

**Consultation on  
The Bright-Line Test for Selling  
Residential Land (PUB00488)**

**Submissions on behalf of  
The Law Association of New Zealand  
by the  
Property Law Committee**

## INTRODUCTION

1. The Law Association of New Zealand (TLANZ) is an independent membership organisation for the New Zealand legal profession with more than 7,000 members. TLANZ maintains expert law committees that support legal review and policy advocacy on important issues.
2. The Property Law Committee (the Committee) of TLANZ appreciates the opportunity to submit on The Bright-Line Test for Selling Residential Land Consultation.

## SUBMISSIONS

### UPDATED TERMINOLOGY FOR WHEN THE BRIGHT-LINE TEST STARTS AND ENDS

#### REGULAR PATTERN

3. In relation to PUB00488a (When do I have a “regular pattern”), we note that on page 2 it’s stated that a “regular pattern” depends on the number of similar transactions and the intervals of time between the same. Further down on page 2 it also states that it typically requires at least three transactions are needed for a regular pattern to arise. If this is the case then issues can arise as it has been reported that on average homeowners in Auckland sell their properties approximately every 5 years,<sup>1</sup> so may inadvertently be caught by the “regular pattern” rule in due course which would invariably lead to the taxing of the sales of family homes even where such houses were not renovated prior to sale. The issue is illustrated in Example 1 – was the intention of Parliament that the result have been the same if Melody and David had done no improvements on the various properties prior to their sale?
4. We see that in determining “regular pattern” the purpose or reason will be deemed irrelevant, yet resident exclusion will not apply if there is a regular pattern, and main home exclusion cannot be claimed twice in 2 years, or if there is a regular pattern. However, could there not be exceptional circumstances where an owner has unintentionally sold and purchased twice in the last 2 years for legitimate reasons such as change in jobs, unexpected family medical situations, inheritance, new or ending relationship, or financial pressure that would justify an exception and we wonder whether there should be room to review the purpose or reason in exceptional circumstances? We recommend that the Commissioner consider whether there is room for an exception or safe harbour in applying the regular pattern rule in truly extraordinary cases – or at least acknowledge in the final QWBA that, while purpose is generally irrelevant, the factual **context** (such as genuine necessity or unforeseen events) might be considered in determining whether a pattern is “regular” in the sense intended by Parliament. In the absence of such an exception, there is a risk that ordinary homeowners could inadvertently lose the benefit of the main home/residential exclusions due to life events beyond their control, which does not appear to be the policy intent.

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<sup>1</sup> <https://news.realestate.co.nz/blog/how-often-do-people-sell-their-homes-in-new-zealand>

5. Is there any guidance on how many main homes one trust could claim if there were multiple families or generations of beneficiaries? The draft items do not appear to address this scenario. We submit that a trust (as a single “person” for tax purposes) likely can only have one main home at any given time (the dwelling with which the trust has the greatest connection, per the definition of “main home” in s YA 1). This could be problematic if a trust holds two homes for two different beneficiary families. We recommend that IRD clarify in the final QWBA (or accompanying guidance) how the main home exclusion is intended to apply for trusts with multiple concurrent residences, to ensure such taxpayers can plan and understand their exposure. For example, if two trust-owned houses are each used by separate beneficiary families as their main homes, it should be clear whether the trust can claim the main home exclusion on both (likely not, under current law), or only one – and if only one, how that is determined. Clear guidance here would be appreciated to avoid confusion for trust-held homes.

#### **START DATE**

6. We see that the “acquisition” date is generally the registration of the transfer with some exceptions. One of these exceptions include purchasers purchasing off-the-plan purchases where the contract date will be the start date of the “acquisition date” and not the registration date. It is very common for off-the-plan purchases to take more than 2 years from the date of the agreement to the settlement date, which means that this would potentially open up an opportunity for buyers to purchase a property off-the-plan and “flip” it immediately prior to, or on settlement, and if the vendor developer takes 2 years, the purchaser would be within the bright-line-test of 2 years and pay no tax. Would this be an intentional outcome? If not, legislative amendment may be needed to address such timing mismatches (for instance, perhaps measuring the bright-line period from registration even for off-plan deals or extending the bright-line period in those cases). We recommend the Commissioner clarify in the final advice whether such scenarios are simply accepted as a consequence of the rule (given the policy choice to use contract date as start date for off-plan acquisitions), or if there is any anti-avoidance principle that could apply to treat a nominal “nomination” or on-sale at settlement as taxable. This will help manage taxpayers’ expectations and discourage intentional “flipping” of off-the-plan purchases to avoid tax.
7. We often see confusion in the acquisition date and disposal date as acquisition is typically from the settlement date (registration date) while disposal is the date of the agreement. This is also different from the acquisition date under other legislations such as the Land Transfer Act 2017. We believe care is needed to ensure there is no misunderstanding from the public, and that this does not contravene other legislation, for instance the Overseas Investment Act 2005 where overseas people need OIO consent to “acquire” an interest in land which is generally regarded as the date an agreement is unconditional as the purchaser would have an equitable interest. Care must be used to ensure there is no confusion of when an overseas person would need to get consent, and this is not affected by the bright line test regulations as would the date of consent now change for an overseas person on whether they were purchasing an ordinary residential property as opposed to an off-the-plan purchase? We recommend the final QWBA or accompanying material explicitly state that the bright-line “acquisition date” is a tax concept only and does not alter obligations under, for example, the Overseas Investment Act. This clarification will help avoid any mistaken

belief that an overseas person could delay seeking consent because of the different bright-line start date for off-plan purchases.

8. We understand that transfers between associated persons (e.g., family, trusts, companies) retain the transferor's bright-line start date, but would there be any exceptions or limitations if there were multiple properties?

## **ACQUIRING LAND**

9. In relation to PUB00488b (On what date is a person treated as acquiring land) we note that the commentary on nominations from paragraph 21 to 26 (which states that the nominator acquires an equitable interest in the land on the date the agreement is entered into and in paragraph 23 continues to have those rights) are inconsistent with paragraph 29 and 30 of PUB00488c, which asserts that a nomination creates no interest in land for a nominator. It is necessary to reconcile these two aspects of the different publications because in the absence of the same you would have differing interpretations of whether a nominator has disposed of their equitable interest when nominating a new purchase where, for example, a nominee pays a nomination fee to the nominator – is that intended to be captured as a “disposal” under the land sale rules, the brightline period, both, or neither?
10. However, these two QWBAs taken together could lead to differing interpretations of whether a nominator has disposed of an interest when a nomination occurs – especially in situations where the nominee pays consideration (a nomination fee or other payment) to the nominator. On one hand, if the nominator “retains rights and remains liable” under the contract up to settlement (as PUB00488b describes), one might argue the nominator never actually sold an interest. On the other hand, if a fee is paid for a nomination, economically the nominator has derived a profit from transferring their opportunity/rights in the property to someone else. We note that PUB00488b itself acknowledges this nuance: a document labelled a “nomination” may in substance be an assignment of the original purchaser's contractual rights, depending on the wording and intent. An assignment (as opposed to a simple nomination) *does* involve the original purchaser transferring all their rights in the agreement to the assignee, and in such case the assignor's date of acquisition would be relevant and a disposal has occurred for them. In fact, an example given is where someone buys off the plans and on-sells the contract before settlement – that is typically an assignment, even if casually referred to as a “nomination”.
11. We submit that the Commissioner should reconcile and clarify these points in the final advice. In particular, it should be made clear that simply nominating another person to settle (especially where nominator and nominee are associated persons, and no consideration changes hands) will not trigger any tax on the nominator, but if what is called a “nomination” in practice involves the original purchaser effectively on-selling the contract (for example, receiving a fee or other value from the new purchaser), then that transaction may be treated as an assignment or novation and could give rise to tax consequences for the nominator. We recommend that the final QWBAs explicitly state whether the nominator in a paid nomination scenario has a “disposal” under the land sale rules or the bright-line test. This is important to prevent tax arbitrage: without clear guidance, a person could attempt to avoid bright-line tax by entering a contract themselves and then nominating

a third party for a fee, arguing no disposal by the nominator. In our view, the law (s CB 6, or potentially the ordinary income rules) should tax such an arrangement if the original contract was acquired for the purpose of resale. Indeed, under s CB 6 (intention of disposal) and existing case law, the profits from selling one's contractual position should be taxable income if the intention was to sell. We believe the IRD's view should align with this, and the examples in PUB00488b and c should be harmonised to avoid any implication that a nominator can always escape tax. In summary, nominations vs assignments is a complex area, and we appreciate the effort to clarify it; we simply urge that any final published guidance clearly delineate the boundary so that taxpayers cannot mischaracterise an assignment as a mere nomination to sidestep tax.

## **SUBDIVISION AND LIFESTYLE BLOCK EXCLUSION**

12. We understand exclusions can apply if more than 50% of the land area was used for the seller's main home for over 50% of the bright line period. Does that mean that if after 2 years a property is sold, but 1 hectare of the 2 hectares was used as the main home for 1 year and 1 day, and for just under 1 year, 90% of the land was used to grow crop but as long as the commercial use was limited to less than 50% of the year, the main home exclusion could be sought? What if the owner owned the land for 5 years (with no other use of land during this time except to live there), and during the last 2 years predominantly used the land to grow crops, would the prior 5 years being more than 50% of the time, allow the owner to use the main home exclusion? Conversely, if a couple had been living on a lifestyle block for 10 years as their main home, but had an avocado farm that used up 55% of their land for more than 50% of this period, the couple would not be able to claim a main home exclusion at all?
13. We agree with the general principle outlined in the drafts: a sale will be excluded from the bright-line test when either the farmland exclusion or the main home exclusion applies. The exposure draft confirms that the **farmland exclusion** (for bright-line purposes, via the definition of "residential land" in s YA 1) applies where the land is or could be used for a farming or agricultural business carried on by the owner, and notes that **lifestyle blocks are generally not farmland** because they are usually not operated as a farming business by the owner and typically are not capable of being worked as such, due to their area and nature. We accept this description – many lifestyle block owners have hobby farms or small rural-residential lots that are not true commercial farms. Therefore, in most cases, lifestyle properties will fall within "residential land" and must rely on the main home exclusion if sold within the bright-line period. The **main home exclusion** (s CB 16A) in turn requires that more than 50% of the area of the land was used for the owner's main home, and that the land was used in that manner for more than 50% of the bright-line period. We appreciate the guidance in PUB00488d that even if a subdivided section being sold does not have a dwelling on it, it can still qualify as "used for a dwelling" (main home) if it was part of the curtilage or used in connection with the dwelling on the original land. This is a sensible and pragmatic interpretation that we support.

## **CLIMATE ADAPTATION AND ENVIRONMENTALLY DRIVEN DISPOSALS**

14. An emerging issue not fully contemplated in the original bright-line policy is the impact of climate change and environmental factors forcing premature property disposals. Increasingly, homeowners

in flood-prone or coastal areas face situations where they must sell or abandon properties due to uninhabitable conditions, government “red-zoning”, or managed retreat initiatives. These sales are often involuntary and driven by environmental necessity, yet under current law they may still trigger the bright-line test if the disposal occurs within the relevant period. We note recent events – for example, the buy-outs of homes after the 2023 Cyclone Gabrielle flooding – where the Government recognized the unfairness of taxing capital gains in such circumstances. A legislative amendment was announced to ensure the bright-line test “will not be triggered when local authorities buy-out damaged properties” in designated disaster zones (Government will remove “bright-line” test for Cyclone buyout properties | Beehive.govt.nz). The Revenue Minister acknowledged it is “not appropriate to apply the bright-line test to these ... sales because the impact of weather events gave the property owner little option other than to sell” (Government will remove “bright-line” test for Cyclone buyout properties | Beehive.govt.nz). This development underscores that environmentally driven sales are a special category deserving relief. We submit that Inland Revenue should consider providing formal guidance or an exception mechanism for taxpayers who dispose of residential land due to climate or environmental risks. It would be prudent for the Commissioner to clarify, in a Revenue Alert or QWBA, how such cases will be treated. Ideally, the tax rules would contain a general carve-out for involuntary climate adaptation sales, akin to other forced-disposal exemptions (for example, transfers under compulsory acquisition or insured loss events).

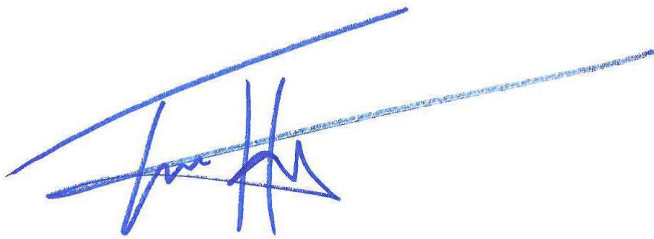
#### **REMOTE WORKING, DIGITAL NOMADISM, AND THE MAIN HOME EXCLUSION**

15. Modern work patterns are changing the way people use their homes. With the rise of remote working arrangements, “digital nomadism,” and extended travel, it is increasingly common for individuals to be temporarily absent from their primary residence for work or personal reasons. This raises important questions about how the main home exclusion (Income Tax Act 2007, s CB 16A) is applied under the bright-line test when a homeowner has prolonged absences. Under current law and recent Inland Revenue interpretation, the main home exclusion requires that the property was used predominantly as the person’s main home for the majority of the ownership period (or that any periods of non-main-home use fit within specified time limits). We note that Inland Revenue’s guidance (following the 2021 amendment to the bright-line rules) has taken a relatively strict view on absences: if an owner is absent for more than 12 months, that is a strong indicator the dwelling is no longer considered their main home. In practice, this means a homeowner who spends say 13–18 months abroad on a work assignment or travelling could lose the benefit of the main home exclusion upon sale – effectively rendering the sale of their family home taxable under bright-line, even though the person always intended to return home. This outcome appears misaligned with the policy that the family home should generally not be subject to income tax. We recommend that Inland Revenue clarify what constitutes acceptable temporary absences from a main home in the context of the bright-line test. Given the prevalence of remote work arrangements, it would be helpful if final guidance (for example, an Interpretation Statement on the main home exclusion) explicitly outlined scenarios of absence that will not jeopardize the main home status. This could involve confirming a safe-harbour period (such as the 12-month period referenced in current guidance) and explaining how it applies – for instance, does the clock reset if the homeowner resumes occupation, and are multiple non-consecutive absences aggregated or viewed separately? We suggest including examples involving common modern scenarios: extended overseas

employment postings, travel sabbaticals, or remote work relocations, in which the individual retains their house in New Zealand as their true home.

## CONCLUSION

16. We would like to once again thank the Commissioner, for the opportunity to provide this feedback.
17. We would like to thank the Subcommittee of the Committee for working on this feedback, particularly Tina Hwang, Hermann Grobler, John Jon, on behalf of the Committee.
18. If you have any questions or require further clarification please contact the Committee Executive, Gandhya Senanayake [gandhya.senanayake@thelawassociation.nz](mailto:gandhya.senanayake@thelawassociation.nz).



Yours sincerely,

Tina Hwang

**Convenor, The Law Association of New Zealand Property Law Committee**  
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*The views represented in this submission are not necessarily representative of the views of all TLANZ members but are those of individual TLANZ members or TLANZ committees who have responded to the consultation.*