

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY**Deadline for comment: **12 October 2022**Quote reference: **PUB00351 – fact sheet**Send your feedback to [Public.Consultation@ird.govt.nz](mailto:Public.Consultation@ird.govt.nz)**FACT SHEET****Bright-line test and families**

Issued: Issue Date

**IS 22/## FS**

This fact sheet accompanies “IS 22/XX: Income tax – application of the s CZ 39 bright-line test to certain family and close relationship transactions”. IS 22/XX considers when the bright-line test in s CZ 39 of the Income Tax Act 2007 applies to disposals of residential land in family transactions. It does not consider transfers under relationship property settlements.

This fact sheet considers only the s CZ 39 bright-line test, which may apply if you entered into a binding agreement to purchase residential land from 29 March 2018 to 26 March 2021 (inclusive). If you purchased residential land after 26 March 2021, the bright-line test in s CB 6A of the Income Tax Act 2007 may apply instead.

**Key terms**

<b>bright-line period</b>	generally the 5-year period from the date you were registered as the owner of residential land and the date you gift it or enter into a binding agreement to sell it
<b>disposal</b>	includes a sale, transfer, or distribution from a trustee or gift

<b>partner</b>	a spouse, civil union partner or de facto partner
<b>residential land</b>	land that has, or will have, a house on it (that is not your main home), and includes rental properties, but not business premises or farmland

## Introduction

1. This fact sheet covers the situations when you:
  - are a parent who assists your child with buying their first home;
  - add your new partner to the title of your residential land; and
  - inherit a share of residential land under a will, and you sell your share to the other beneficiaries who own shares in the residential land.
2. If you sell residential land to your family member or partner within the bright-line period, you may be taxed under the bright-line test.
3. If you gift residential land or the payment you receive is below the market value, you will be taxed on the market value of the residential land instead.
4. If you sell residential land inherited under a will, the sale is exempt from the bright-line test.

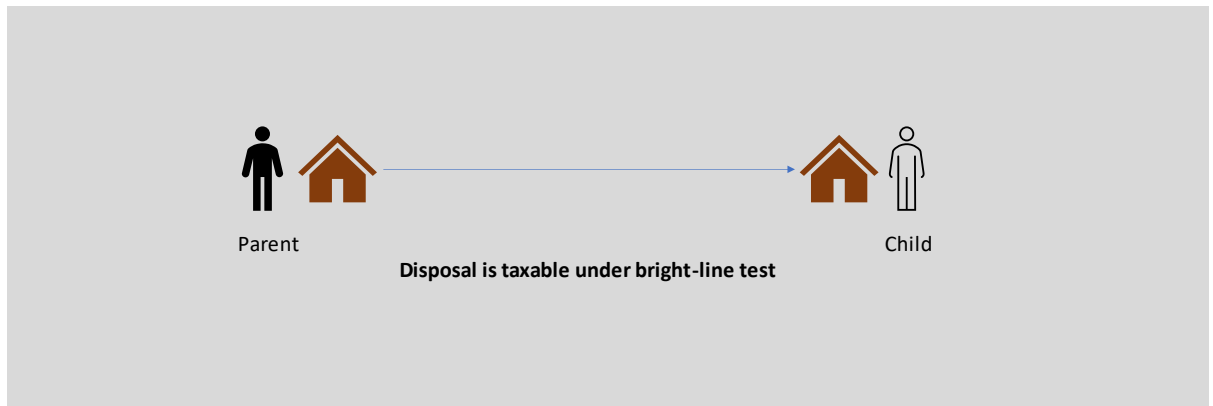
## Family and close relationships

### Parent disposes of residential land to their child

5. You may be a parent who assists your child to buy residential land. You purchase the land personally, as a trustee of a trust, or as a shareholder of a company. You do not purchase the land as a nominee or bare trustee for your child (considered from [8]).
6. Your child may provide funds towards the purchase. You are the borrower from the bank if there is a mortgage in your name registered against the residential land. You rent the land out until your child is able to buy it from you. They may reimburse you for some of the ongoing costs.
7. You dispose of the land to your child for the market value within the bright-line period. The payment you receive from your child is income under the bright-line test.

You can deduct the cost of the residential land, and this can reduce the amount of income you have to pay tax on. See Example 1.

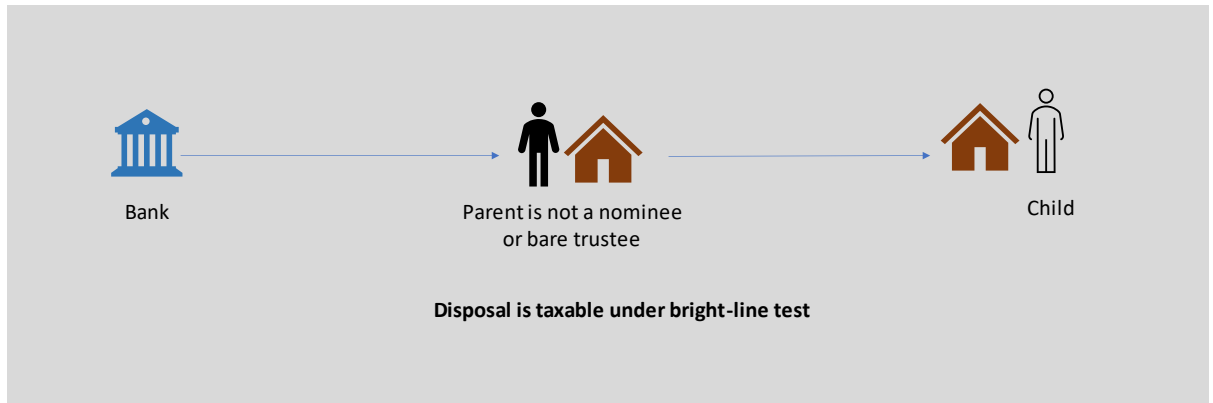
### Example 1: Parent disposes of residential land to their child



### Parent as nominee or bare trustee for their child

8. If you acted as a nominee for your child, the disposal of the residential land to your child within the bright-line period is not subject to the bright-line test. You will be a nominee if you are acting on behalf of your child in accordance with their instructions.
9. The same is true if you transfer residential land as a bare trustee to your child who is a beneficiary under a bare trust. You will be a bare trustee if you are a trustee holding residential land passively for your child and have no active duties. Your only responsibility as a bare trustee is to maintain the residential land and transfer it on demand to your child or as directed by them.
10. You will not be a bare trustee if you are a borrower for a loan in relation to a mortgage registered against the residential land in your own name or as a trustee of a trust. A legal responsibility for the loan is an active duty and not a passive duty of a bare trustee. See Example 2.
11. You will need to provide us with evidence that you are acting as a nominee or a bare trustee for your child. Whether or not this is the case will depend on the circumstances.

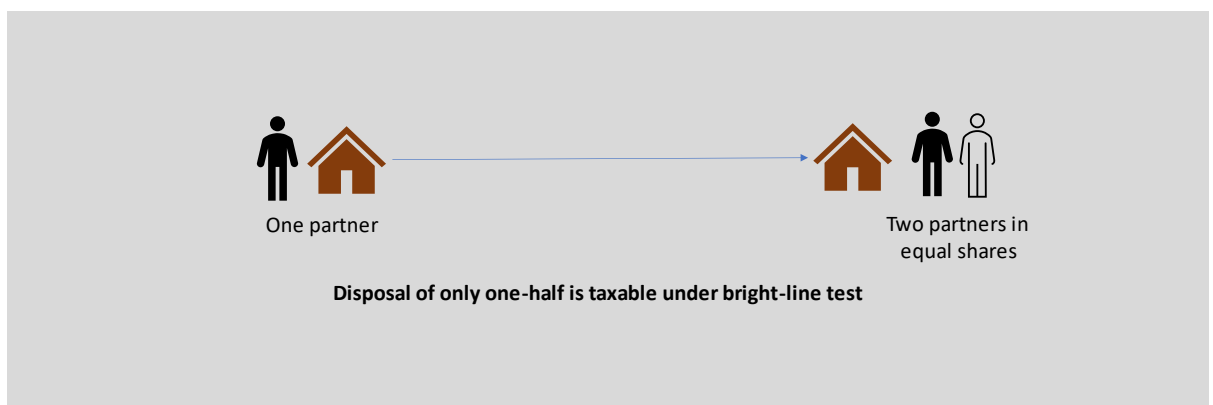
### Example 2: Parent is not a nominee or bare trustee for their child



### Partner transfers a share of residential land to their new partner

12. You may have changed the ownership of your residential land from yourself to yourself and your new partner as equal co-owners within the bright-line period.
13. The transfer of a half share of the residential land to yourself is not subject to the bright-line test. However, the sale of the other half share of the residential land to your partner is subject to the test. You will be taxed on the market value of the land if you sold the half share for less than market value. See Example 3.

### Example 3: Partner sells a share of residential land to their new partner

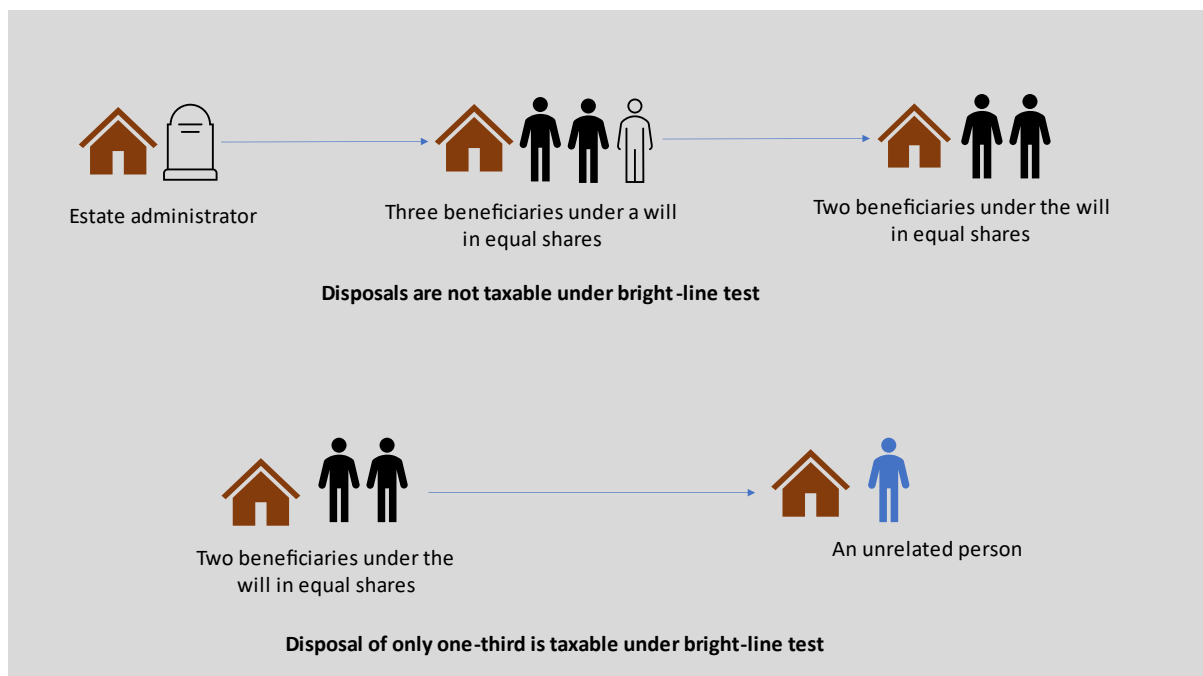


14. Any subsequent sales by you and your partner to someone else within the bright-line periods for your and your partner's shares in the residential land will be fully subject to the bright-line test.
15. In both situations, you can deduct half of the cost of the residential land and this can reduce the amount of income you have to pay tax on.

## Beneficiaries sell inherited residential land

16. You may have inherited a share of residential land under a will. You want to sell your share in the residential land to the other beneficiaries who have shares in the residential land.
17. The sale of your share in the residential land to the other beneficiaries within the bright-line period is exempted from the bright-line test. See Example 4.
18. However, a later sale of the residential land within the bright-line period by the remaining beneficiaries to someone else is exempted only to the extent of their original inherited shares in the residential land. See Example 4.

### Example 4: Beneficiaries sell inherited residential land



*Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.*

*In draft form these items may not be relied on by taxation officers, taxpayers, and practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*

## About this document

Some of our longer or more complex items are accompanied by fact sheets, which summarise and explain the main points. To fully understand the guidance, a fact sheet should be read alongside the full item.