

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **23 September 2024**

Please quote reference | Whakahuatia te tohutoro: **PUB00455**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

FACT SHEET | PUKA MEKA

Income tax – Look-through companies and the bright-line test

Issued | Tukuna: Issue Date

IS ##/## FS #

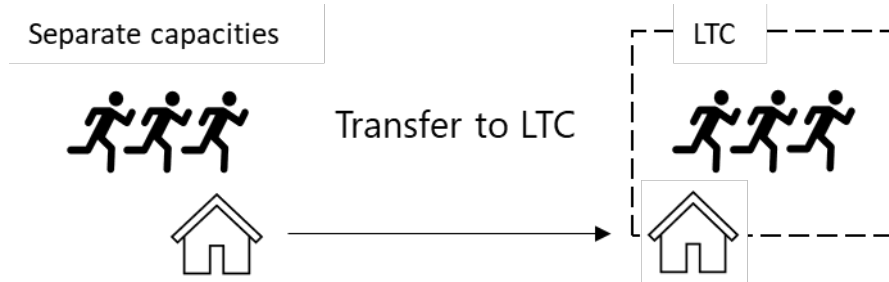
This fact sheet accompanies a draft interpretation statement (PUB00455) that explains how the bright-line test applies in various situations involving residential land and transfers involving a look-through company.

Summary | Whakarāpopoto

1. If you sell a residential property you have owned for less than two years, you may have to pay income tax on any gain on the sale, unless an exclusion or rollover relief applies. This is called the bright-line test.
2. A look-through company (LTC) is a normal company that for income tax purposes is treated as transparent (like a partnership). Transparency is achieved by attributing the activities and other characteristics of the LTC to the LTC owners. Transparency results in the LTC owners being treated as deriving income and having other amounts (for example, deductions and tax credits) that would otherwise be derived or had by the LTC. An LTC owner is treated as:
 - carrying on the activities and having the status, intentions and purposes of the look-through company;
 - holding the property of the LTC (in proportion to the LTC owner's interest in the LTC);
 - being a party to any arrangement to which the LTC is a party (in proportion to the LTC owner's interest in the LTC); and
 - doing a thing or being entitled to anything the LTC does or is entitled to (in proportion to the LTC owner's interest in the LTC).
3. Because of the above treatment (particularly the holding of property), questions arise as to how the bright-line test applies in the following situations, where:
 - 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;
 - a company that owns residential land ceases to be an LTC; and
 - an LTC owner disposes of some or all of their owner's interests in an LTC that owns residential land, for example by selling shares in the LTC.
4. For these situations, the interpretation statement 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).
5. For the fifth situation, the application of the safe harbour test in s HB 5 is also discussed.
 6. The interpretation statement explains the tax treatment in more detail, but the explanations are summarised in the following table | tūtohi.

Where a person (in their separate capacity) transfers residential land to an LTC of which they are an LTC owner

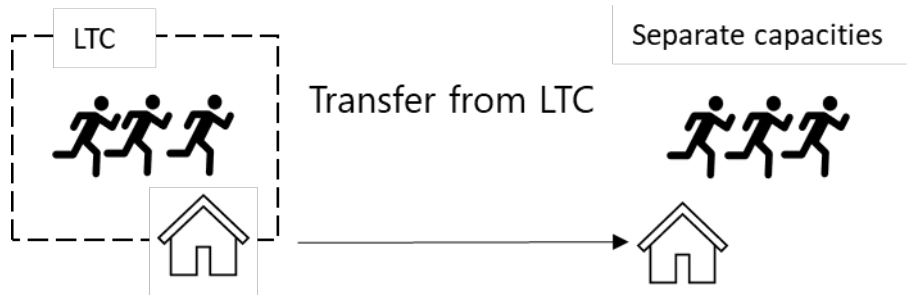


Disposal of land? Yes

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(4))
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)

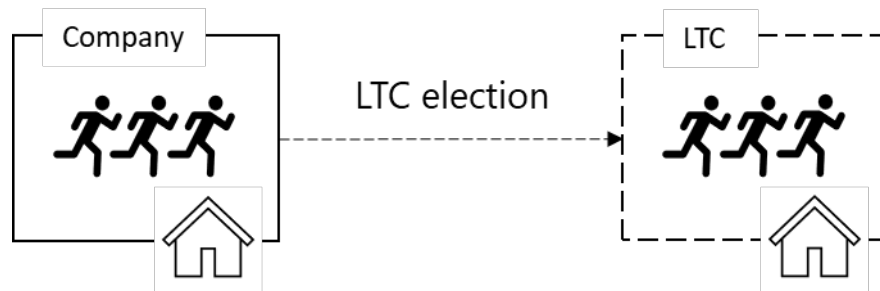


Disposal of land? Yes

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(4))
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

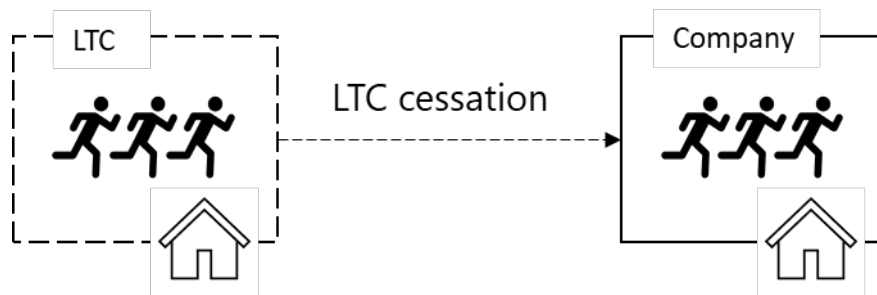


Disposal of land? No

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

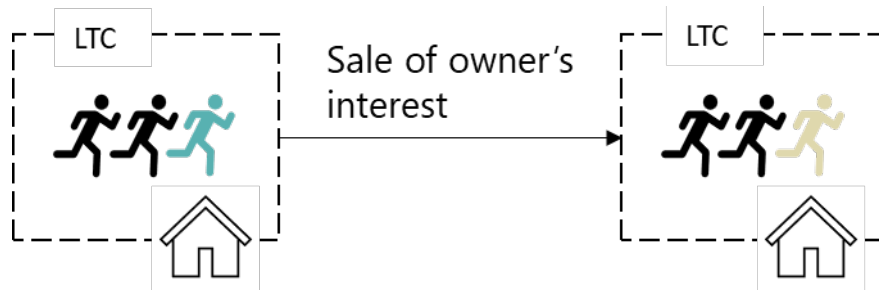


Disposal of land? Yes, under s HB 4(6)

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(4))
Neither applies	Actual consideration for transfer, or market value if s GC 1 applies	Determined under s CB 6A(2)	No

About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (Commissioner's Statement, Inland Revenue, December 2012).