

To address the risk of people using land-rich companies and trusts to circumvent the bright-line test, a specific anti-avoidance rule is proposed in the bill that deems disposals of residential land to have occurred when companies and trusts are used to defeat the intent and application of the bright-line test.

Land-rich companies

The proposed specific anti-avoidance rule for companies deems a shareholder to have disposed of residential land whenever the following three requirements are met:

- The company is land rich – this means at least 50 percent of the value of the company is attributable to residential property.
- 50 percent or more of the shares in the company are disposed of within a 12-month period.
- The disposal of shares had a purpose or effect of defeating the intent and application of the bright-line test.

Definition of land-rich company

A “land-rich” company is one where at least 50 percent of the value of the company is attributable to residential land either directly or indirectly. This is intended to mirror similar provisions contained in international double tax agreements. Residential land can be attributable to a company either through the company owning the residential land in its own name or holding shares in another land-rich company.

Purpose or effect of defeating the intent and application of the bright-line test

This provision is intended to align with other specific anti-avoidance rules contained in the Income Tax Act 2007.³

As with other specific anti-avoidance rules, principles from the general anti-avoidance rule are intended to apply to this specific anti-avoidance rule. This means that when determining whether a disposal of shares has “a purpose or effect of defeating the intent and application of the bright-line test” the principles outlined in the general anti-avoidance cases should apply.⁴

³ See, for example, sections GB 49 and YC 9(2) of the Income Tax Act 2007.

⁴ See *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2008] NZSC 115, [2009] 2 NZLR 289.

In particular, in determining whether there is a purpose or effect of defeating the intent and application of the bright-line test it is intended that the key question be whether the disposal of shares, viewed in a commercially and economically realistic way, makes use of the bright-line test provisions in a manner that is consistent with Parliament's contemplation.

Land-rich trusts

The proposed specific anti-avoidance rule for trusts deems a trustee to have disposed of residential land whenever all three of the following requirements are met:

- The trust is land-rich – this means that at least 50 percent of the value of the trust is attributable to residential land.
- And:
 - a. the trust deed changes; or
 - b. a decision-maker under the trust deed changes; or
 - c. an arrangement under the trust changes
- The action in (b) was done with a purpose or effect of defeating the intent and application of the bright-line test.

The same considerations as for land-rich companies apply in determining whether the trust is land-rich and whether there was a purpose or effect of defeating the intent and application of the bright-line test.

Consequential and remedial amendments

DEFINITION OF “LAND”

(Clause 15(6) and (8))

Summary of proposed amendment

The proposed amendment clarifies the definition of “land” to make clear that “land” includes interests in land.

Application date

The amendment will come into force on 1 October 2015.

Key features

It is proposed that the definition of “estate” and “interest” in land are replaced with a definition of estate and interest in land that clearly includes interests in land. The definition of land clearly includes an interest in land prior to the rewrite of the definition.

In addition, the proposed new definition clarifies that an interest in land includes the right to possession of land.

Background

As a result of the rewrite of income tax legislation, there was an unintended change to the definition of “land”. This change created uncertainty over whether it included an interest in land.

CLARIFYING TREATMENT OF LAND TRANSFERRED UNDER A RESIDENT'S RESTRICTED AMALGAMATION

(Clause 13)

Summary of proposed amendment

The bill proposes to clarify the treatment of revenue account property transferred as a result of a resident's restricted amalgamation when, at the time of the amalgamation, it is unclear whether the amalgamated company holds the property on revenue or capital account.

Application date

The proposed amendment will come into force on 1 October 2015.

Key features

The amendment applies so that property is deemed to be transferred at market value when:

- the land is held on revenue account for the amalgamating company; and
- the land is, or may be, revenue account property of the amalgamating company solely because of the 2-year bright-line test or a 10-year rule in any of sections CB 9 to CB 11, and CB 14.

When the two criteria above are met the property is deemed to be transferred at market value.

Background

When two companies merge under an amalgamation, the transfer of assets between the companies is generally exempt from tax. However, the transfer is not exempt from tax if the property leaves the tax base.

The amalgamation rules achieve this result by transferring property either at cost or at market value, depending on whether the amalgamating and amalgamated company hold the property on revenue or capital account. This is illustrated in Table 1.

Table 1

		B		
		Holds on capital account	Holds on revenue account (except if solely due to 10-year rule)	Holds on revenue account solely due to 10-year rule
A	Holds on capital account	Cost	Market	Market
	Holds on revenue account (except if solely due to 10-year rule)	Market	Cost	Cost <u>Market</u>
	Holds on revenue account solely due to 10-year rule	Cost	Cost	Cost

However, when the amalgamated company holds the property on revenue account, if it disposes of the property within 10 years, it is unclear for the amalgamating company whether they transfer the property at cost (and have no tax liability) or at market value (and have a tax liability).

NON-ACTIVE TRUSTS MAY BE EXCUSED FROM FILING RETURNS

(Clause 16)

Summary of proposed amendment

The amendment proposes to introduce a new section into the Tax Administration Act 1994. It will allow non-active trusts (which are currently required to file nil income tax returns) to be exempted from the obligation to file, thereby reducing their compliance costs.

Application date

The amendment will come into force on the date of enactment.

Key features

Trusts that are non-active will no longer be required to file annual income tax returns, if:

- throughout the tax year the trust is a non-active complying trust; and
- the trustee of the trust has filed a declaration that the trust is non-active (and the trust has not become active since making the declaration).

A trust will be non-active if it:

- has not derived or been deemed to have derived any income;
- has no deductions;
- has not disposed of, or been deemed to have disposed of, any assets of the trust; and
- has not been a party to, or perpetuated or continued with, any transactions with assets of the trust in the tax year, which give rise to income in any person's hands, or fringe benefits to any employee or to any former employee.

Certain minimal amounts of income or deductions can be ignored in determining whether a trust is non-active.

The amendment sets out the process by which a non-active trust may make application for exemption from filing income tax returns. This process entails the completion of a declaration – first, that the trust is a non-active trust and secondly, that a trustee of the trust will inform the Commissioner if it ceases to be so. The trustees of the trust are thereby placed under a statutory obligation to inform the Commissioner upon the cessation.

The Commissioner will retain the power to request the trustees of a trust to furnish a return of income even if it holds an exemption under the proposed provision.

The proposed amendment is based on a similar provision for non-active companies in section 43A of the Tax Administration Act 1994.