

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

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**INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI**

# **Look-through companies and disposal of residential land under the bright-line test**

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IS XX/XX

This interpretation statement explains how the bright-line rules (including the main home exclusion and rollover relief) apply in various situations involving residential land and transfers involving a look-through company. This interpretation statement applies only to transfers on or after 1 July 2024.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

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## Glossary

**Bright-line end date** is the date that triggers the application of the bright-line test in s CB 6A. This can vary, but it is usually the date the person enters into an agreement for the disposal of the residential land.

**Bright-line period** is the period beginning with the bright-line start date for the land and ending with the bright-line end date for the land.

**Bright-line start date** is the date that the bright-line period starts. This can also vary, but it will often be date on which the instrument to transfer the land to the person was registered under the Land Transfer Act 2017. This is not necessarily the same as the date that the land is acquired. This can also be modified for a person by the rollover relief provisions.

**Capacity** is about how a person is recognised for tax purposes. In some cases, a person can have more than one capacity. A person who holds property as a look-through company (LTC) owner is treated as having certain characteristics of the LTC, but only in their capacity as an LTC owner. An LTC owner's characteristics from their separate capacity can also be relevant in determining their liabilities with respect to the activities of the LTC.

**Excluded income** is an amount of income that is not included in a person's assessable income.

**LTC owner** is a term used generally to describe a person who has a look-through interest for the look-through company. This means they own shares in the LTC.

**Rollover relief** is a term used generally to describe various kinds of relief that may be available under the bright-line rules where there is a disposal of residential land. Despite being referred to as "relief", it will not always be favourable. One form of rollover relief is the treatment of a transfer as being made at cost (for both the transferor and the transferee), which prevents any profit or loss on the transfer. Another form of rollover relief allows a person who acquires residential land to have the same bright-line start date as the person who transferred the land to them. Finally, a transferor's use of the residential land (including use as a main home) can be attributed to a transferee.

**Transfer** is used in the bright-line rules in a general sense. The word transfer does not necessarily mean the registration of an instrument to transfer the land under the Land Transfer Act 2017.

## Introduction | Whakataki

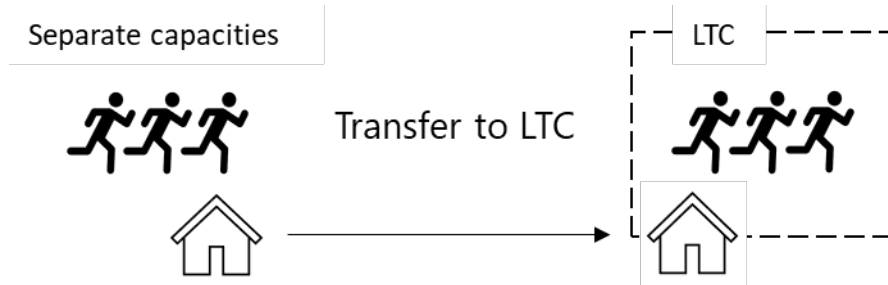
1. A look-through company (LTC) is a company that is treated as being transparent for most income tax purposes under the ITA 2007. Among other things, transparency means that LTC owners are treated as holding property that the company holds. Transparency results in LTC owners, rather than the LTC, deriving income from a transaction involving LTC property. This includes income under the bright-line test in s CB 6A.
2. The directors of a company can elect for a company to be an LTC if eligibility requirements are met. One of the requirements is that company must have five or fewer "look-through counted owners". LTCs are sometimes used by families or other small groups of people to hold residential land.
3. The bright-line test in s CB 6A applies to an amount derived by a person from the disposal of residential land if the land is disposed of within two years of the person's "bright-line start date" for the land.<sup>1</sup> However, the bright-line test will not apply if the main home exclusion in s CB 16A applies. Further, rollover relief under subpart FD may apply in some circumstances. Relief may also be provided by the LTC safe harbour rule in s HB 5 where an LTC owner transfers shares in an LTC.
4. This interpretation statement discusses five situations involving LTCs, and for each situation 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.

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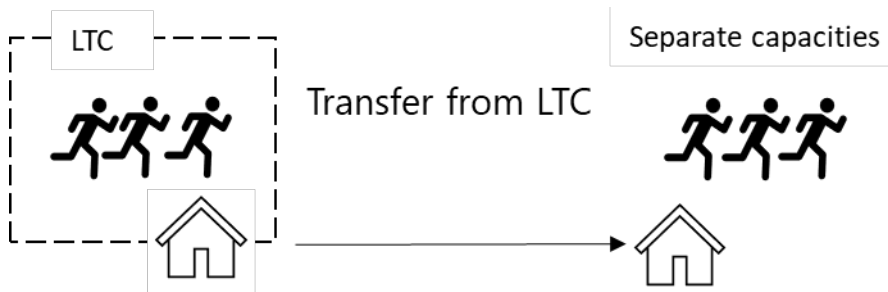
<sup>1</sup> An amount derived from disposing of residential land outside of the 2-year period may be subject to tax under another taxing provision, for example, s CB 6 (Disposal: land acquired for purpose or with intention of disposal).

6. The five situations involving LTCs are as follows:

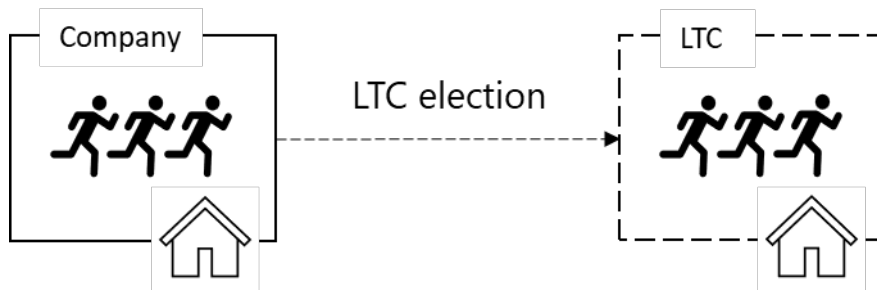
- A person or persons transfer an interest in residential land to an LTC of which they are LTC owners.



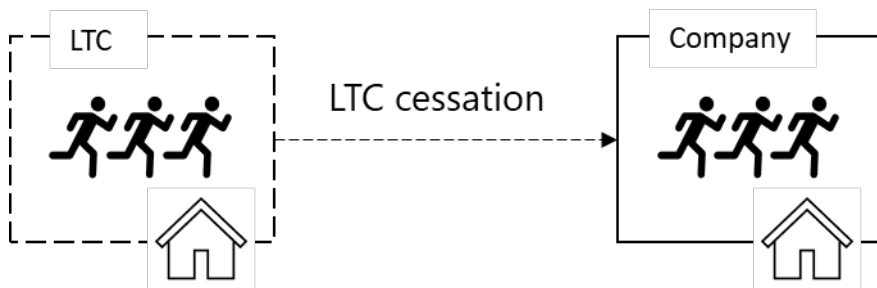
- An LTC transfers an interest in residential land to one or more LTC owners in their separate capacities.



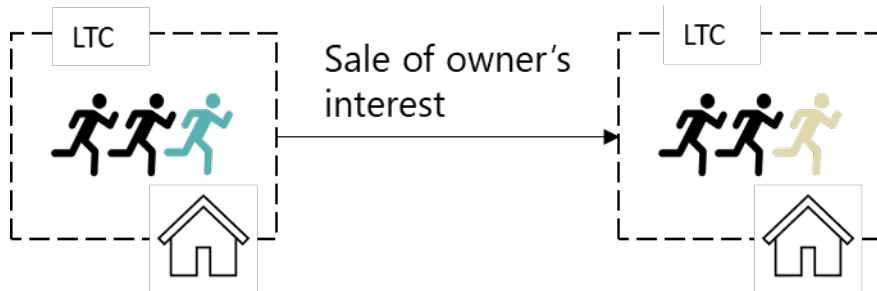
- A company that owns residential land becomes an LTC.



- An LTC that owns residential land ceases to be an LTC.



- An LTC owner disposes of some or all of their owner's interests in an LTC that owns residential land, for example by selling some of their shares in the LTC.



- Table | Tūtohi 1 summarises the guidance for the situations in [6].
- This interpretation statement also briefly discusses some miscellaneous transfers including transfers of residential land following death of a person, transfers of residential land from a trustee of a trust to an LTC, and transfers of residential land from a company to an LTC.

**Table | Tūtohi 1 – Summary of tax treatment**

Where a person (in their separate capacity) transfers residential land to an LTC of which they are an LTC owner			
<b>Disposal of land?</b> Yes			
<b>Rollover relief</b> 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)			
<b>Disposal of land?</b> Yes			
<b>Rollover relief</b> 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?
<b>Yes</b>	Transferor's cost (s FD 1(2))	Transferor's bright-line start date (s FD 1(3))	Yes (s FD 1(4))
<b>No</b>	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)

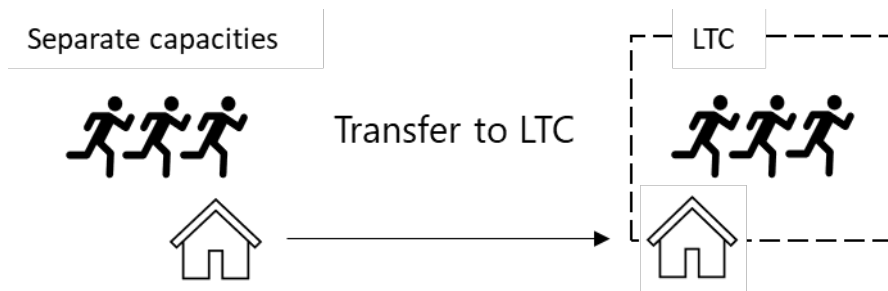
Does the safe harbour rule or rollover relief apply?	Tax treatment		
	Value of transfer	Bright-line start date for transferee	Transferor's use of land attributed to transferee?
<b>Safe harbour rule applies</b>	Disposal payment is excluded income to the exiting owner and the entering owner has exiting 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.
<b>Safe harbour does not apply, but rollover relief applies</b>	Exiting owner's cost (s FD 1(2))	Exiting owner's bright-line start date (s FD 1(3))	Yes (s FD 1(4))
<b>Neither applies</b>	Actual consideration for transfer, or market value if s GC 1 applies	Determined under s CB 6A(2)	No

## Analysis | Tātari

### Where a person transfers residential land to an LTC

- This section considers the situation where one or more persons transfer an interest in residential land to an LTC they own shares in.





## Whether there is a disposal

10. For the bright-line test in s CB 6A to apply, there must be a disposal of residential land.
11. The Commissioner considers there is a disposal of residential land in this situation.
12. The ordinary meaning of “dispose” applies in this context.<sup>2</sup> Under the ordinary meaning, a disposal of property involves the total alienation of the property.<sup>3</sup> A disposal also includes acts by which some new interest in property is created and vested in another person. The new interest can be a legal or an equitable interest.<sup>4</sup>
13. For a more detailed discussion of the ordinary meaning of “dispose”, see [IS 22/03: Income tax – Application of the land sale rules to co-ownership changes and changes of trustees](#)<sup>5</sup> from [35].
14. In determining whether there is a disposal when a person transfers an interest in land to an LTC, it is relevant to ask whether the property that they have before and after the transfer is the same. If they have a different interest in property after the transfer, then they may have disposed of their original interest in property and replaced it with a new interest in property.
15. Therefore, it is relevant to consider the nature of an LTC owner’s interest in property that the LTC owns and to compare this with the interest in property that a person has where they hold property directly.
16. The nature of an LTC owner’s interest in property has two dimensions:
  - the nature of the interests LTC owners have for non-tax law purposes; and
  - the effect of s HB 1 (LTCs are transparent).

<sup>2</sup> “Dispose” is defined in the Act for the purposes of s CB 6A, but the definition is an inclusive one, such that it extends the meaning of the word, rather than providing a general meaning.

<sup>3</sup> *Henty House Pty Ltd v FCT* (1953) 88 CLR 141 (HCA); *FCT v Cooling* 90 ATC 4,472 (FC).

<sup>4</sup> *Carter v Carter* [1896] 1 Ch 62; *Case Q57* (1993) 15 NZTC 5,325.

<sup>5</sup> *Tax Information Bulletin* Vol 34, No 7 (August 2022).

### **For non-tax law purposes**

17. For non-tax purposes, an LTC owner does not own land that the LTC owns. An LTC is a normal company – an entity that is separate from its owners. An LTC owner is merely a shareholder of the company. A company's assets do not belong to the shareholders. Shareholders are not entitled to anything except for the ownership interest given by their shares. These ownership interests might include the right to a share on the distribution of the surplus assets of the company if it is liquidated or wound up. However, this interest is quite different from an interest that a person holds where they own land directly.
18. Therefore, for non-tax purposes, when a person transfers land to an LTC there is a total alienation of the interest in land that they held before the transfer and, therefore, there is a disposal of the land.

### **The effect of s HB 1 (LTCs are transparent)**

19. It might be argued that the transparent tax treatment under s HB 1 prevents the existence of a disposal on the basis that an LTC owner owns, or is treated by s HB 1 as owning, the property before and after the transfer.
20. The Commissioner's view is that transparency under s HB 1 does not apply to this situation, so transparency does not prevent the existence of a disposal.
21. Under s HB 1, LTCs are treated as being transparent for some income tax purposes. Section HB 1 relevantly states:

## HB 1 Look-through companies are transparent

*When this section applies*

- (1) **This section applies** for the purposes of this Act, other than the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, and the RSCT rules, **for a person in their capacity of owner** of an effective look-through interest for a look-through company (the LTC), for an income year, ...

...

*Look-through for effective look-through interest*

- (4) For a person, unless the context requires otherwise,—
- (a) the person is treated as carrying on an activity carried on by the LTC, and having a status, intention, and purpose of the LTC, and the LTC is treated as not carrying on the activity or having the status, intention, or purpose:
  - (b) the person is treated as holding property that the LTC holds, in proportion to the person's effective look-through interest, and the LTC is treated as not holding the property:
  - (c) the person is treated as being party to an arrangement to which the LTC is a party, in proportion to the person's effective look-through interest, and the LTC is treated as not being a party to the arrangement:
  - (d) the person is treated as doing a thing and being entitled to a thing that the LTC does or is entitled to, in proportion to the person's effective look-through interest, and the LTC is treated as not doing the thing or being entitled to the thing.  
[Emphasis added]

22. Among other things, s HB 1 treats a person who is an LTC owner as holding property that the LTC holds and as doing a thing the LTC does. Also, it treats the LTC as not holding the property or doing the thing.
23. If s HB 1 applied in this situation (where persons transfer land to an LTC they own, and their ownership proportions do not change), it might be argued that there is no disposal of the land on the basis that a person would be treated as holding the same interest in land before and after the disposal, first in their separate capacity and then in their capacity as LTC owner.
24. However, s HB 1 does not apply in all cases. First, it applies for a person only if they are an LTC owner and only in their capacity as an LTC owner. Second, it does not apply if the context requires otherwise. Section HB 1 is also a deeming provision that creates statutory fictions. In interpreting a deeming provision that creates a statutory fiction, it

is necessary to understand the purpose of the provision. The fiction is then only taken as far as is necessary to achieve the purpose of the provision, and no further.<sup>6</sup>

25. Because of these limits to its application, s HB 1 does not apply in a scenario where a section (such as s CB 6A) is being applied to a person who is not an LTC owner or who is not acting in their capacity as an LTC owner. This is the case even if an LTC is the other party to a transaction to which the section is being applied.
26. When a person transfers an interest in land to an LTC, the person (who are potentially the subject of s CB 6A) is not acting in their capacity as an LTC owner – they are acting in their separate capacity. Therefore, in any consideration of whether there is a disposal giving rise to income under s CB 6A for the person, s HB 1 does not apply. Because s HB 1 does not apply, the LTC is not treated as transparent for the purposes of the transfer, so the LTC owner is not treated as acquiring or holding the land in this context. As a result, under s HB 1, the land is not treated as owned by the same persons before and after the transfer. Therefore, s HB 1 does not invite a conclusion that there is no disposal. The transfer is simply a transfer from persons to a company, so is a disposal by the persons.
27. This interpretation of s HB 1 is consistent with the interpretation of the similar provision, s HG 2 (partnerships are transparent), in [QB 17/09: Is there a full or partial disposal when an asset is contributed to a partnership as a capital contribution?](#)<sup>7</sup>
28. Further, the Commissioner considers that to apply the statutory fictions in s HB 1 in this situation would be going further than is necessary to achieve the purpose of s HB 1. The general purpose of s HB 1 is to provide transparent income tax treatment for electing closely held companies.<sup>8</sup> This is reflected in the heading of s HB 1(4): “Look-through for effective look-through interest”. The commentary also refers to look-through income tax treatment.<sup>9</sup> The main goals of the look-through income tax treatment are to pass income, expenses, tax credits, rebates, gains and losses through to owners and to tax the owners at the level of the owners.
29. The situation considered here involves a transaction between an LTC and an owner of the LTC. It involves a transition from holding property directly to using an entity to hold property – it is not a situation concerning the look-through treatment of income

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<sup>6</sup> *Re Levy, ex parte Walton* (1881) 17 Ch D 746 at 756; [1881 – 85] All ER Rep 548. This principle, as expressed in *Re Levy*, has been approved in New Zealand in *Tobin v Dorman* [1937] NZLR 937 (HC) at 942 and *Picton Borough v Marlin Motels (1971) Ltd* [1975] 1 NZLR 65 (HC) at 70. The principle is also discussed in Burrows and Carter *Statute Law in New Zealand* (6<sup>th</sup> ed, LexisNexis, Wellington, 2021) at 451 and in *Bennion on Statutory Interpretation* (7<sup>th</sup> ed, LexisNexis, London, 2017) at 850.

<sup>7</sup> *Tax Information Bulletin* Vol 30, No 1 (February 2018) at 10.

<sup>8</sup> New look-through company rules (special report, Policy Advice Division of Inland Revenue, 23 December 2010) at 1.

<sup>9</sup> New look-through company rules.

and other amounts. There is no indication of any intention that the income tax treatments s HB 1 provides for were to apply to a context such as this. This is a further reason for concluding that there is a disposal when a person transfers an interest in land to an LTC.

30. The view that there is a disposal is also consistent with the former sections s CB 6AB and ss FC 9B and FC 9C. These sections assumed the existence of a disposal where persons transfer residential land to themselves in different capacities. Section CB 6AB and ss FC 9B and FC 9C have now been repealed, but as legislative history they still provide some support for the view that there is a disposal.

### **Whether the main home exclusion applies**

31. If the disposal is made within two years of the person's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.
32. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.

### **Used predominantly, for most of the bright-line period**

33. For the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, for most of the bright-line period, for a dwelling that was the main home of the person.<sup>10</sup>
34. Land is used "predominantly" for the person's main home if more than 50% of the area of the land has been used for the home. The test is based on a person's actual use of the property, not the person's intended use.
35. The person must also use the land as their main home for most of the bright-line period. This requires the person to use the land as their main home for more than 50% of the bright-line period. However, the person does not need to have used the land as their main home without interruption.
36. The "bright-line period" is the period beginning with the bright-line start date for the land and ending with the bright-line end date for the land. This period can be modified by the rollover relief provisions (discussed from [38]). This means the bright-line period can pre-date the period the land is held in the LTC. In the situation considered in this section, the bright-line period for the LTC owners may be a period beginning with the bright-line start date of the transferor in their non-LTC capacity before the land was transferred to the LTC. If so, the use of the land for this extended period must be considered.

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<sup>10</sup> Or the main home of a beneficiary of a trust if the requirements of section CB 16A(1)(b) are satisfied.

37. The main home exclusion is discussed further at [63] in relation to the rollover relief provided by s FD 1(4). This rollover relief can affect whether the main home exclusion is available to a transferee if the transferee subsequently disposes of the land.

### Whether rollover relief applies

38. If the bright-line test does apply, the next question is whether rollover relief under s FD 1 applies. There are different types of rollover relief, including relief relating to the value of the transfer, the bright-line start date and the attribution of the use of land. The different types of rollover relief are discussed from [55], but the requirements for the application of rollover relief are discussed first.
39. There are two alternative tests for the application of rollover relief under s FD 1:
- Under the first test in s FD 1(1)(a), rollover relief applies if residential land is transferred within the bright-line period between persons associated under any of ss YB 2 to YB 13 at the date of transfer and for at least two years before that date.<sup>11</sup>
  - The second test in s FD 1(1)(b) involves a transfer to a trustee of a trust. This test is not relevant in the situation considered in this section, which involves a transfer to an LTC.

### Association between an LTC and an LTC owner

40. Rollover relief under s FD 1(1)(a) applies to transfers between persons associated under any of sections YB 2 to YB 13 at the date of transfer and for at least two years before that date.<sup>12</sup>
41. For the purposes of the association requirement in s FD 1(1)(a), s HB 1 (Look-through companies are transparent) is ignored. Section HB 1 provides for the transparent tax treatment of LTCs and applies unless the context requires otherwise. In this case, the context of s FD 1(1)(a) requires otherwise. This is because s FD 1(1)(a) is intentionally using the associated person rules to describe relationships, including the relationship between an LTC and an LTC owner. Transparency would be counterproductive in this context. This is supported by the commentary to the amendment paper released when s FD 1 was introduced.<sup>13</sup> Ignoring transparency in this context means that where there is a transfer of residential land between a person and an LTC in which they own shares,

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<sup>11</sup> Rollover relief can also apply in a case where residential land is transferred to a trustee, but this is not applicable in the context of this situation.

<sup>12</sup> Sections YB 2 to YB 13 contain all the associated person rules in subpart YB, except the tripartite relationship rule contained in s YB 14.

<sup>13</sup> Commentary for Amendment Paper to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (Policy and Regulatory Stewardship, Inland Revenue, March 2024) at 19.

the land is treated as being transferred between the person and the LTC, not the person and themselves in different capacities.

42. For this LTC situation, the relevant associated person test is s YB 13 (Look-through companies and owners of interests).
43. Under s YB 13, an LTC and an LTC owner are associated if:
  - the LTC owner is a director or employee for the LTC; or
  - the LTC owner has effective look-through interests of 25% or more in a right, obligation, or other property status, or thing of the LTC.
44. An aggregation rule (in s YB 13(3)) applies for the purposes of determining whether a person has effective look-through interests of 25% or more. This rule treats a person (person A) as holding anything held by another person (person B), if persons A and B are associated under any of ss YB 2 to YB 11 and YB 14.
45. Example | Taura 1 provides a simple example of rollover relief applying based on association between an LTC and an LTC owner.

### **Example | Taura 1 – Rollover relief based on association between LTC and LTC owner**

#### **Facts**

On 24 June 2023, a married couple, persons 1 and 2, acquired residential land as a holiday home.

On 1 August 2024, persons 1 and 2 transferred the residential land to an LTC, wholly owned by person 1 since 1 April 2020. At the time of transfer, the LTC was dormant and had no property. At the time of transfer, shares were issued to person 2 to give person 1 and 2 equal shares in the LTC.

Persons 1 and 2 have been married since 14 February 2022.

#### **Bright-line test applies**

The transfer of the land to the LTC on 1 August 2024 is within two years of person 1 and 2's bright-line start date for the land of 24 June 2023, and the main home exclusion does not apply. Therefore, the bright-line test applies to the amounts derived by persons 1 and 2 from the transfer of the land.

#### **Rollover relief applies**

However, rollover relief applies for both persons 1 and 2.

Person 1 and the LTC were associated at the date of transfer and for the two years before that date.

Person 2 was also associated with the LTC at the date of transfer and for the two years before that date. Under the aggregation rule in s YB 13(3), person 2 is treated as having held person 1's effective look-through interests in the LTC from 14 February 2022 (when they married person 1).

46. Rollover relief under s FD 1(1)(a) applies if the transfer is between persons associated at the date of transfer and for at least two years before that date. The 2-year period before the date of transfer would, for example, include 1 July 2022 if the date of transfer was 1 July 2024.
47. An effective look-through interest can in some cases be calculated based on average daily look-through interests during an income year. If so, in the context of s FD 1, this means that for each income year that falls within the two-year period (there will usually be three such income years), the average daily interest must be 25% or more. This means that the look-through interest could be lower than 25% at times during the income years (but not zero because the person must be an LTC owner at all times during the two-year period).

### **Rollover relief not available for transfer to newly incorporated company**

48. The requirement to be associated for two years before the transfer date means that rollover will not be available in the scenario where a person owning residential land in their own name wishes to transfer the land into a newly incorporated company that they own. This is illustrated in Example | Taura 2.

### **Example | Taura 2 – Rollover relief not available for transfer to new company**

In August 2024, persons 1 and 2 purchase a house together as a residential rental property. The purchase price is \$1 million. The instrument to transfer the land to persons 1 and 2 is registered on 20 August 2024.

On 18 September 2025, they ask their lawyer about transferring the property to an LTC (which they would incorporate and elect to be an LTC). By this date the value of the property has increased to \$1.1 million.

Their lawyer advises them to wait, if possible, until 20 August 2026 to transfer the property to an LTC so that the bright-line test will not apply to the transfer.

Their lawyer advises them that if they transfer the property to the LTC before 20 August 2026 they could be subject to the bright-line test.



## Rollover relief is not dependent on the bright-line test applying to the transferor

49. Rollover relief under s FD 1 applies for a transfer regardless of whether the bright-line test in s CB 6A applies to the transferor.
50. Section FD 1 applies when residential land is “transferred within the bright-line period”. This might be interpreted as meaning that rollover relief will apply only if the bright-line test in s CB 6A applies to a transfer. However, this is not the case.
51. The Commissioner considers that the words “within the bright-line period” in s FD 1(1) do not add anything to the legislative test. “Bright-line period” is defined as the period beginning with the bright-line start date and ending with the bright-line end date – a period without any fixed length.<sup>14</sup> Further, the term “transferred” in the phrase “transferred within the bright-line period” is used in a general sense to refer to the disposal that is the subject of s CB 6A. “Transfer” does not necessarily refer to the registration of an instrument to transfer land under the Land Transfer Act 2017. It follows that the requirement for the land to be “transferred within the bright-line period” will always be satisfied for a transfer because the bright-line period ends with the bright-line end date, which will be the same as the date of transfer (being the date of disposal).
52. This is illustrated in Example | Taura 3.

### Example | Taura 3 – Rollover relief applies for a transfer regardless of whether the bright-line test applies to the transferor

On 16 April 2024, person 1 purchases residential land for \$1 million.

Three years later, on 16 April 2027, person 1 transfers the land to an LTC that they have owned for several years for the market value of \$1.1 million.

The LTC holds the land for one year and then, on 16 April 2028, transfers it to a third party for \$1.2 million.

#### Transfer to the LTC

The bright-line test does not apply to the disposal of the land to the LTC because the disposal is not within two years of person 1’s bright-line start date for the land.

Nevertheless, rollover relief applies to the transfer. This has no impact on person 1 as transferor because they are not taxed on the transfer. However, person 1 as transferee and in their capacity as LTC owner, is treated as acquiring the residential land at the

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<sup>14</sup> Section YA 1.

transferor's cost (\$1 million) and with the transferor's bright-line start date (16 April 2024).

### **Transfer to the third party**

The transfer to the third party on 16 April 2028 is treated, by virtue of s HB 1, as a transfer of an interest in the land by person 1 in their capacity as LTC owner.

The land is not transferred within two years of the bright-line start date of 16 April 2024, so the transfer is not subject to the bright-line test.

### **Two-year stand down period for subsequent use of rollover relief**

53. Rollover relief under s FD 1 does not apply to a transfer (a second transfer) of residential land if the section has already been applied to a transfer (the first transfer) and two years have not passed from the date of the first transfer.<sup>15</sup>
54. For example, in Example | Tauria 3, if instead of transferring the residential land to the third party, the LTC transferred the land back to person 1 (second transfer), rollover relief would not apply because only one year had passed since person 1 transferred the land to the LTC (first transfer).

## **Rollover relief**

### **Rollover "relief" is not necessarily favourable**

55. Although it is referred to as rollover "relief", and often will prevent tax applying to a disposal of land, the rollover relief provided by s FD 1 is not necessarily favourable in all situations. For example, in some cases s FD 1 could prevent a person from realising a loss on a disposal or prevent a person from using the main home exclusion (this is illustrated in Example | Tauria 9). Whether it is favourable or not, the rollover relief treatment applies automatically and there is no requirement to opt in or ability to opt out.
56. Where the requirements for rollover relief are met, the following rollover relief treatment applies.

### **Rollover relief applies to all LTC owners**

57. Where a person or persons transfer residential land to an LTC and the requirements for rollover relief are satisfied (eg, if the person or persons have been associated with the

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<sup>15</sup> Section FD 1(5).

LTC for the required 2-year period), rollover relief will apply to all LTC owners, not just the LTC owner or owners who transferred the land to the LTC.

### **Disposal amount**

58. The transferor (in this situation, the person in their non-LTC owner capacity) is treated under s FD 1(2) as transferring the residential land for an amount that equals the cost of the land to the transferor. This means that they will not have any profit or loss from the disposal.

### **Acquisition cost**

59. Also under s FD 1(2), a transfer is treated as an acquisition by the transferee for an amount that equals the cost of the land to the transferor.
60. In the situation considered here, the transferor is the person in their non-LTC owner capacity. The transferees are the LTC owners (including the transferor in their LTC owner capacity).
61. Each transferee will have a share of the total cost of the land to the transferor determined by the transferees' effective look-through interests.

### **Bright-line start date**

62. Under s FD 1(3), rollover relief is provided to a transferee in relation to their bright-line start date for an interest in land. The transferee is treated as having the same bright-line start date for an interest in land as the transferor. In other words, the bright-line start date for the interest in land will not reset.

### **Transferor's use of land attributed to transferee**

63. Under s FD 1(4), the transferor's use of the land (and the periods of time in which it is so used) is attributed to the transferee. This is relevant to whether the transferee can satisfy the requirements of the main home exclusion if they subsequently dispose of the land within two years of their bright-line start date. The main home exclusion is discussed at [33].
64. Section FD 1(4) is relevant to the main home exclusion because for the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, "for most of the bright-line period", for a dwelling that was the main home. The attribution of the transferor's use of the land to the transferee under s FD 1(4) can determine whether residential land has been used by the transferee as a main home "for most of the bright-line period".

65. An example of attribution of use is provided at [111] in the context of the next situation considered in this statement (where attribution is more likely to be relevant).
66. In the situation considered in this section, the transferees are the LTC owners. As discussed next, an LTC owner can satisfy the requirements, and receive the benefit, of the main home exclusion (which will be relevant if they subsequently dispose of the land within two years of their bright line start date).

### **Main home exclusion can apply to LTC owners**

67. If an LTC owner subsequently disposes of their interest in land, the question may arise as to whether they can use the main home exclusion.
68. An LTC owner can satisfy the requirements, and receive the benefit, of the main home exclusion. Section HB 1 treats an LTC owner as holding property that the LTC holds in proportion to the LTC owner's interest in the LTC. As a result, the LTC owner is the person who is subject to tax under s CB 6A and the person to whom the main home exclusion in s CB 16A could potentially apply. Section HB 1 also enables the LTC owner to satisfy the main home exclusion requirement that the residential land is the main home for the LTC owner.<sup>16</sup>
69. It might be argued that a person lives in a main home in their personal capacity, not in their capacity as an LTC owner. From this, it might be argued that an assessment of the person for tax in their capacity as an LTC owner should not take into account the fact that they live in the main home. However, the transparent tax treatment of an LTC does not mean the characteristics of an LTC owner in their separate capacity are ignored. Section HB 1 treats the LTC owner as having certain characteristics that the LTC has; it does not take away separate characteristics of the LTC owner, such as the fact that they use residential land as a main home. An LTC owner is not taxed as two entirely separate people. Further, the purposes for which a person holds residential land in their capacity as an LTC owner and their use of the land in their separate capacity can be consistent. There is not necessarily any issue with using an LTC to hold residential land that the LTC owners are using as a dwelling (provided deductions are not claimed for expenditure that has no nexus with the derivation of income or that is of a private or domestic nature). For example, a company is not required to be carrying on a business or other income earning activity in order to be a look-through company.
70. This is illustrated in Example | Tauira 4.

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<sup>16</sup> The view that an LTC owner can use the main home exclusion is consistent with an officials' comment on a submission discussed in the Officials' Report to the Finance and Expenditure Committee on Submissions on the Taxation (Bright-line Test for Residential Land) Bill (Policy and Strategy, Inland Revenue, October 2015) at page 36.

## Example | Tauria 4 – Main home exclusion can apply for LTC owners

### Facts

An LTC has two LTC owners (natural persons). The LTC owns a residential property that was purchased on 19 November 2023 for \$1 million.

On 31 January 2025, the LTC transfers the residential property to a third party for \$1.25 million.

Between 19 November 2023 and 31 January 2025, the LTC owners lived in the residential property as their main home.

### Tax treatment

The LTC owners are treated under s HB 1 as holding and disposing of the residential land that the LTC holds and disposes. Therefore, they are subject to the bright-line test in s CB 6A. They have income under s CB 6A because the residential land has been disposed of within two years of their bright-line start date. However, they are eligible for the main home exclusion, so no assessable income arises for them from the disposal of the property.

71. The application of rollover relief is illustrated in Example | Tauria 5.

## Example | Tauria 5 - Transfer of residential land to an LTC

Persons 1 and 2 purchase a residential property as joint tenants for \$1 million. The instrument to transfer the land to them is registered on 1 August 2023.

On 1 August 2024, persons 1 and 2 transfer the land to an LTC for \$1.1 million. Persons 1 and 2 own the LTC in equal shares and are also directors of the LTC. They have owned the LTC for several years.

On 1 May 2026, the LTC transfers the land to a third party for \$1.2 million.

Persons 1 and 2 did not live in the property at any time. They used it as a rental property.

### Transfer to LTC

In their non-LTC owner capacities, persons 1 and 2 are each treated as disposing of a 50% interest in the residential land to the LTC. This occurs within two years of their bright-line start date and the main home exclusion does not apply. Therefore, the bright-line test applies to this disposal.

However, persons 1 and 2 are eligible for rollover relief on the disposal because they are each associated with the LTC (this is because, at the date of transfer and for at least two years before that date, they were LTC owners and directors of the LTC; they also each had effective look-through interests in the LTC of more than 25%).

The rollover relief includes:

- persons 1 and 2, in their non-LTC owner capacities, are each treated as disposing of their share of the land for \$500,000 - this equals the cost that they each incurred, so they do not realise a profit from the disposal;
- in their capacities as LTC owners, persons 1 and 2 are each treated as acquiring a share of the land at a cost of \$500,000;
- in their capacities as LTC owners, persons 1 and 2 are treated as having a bright-line start date of 1 August 2023, the same bright-line start date they had in their non-LTC owner capacities; and
- in their capacities as LTC owners, persons 1 and 2 are attributed with the use of the land that they had in their non-LTC owner capacities.

### **Transfer to third party**

The bright-line test does not apply to the transfer of the residential land to the third party on 1 May 2026.

When the LTC transfers the land to the third party, persons 1 and 2 are treated as disposing of their share of the residential land. By virtue of the rollover relief provided by s FD 1(3), persons 1 and 2, in their capacities as LTC owners, are each treated as having a bright-line start date of 1 August 2023. The transfer to the third party on 1 May 2026 is not within two years of this bright-line start date, so the bright-line test does not apply.

### **If no rollover relief applies**

72. If rollover relief does not apply, the value of the transfer is the market value of the land if s GC 1 applies, or the actual consideration provided for the transfer if s GC 1 does not apply.
73. Section GC 1 applies to the disposal of trading stock. The definition of "trading stock" includes land whose disposal would produce income under any of ss CB 6A to CB 15 (which relate to income from land).<sup>17</sup>

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<sup>17</sup> Para (b)(v) of the definition of "trading stock" in s YA 1.

74. Section GC 1 will apply to a person who transfers their interest in land to an LTC (producing income under s CB 6A) if:
- The land is disposed of for no consideration or a consideration that is less than market value;<sup>18</sup> and
  - One of the following applies:
    - the person does not carry on business, or if they do carry on business, the transfer of the land is not made in the course of carrying on the business for the purpose of deriving their assessable or excluded income (or both);<sup>19</sup> or
    - the person and the LTC are associated.<sup>20</sup>
75. It will be common for the LTC and the LTC owners to be associated. Therefore, where land is disposed of for no consideration or a consideration that is less than market value, it will be common for s GC 1 to apply and for the value of the transfer to be the market value.
76. If rollover relief does not apply, the bright-line start date will usually be the date on which the instrument to transfer the land to the LTC was registered under the Land Transfer Act 2017 (s CB 6A(2)). However, there are some exceptions to this, for example, if the land is outside New Zealand or if the land was acquired on the completion of a land development or subdivision.
77. The application of s GC 1 is illustrated in Example | Taurira 6.

### Example | Taurira 6 – Application of s GC 1 where no rollover relief applies

#### Facts

In August 2024, persons 1 and 2 purchase a house together as a residential rental property. The purchase price is \$1 million. The instrument to transfer the land to persons 1 and 2 is registered on 20 August 2024.

On 20 October 2025, despite their accountant's advice, persons 1 and 2 transfer the property to a newly incorporated company that they have elected to be an LTC and in which they have equal shares. On 20 October 2025 the value of the property has increased to \$1.1 million, but they transfer the property to the LTC for \$1 million.

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<sup>18</sup> Section GC 1(1)(a).

<sup>19</sup> Section GC 1(1)(b)(ii).

<sup>20</sup> Section GC 1(1)(b)(iii). Section GC 1(1)(b)(i) is not relevant in this situation because the land is being disposed of to the LTC, not taken by the person for their own use.

### Bright-line test and rollover

The bright-line test applies to the disposal of the land because the disposal is within two years of the bright-line start date.

Rollover relief does not apply because persons 1 and 2 have not been associated with the LTC for at least two years before the date of transfer.

### Application of s GC 1

The transfer of the land to the LTC is treated as being made at market value under s GC 1. The requirements of s GC 1 are satisfied because the land comes within the definition of "trading stock" (because of the application of s CB 6A), the land is transferred for an amount that is less than its market value, and the disposal is to an associated person (unlike in s FD 1, there is no requirement for the association to have existed for at least two years before the date of transfer).

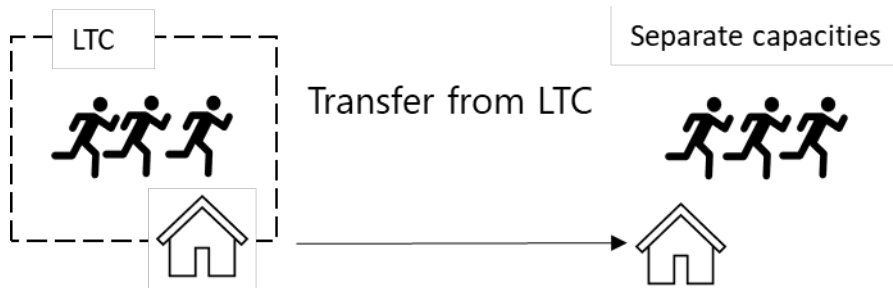
Persons 1 and 2 therefore have income of \$1.1 million (\$550,000 each) and deductions of \$1 million (\$500,000 each) for the cost of the land.

Section GC 1(3) also applies to the LTC owners as transferees, treating the \$1.1 million market value of the land as expenditure incurred by the LTC owners (\$550,000 each) in acquiring the land.

The LTC owners as transferees have bright-line start dates of 20 October 2025 for their interests in the land.

## Where an LTC transfers residential land to the LTC owners

78. This section discusses the situation where residential land is transferred from an LTC to one or more of the LTC owners in their separate capacities.



79. The situation is the reverse of the previous situation discussed from [9] (where a person transfers an interest in residential land to an LTC). The tax treatment in this situation is similar to the tax treatment that applies to the previous situation.



## Whether there is a disposal

80. In this situation, the Commissioner considers that there is a disposal from the LTC to the LTC owner or owners. With one exception, the reasons for this are the same as for the previous situation, as discussed from [12].
81. In determining whether there is a disposal when an LTC transfers an interest in property to an LTC owner, it is relevant to ask whether the interest in property<sup>21</sup> that the LTC owner has before and after the transfer, in their capacity as LTC owner and in their separate capacity, is the same. If they have a different interest property after the transfer, then they may have disposed of their original interest in property and replaced it with a new interest in property.
82. The nature of an LTC owner's interest in property owned by the LTC has been discussed from [15].
83. The nature of an LTC owner's interest in property has two dimensions:
  - the nature of the interests that LTC owners have for non-tax law purposes; and
  - the effect of s HB 1 (LTCs are transparent).

## For non-tax law purposes

84. For non-tax law purposes, an LTC owner does not own property that the LTC owns. An LTC is a normal company – an entity that is separate from its owners. An LTC owner is merely a shareholder of the company. A company's property does not belong to the shareholders. Shareholders are not entitled to anything except for the ownership interests given by their shares. These ownership interests might include the right to a share on the distribution of the surplus assets of the company if it is liquidated or wound up. However, this interest is quite different from an interest that a person holds where they own property directly.
85. Therefore, for non-tax law purposes, when an LTC transfers an interest in land to an LTC owner, the LTC owner receives a very different interest compared with the ownership interest given by their shares.

## The effect of s HB 1 (LTCs are transparent)

86. It might be argued that the transparent tax treatment under s HB 1 prevents the existence of a disposal on the basis that an LTC owner owns, or is treated by s HB 1 as owning, an interest in the property before and after the transfer. Section HB 1 is discussed from [21].

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<sup>21</sup> In terms of their rights and obligations the LTC owners have with respect to the property.

87. The Commissioner's view is that transparency under s HB 1 does not apply to prevent the existence of a disposal.
88. In the previous situation, one of the reasons for the conclusion that s HB 1 did not apply was that the person or persons who were transferring the land, and who were potentially subject to the bright-line test, were not acting in their capacity as LTC owners (see from [24]). The same reason does not apply in this situation. In this situation, the LTC owners would be the persons transferring the interest in land and, therefore, the persons potentially subject to the bright-line test. In transferring their interest in land, they would be acting in their capacity as LTC owners.
89. However, other reasons support the view that s HB 1 does not apply to prevent the existence of a disposal, which are the same reasons discussed for the previous situation (see [28] to [30]). In summary, the Commissioner considers that to apply the statutory fictions in s HB 1 in this situation would be going further than is necessary to achieve the purpose of s HB 1. There is no indication of any intention that the income tax treatments provided by s HB 1 were to apply to a context such as this. The view that there is a disposal is also consistent with legislative history of the now repealed s CB 6AB and ss FC 9B and FC 9C.
90. Therefore, where an LTC transfers residential land to one or more LTC owners (transferees) there are disposals of shares in the land by the LTC owners, as transferors and in their LTC owner capacities, to the transferees.

### **Whether the main home exclusion applies**

91. If the disposal is made within two years of the transferors' bright-line start dates, the bright-line test in s CB 6A could apply to the transferors.
92. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.
93. The earlier discussion about the main home exclusion (see from [31]) also applies to this situation. As discussed from [68], an LTC owner can satisfy the requirements and receive the benefit of the main home exclusion where residential land is held by an LTC.

### **Main home exclusion count**

94. Another requirement for the main home exclusion to apply is that the person has not used the main home exclusion two or more times within the two years immediately before the bright-line end date for the residential land.
95. One question relevant to counting the number of times a person has used the main home exclusion is whether the main home exclusion is used if the safe harbour rule in

s HB 5 also applies (discussed further in [96]). Where an LTC owner disposes of some or all of their owner's interests in an LTC, and the requirements of s HB 5 are satisfied, s HB 5(3) treats the disposal payment as excluded income of the LTC owner. Therefore, two exclusions could potentially apply to the disposal payment: the main home exclusion and the exclusion in s HB 5(3).

96. In this situation, the Commissioner's view is that the main home exclusion is not used if the safe harbour rule in s HB 5 applies to a disposal. The exception to the main home exclusion is intended to impose a limitation on the use of the exclusion, which prevents the exclusion from being abused. The safe harbour rule in s HB 5 essentially allows for the transfer and deferral of tax liability to another LTC owner where the amount paid for the ownership interest is close to the gross tax value less liabilities of the LTC (in the case of residential land, the gross tax value is the cost of the residential land, as revenue account property). This is not a transfer that Parliament would have intended to be counted in the exception to the main home exclusion.

### **Whether rollover relief applies**

97. The discussion about whether rollover relief applies in the context of the previous situation (see from [38]) also largely applies to this situation.
98. One practical difference is that in this situation, where the transfer is from the LTC to one or more of the LTC owners, it is more likely that the LTC and the LTC owners will have been associated for two years before the date of transfer. Therefore, rollover relief will be more common in this situation than the previous one.
99. Where the requirements for rollover relief are met, the following rollover relief applies.

### **Disposal amount**

100. The transferors (in this situation, the LTC owners in their capacities as LTC owners) are each treated under s FD 1(2) as transferring a share of the residential land for an amount that equals the cost of that share to the transferor. This means that they will not have any profit or loss from the disposal.

### **Acquisition cost**

101. The transferee (in this situation, an LTC owner, but in their non-LTC owner capacity) is treated under s FD 1(2) as acquiring an interest in the residential land for an amount that equals the cost of the land to the transferors.
102. The cost of the residential land to the LTC owners (as transferors) is not necessarily the cost of the land to the LTC. This is because changes in LTC owners over time may have resulted in shares in the land being transferred between owners. If such transfers have

occurred, different owners, who have acquired shares in the land at different times, can have different cost bases for their share of the land owned by the LTC, even if they have the same effective look through interest as other LTC owners. Therefore, the cost of the land to the transferors is the total of the costs of all the LTC owners.

103. Each transferee will have a share of the total cost of the residential land to the LTC owners (as transferors).
104. The calculation of the transferors' total cost is illustrated in Example | Taurira 7.

### **Example | Taurira 7 – Transferors' total cost**

An LTC originally had two LTC owners: persons 1 and 2, with equal owner's interests in the LTC.

On 5 October 2023 the LTC purchased residential land for \$1 million. This resulted in person 1 and 2 having a cost base for the land of \$500,000 each.

On 6 October 2025, person 2 sold their 50% owner's interest in the LTC to person 3 for \$600,000. This sale was not subject to the bright-line test because the sale was not within two years of person 2's bright-line start date (it is assumed the safe harbour rules in subpart HB do not apply).

Of the \$600,000 purchase price paid for the shares, persons 2 and 3 agreed to allocate \$550,000 to the acquisition of the share of the residential land. This resulted in person 3 having a cost base for the land of \$550,000.

On 7 October 2027, the LTC transfers the land to person 3 for \$1.3 million. Persons 1 and 3, in their capacities as LTC owners, are treated as disposing of their 50% shares in the land to person 3, in person 3's non-LTC capacity.

The disposal is not within two years of person 1's bright-line start date of 5 October 2023 or person 3's bright-line start date of 6 October 2025, so neither has income under the bright-line test.

For person 3, as transferee, rollover relief applies because the LTC and person 3 are associated on the date of transfer and for at least two years before the date of transfer.

Person 3 is treated under s FD 1(2) as acquiring the interest in the residential land for an amount that equals the cost of the interest to the transferors. This is \$1.1 million, the total of person 1's cost of \$500,000 and person 3's cost of \$600,000.

Person 3 is also treated as having the transferors' bright-line start dates.

### Bright-line start date

105. Under s FD 1(3), rollover relief is provided to the transferee in relation to their bright-line start date for an interest in land they acquire. The transferee is treated as having the same bright-line start date for an interest in land as the transferor. In other words, the bright-line start date for the interest in land does not reset.
106. Different LTC owners (as transferors) could have different bright-line start dates for their share of the land. If so, the transferee will have different bright-line start dates for the share of the land acquired from each transferor. If the transferee subsequently disposes of the land, this could lead to the bright-line test applying to only a portion of the land that is being disposed of. This is illustrated in Example | Taura 8.

### Example | Taura 8 - different bright-line start dates

An LTC owns residential land. It has two LTC owners with equal owner's interests, persons 1 and 2. Person 1 has a bright-line start date of 1 February 2024 and person 2 has a bright-line start date of 1 February 2025.

On 31 July 2025, the LTC owners transfer the residential land to person 2 (in person 2's non-LTC owner capacity).

Rollover relief applies and person 2 (as transferee) is treated as having person 1's bright-line start date of 1 February 2024 with respect to the share of land acquired from person 1, and person 2's bright-line start date of 1 February 2025 with respect to the share of land they acquired from themselves (in their different capacities).

On 31 July 2026, person 2 disposes of the land to third party.

The bright-line test will not apply with respect to the share of the land acquired from person 1 as the land is not disposed of within two years of the bright-line start date for that share (1 February 2024).

However, the bright-line test will apply with respect to the share of the land that person 2 acquired from themselves, because the land was disposed of within two years of the bright-line acquisition date of that share (1 February 2025).

### Transferor's use of land is attributed to transferee

107. Under s FD 1(4), the transferors' use of the land (and the periods of time in which it is so used) is attributed to the transferee. This is relevant to whether the transferee can satisfy the requirements of the main home exclusion if they subsequently dispose of the land within two years of their bright-line start date.

108. Section FD 1(4) is relevant because for the main home exclusion to apply to a disposal of residential land by a person, the land must have been used predominantly, “for most of the bright-line period”, for a dwelling that was the main home. The attribution of the transferor’s use of the land to the transferee under s FD 1(4) can determine whether residential land has been used as a main home “for most of the bright-line period”.

### **If no rollover relief applies**

109. If rollover relief does not apply, the value of the transfer is the market value of the land if s GC 1 applies, or the actual consideration provided for the transfer if s GC 1 does not apply. See discussion of s GC 1 from [74].
110. If rollover relief does not apply, the bright-line start date is determined under s CB 6A(2). The bright-line start date in this situation will usually be the date on which the instrument to transfer the land to an LTC owner (in their non-LTC owner capacity) was registered under the Land Transfer Act 2017.
111. Example | Taura 9 illustrates the analysis in this section.

### **Example | Taura 9 - Transfer of residential land to LTC owners**

Persons 1 and 2 incorporated a company and elected for it to be an LTC in 2020. Persons 1 and 2 own equal shares in the LTC and are both directors.

In November 2023, the LTC acquires residential land for \$1 million. The instrument to transfer the land to the LTC is registered on 30 November 2023. For the next 12 months, the LTC uses the land as a rental property.

On 30 November 2024, the LTC transfers the residential land to persons 1 and 2 (in their non-LTC owner capacities) for \$1.1 million. For the next 10 months, persons 1 and 2 use the land predominantly as their main home before transferring the land to a third party for \$1.2 million on 30 September 2025.

#### **Transfer to persons 1 and 2**

In their LTC owner capacities, persons 1 and 2 are each treated as disposing of a 50% share of the residential land to themselves in their non-LTC owner capacities. This occurs within two years of their bright-line start date and the main home exclusion does not apply. Therefore, the bright-line test applies to this disposal.

However, persons 1 and 2 are eligible for rollover relief on the transfer because they are associated with the LTC at the date of transfer and for at least two years before that date. They are associated because at the date of transfer and for the last three years they have been LTC owners and directors of the LTC.

The rollover relief includes:

- in their LTC owner capacities, persons 1 and 2 are each treated as disposing of their share of the land for \$500,000 on 30 November 2024 - this equals the cost that they each incurred, so they do not realise a profit or loss from the disposal;
- in their non-LTC capacities, persons 1 and 2 are each treated as acquiring a share of the land at a cost of \$500,000;
- in their non-LTC capacities, persons 1 and 2 are treated as having a bright-line start date of 30 November 2023, the same bright-line start date they had in their LTC owner capacities; and
- person 1 and 2's use of the land as a rental property for 12 months, in their LTC owner capacities, is attributed to person 1 and 2 in their non-LTC owner capacities.

### **Transfer to third party**

The bright-line test applies to the transfer of the residential land to the third party on 30 September 2025.

The transfer is within the two years of the bright-line start date of 30 November 2023 and the main home exclusion does not apply.

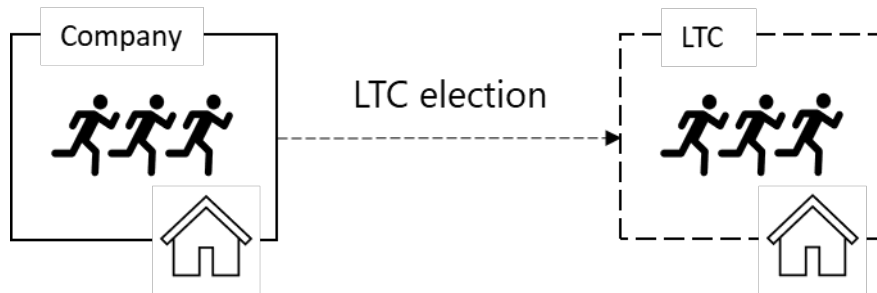
The main home exclusion does not apply because persons 1 and 2, in their non-LTC owner capacity, have not used the land for most of the bright-line period for a dwelling that was the main home. In this case, the "bright-line period" begins with the bright-line start date of 30 November 2023, the date the LTC acquired the land. The bright-line period is a period of 22 months and persons 1 and 2 are treated as having used the land as a main home for only 10 of these 22 months.

Therefore, persons 1 and 2 will each have income of \$600,000 ( $\$1.2 \text{ million} \div 2$ ), a deduction of \$500,000 ( $\$1 \text{ million} \div 2$ ) and, therefore, a profit of \$100,000.

If the transfer to the third party had been over 2 months later, the bright-line test would not have applied.

## **Where a company that owns residential land becomes an LTC**

112. This section discusses the situation where a company that owns residential land becomes an LTC.



### There is no disposal in this situation

- 113. The Commissioner's view is that there is no disposal of residential land in this situation.
- 114. For non-tax law purposes, no disposal results from the election to become an LTC. LTCs are a tax concept only and the same company owns the land at all times.
- 115. In addition, the Act contains no provisions that explicitly treat a company as disposing of its assets when the shareholders elect for the company to become an LTC. In contrast, such a provision exists when a company ceases to be an LTC – see [121].
- 116. Further, the Commissioner's view is that s HB 1 does not result in the company disposing of the land to the LTC owners when the company becomes an LTC. The effect of s HB 1 is discussed next.

### The effect of s HB 1

- 117. When a company becomes an LTC, s HB 1 treats the LTC owners as holding the land that the LTC holds. This means that before the election, the land is held by the company and after the election, the land is treated by s HB 1 as being held by the LTC owners. From this change, it might be argued that there is a disposal of land.
- 118. However, for the reasons discussed next, the Commissioner's view is that s HB 1 does not result in a disposal of the land.
- 119. Section HB 1 does not apply if the context requires otherwise. Section HB 1 is also a deeming provision that creates statutory fictions. In interpreting a deeming provision that creates a statutory fiction, it is necessary to understand the purpose of the provision. The fiction is then only taken as far as is necessary to achieve the purpose of the provision, and no further. The general purpose of s HB 1 is to provide transparent or look-through income tax treatment for electing closely held companies. The main goal of the look-through income tax treatment is to pass income, expenses, tax credits, rebates, gains and losses through to owners and to tax owners at the level of the owner.
- 120. By electing for the company to be an LTC, the shareholders of the company are making a choice provided under the Act about how they and the company will be taxed in



future. It seems unlikely that Parliament would have intended for this election to result in a disposal through the operation of s HB 1. The Commissioner's view is that if Parliament had intended for the election to result in a disposal, it would have made this explicit.

121. In determining whether there is a disposal of land, it is relevant to consider the context provided by s HB 4(6), which applies where a company ceases to be an LTC. In that situation, which is the reverse of the situation considered here, s HB 4(6) treats an LTC owner as disposing of all their owner's interests in the LTC (which would include any interest the owner has in residential land the LTC holds). Different conclusions could be reached from the context of s HB 4(6):

- On the one hand, it might be argued s HB 4(6) indicates that, in the absence of s HB 4(6), there would be no disposal when a company ceases to be an LTC. From this, it might then be argued that there would also be no disposal in the situation when the shareholders of a company elect for the company to be an LTC.
- On the other hand, it might be argued that s HB 4(6) merely confirms that there is a disposal. However, it seems unlikely that Parliament would explicitly confirm this for the situation where a company ceases to be an LTC, but not for when a company becomes an LTC.

122. On balance, the Commissioner's view is the first conclusion at [121] is more likely to be correct, which suggests that there is no disposal when a company becomes an LTC.

123. Further support for the view that there is no disposal in this situation comes from the context of s CB 32C. Under s CB 32C, an LTC owner can have an amount of income based on the untaxed reserves of the company (but only if a company becomes an LTC after its first year of trading).<sup>22</sup> This is relevant because the calculation of the untaxed reserves involves a hypothetical disposal of property.

124. The formula for the amount included in income under s CB 32C includes a component called "untaxed reserves". Untaxed reserves contains a subcomponent called "dividends". The term "dividends" is defined in s CB 32C(7) for the purposes of the calculation of untaxed reserves. It includes the sum of the amounts that would be dividends if the company disposed of all its property at market value. However, this does not mean that there is a disposal of the property. Section CB 32C simply defines an amount based on a hypothetical disposal of the property.

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<sup>22</sup> Section CB 32C. It is necessary to bring the reserve amounts to tax on becoming an LTC because its status as an LTC means distributions to LTC owners are not taxed. If the reserves were not brought to tax on becoming an LTC, they could be distributed tax free.

125. The hypothetical disposal in s CB 32C suggests that Parliament did not consider that there is an actual disposal when a company becomes an LTC. If there was an actual disposal, it would not be necessary to include the hypothetical disposal in s CB 32C.
126. Another provision that applies when a company becomes an LTC is s HB 13(6). This provision treats an entity that ceases to be a “company” on becoming an LTC as having, as an LTC, the same “status, intention, purpose, and tax book timings and values” as it had as a company for its assets, liabilities, and associated legal rights and obligations. For tax purposes, an entity ceases to be a company on becoming an LTC because the definition of company in s YA 1 excludes an LTC for certain purposes.
127. Section HB 13(6) makes no mention of a disposal occurring when a company becomes an LTC. Nevertheless, it might be argued that if there is no disposal, then it would not have been strictly necessary for s HB 13(6) to provide that the entity has the same status, intention, purpose, and tax book timings and values it had as a company. However, s HB 13(6) specifically mentions that the entity ceases to be a company, which suggests that it was the ceasing to be a company, not a disposal, that motivated Parliament to confirm these matters. Therefore, it is considered that s HB 13(6) does not indicate there is a disposal.
128. For the reasons given above, the Commissioner considers that for tax purposes when a company becomes an LTC, there is no disposal of residential land or other property that the company holds.
129. Although there is no disposal event when a company becomes an LTC, the LTC owners are treated as holding the residential land that the LTC holds and the LTC owners may be assessable if, in their capacity as LTC owners, they dispose of the land. Therefore, for the purposes of a future disposal by the LTC owners, it is necessary to identify the LTC owners’ cost base for the land and their bright-line start date.

### **LTC owners’ cost base for land**

130. If the LTC owners subsequently dispose of the land and have income under s CB 6A, they are allowed a deduction for the cost of the land.
131. As noted at [126], s HB 13(6) provides that an entity is treated as having, as an LTC, the same status, intention, purpose, and tax book timings and values as it had as a company. Because the LTC is treated as having the company’s tax book values, the LTC owners are also treated as having a share of these values under s HB 1.
132. “Tax book values” is not a defined term, but the Commissioner considers the ordinary meaning of this term includes the cost of land acquired by the company.

## Bright-line start date for the LTC owners

133. The Commissioner considers that where a company that owns residential land becomes an LTC, the LTC owners have the same bright-line start date for the land as the company had before it became an LTC.
134. As noted at [126], s HB 13(6) provides that an entity is treated as having, as an LTC, the same status, intention, purpose, and tax book timings and values as it had as a company. Because the LTC is treated as having these tax book timings, the LTC owners are also treated as having these tax book timings under s HB 1.
135. "Tax book timings" is not a defined term. Based on the ordinary meaning, the Commissioner considers that the term "tax book timings" includes the bright-line start date for residential land that the company owns.<sup>23</sup>

## Company's use of land attributed to LTC owner

136. By virtue of ss HB 13(6) and HB 1, when a company becomes an LTC, the LTC owners are treated as having the same status, intention, purpose, and tax book timings and values that the company had. The LTC owners' bright-line start dates will be the bright-line start date the company had.
137. This earlier bright-line start date and, therefore, longer bright-line period can affect whether the land is used as a main home for most of the bright-line period. A company is not able to use land as a home, and the use of land as a main home by the shareholders of the company (before it became an LTC) does not qualify as use by the company. Therefore, the application of the main home exclusion would depend on the LTC owners' use of the land as a main home after the transfer being long enough to satisfy the "most of the bright-line period" requirement.
138. Example | Taura 10 and Example | Taura 11 illustrate the analysis of the situation discussed in this section.

## Example | Taura 10 – Company becoming an LTC

### Facts

Company A was incorporated on 1 April 2024. Persons 1 to 3 own the company in equal shares. They are also the directors of the company.

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<sup>23</sup> This is consistent with the commentary to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2), which proposed the addition of the words "tax book timings" to s HB 13(6).

On the same day as it was incorporated, company A purchased a residential property to hold as a rental property. The instrument to transfer the land to the company was also registered on 1 April 2024. The property cost \$900,000.

On 31 March 2025, persons 1 to 3 elected for company A to be an LTC for the 2026 income year. On that date, the residential property had a market value of \$1 million.

On 5 May 2026, the LTC transfers the land to a third party for \$1.1 million.

### **Tax treatment – effect of election**

When company A became an LTC, persons 1 to 3 were treated under s HB 1 as holding the residential property. This did not result in a disposal of the land from the company to persons 1 to 3 for the purposes of the bright-line test.

In their capacity as LTC owners, persons 1 to 3 are each treated as having a cost of \$300,000 and as having a bright-line start date of 1 April 2024 in relation to the land. This is the same bright-line start date that the company had before it became an LTC.

When the land is sold to the third party on 5 May 2026, persons 1 to 3 are treated under s HB 1 as disposing of their interests in the land. However, for each person, the disposal is not subject to the bright-line test because the disposal is not within two years of their bright-line start date.

## **Example | Tauria 11 - Attribution of use – where a company becomes an LTC**

### **Facts**

Company A is owned by persons 1 and 2 in equal shares.

Company A owns a residential property. The property was purchased on 1 April 2024 for \$1 million.

On 31 March 2025, persons 1 and 2 elect for the Company to be an LTC for the 2026 income year (from 1 April 2025).

On 30 November 2025, the LTC transfers the residential property to a third party for \$1.25 million.

For the 12 months before the company became an LTC (between 1 April 2024 and 31 March 2025), the residential property was used as a rental property. For the eight months after the company became an LTC, and before the land was transferred to the third party (between 1 April 2025 and 30 November 2025), the land was used predominantly for a dwelling that was person 1 and 2's main home.

**Tax treatment**

When the company became an LTC, the LTC owners were treated by s HB 1 as holding the land, and when the LTC disposed of the land to the third party, the LTC owners were treated as disposing of their interests in the land.

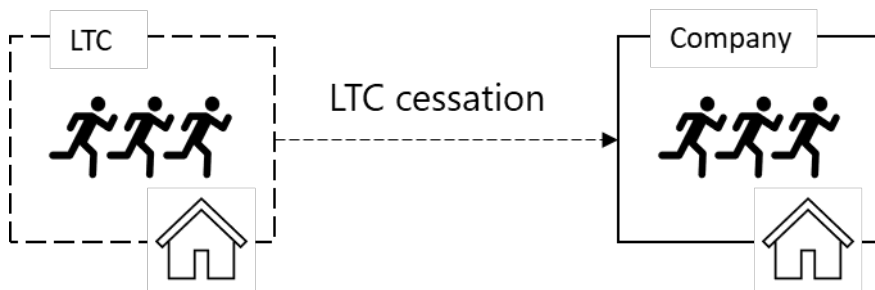
Further, when the company became an LTC, persons 1 and 2 (by virtue of s HB 13(6) and HB 1) were treated, as LTC owners, as having the same status, intention, purpose, and tax book timings and values that the company had. This means that the LTC owners have the same cost and bright-line start date as the company. It also means that the company’s ownership and use of the land as a rental property for 12 months is attributed to persons 1 and 2.

The transfer of the residential property on 30 November 2025 to the third party is within two years of the bright-line start date of 1 April 2024. Further, the main home exclusion does not apply because persons 1 and 2 did not use the land as a main home for most of the bright-line period. In this case, the bright-line period is a period beginning with the bright-line start date of 1 April 2024 (the date the company purchased the land). This means the bright-line period was a period of 20 months. Persons 1 and 2 used the land as a main home for only eight of these 20 months.

Therefore, the bright-line test applies to the disposal and persons 1 and 2 will be taxable on the profit of \$250,000 from the disposal.

**Where a company that owns residential land ceases to be an LTC**

139. This section discusses the tax treatment of a company<sup>24</sup> that owns residential land and that ceases to be an LTC.



<sup>24</sup> "Company" is used here in a general sense. A company that is an LTC is excluded from the definition of "company" in s YA 1.

## Whether there is a disposal

140. Where a company ceases to be an LTC, s HB 4(6) treats an LTC owner as disposing of all their owner's interests for the LTC (including any share of residential land). As discussed from [115], there is no similar deemed disposal when a company becomes an LTC.
141. Section HB 4(6) provides:

### HB 4 General provisions relating to disposals

#### *Cessation due to revocation or otherwise*

- (6) **A person is treated as disposing of all of their owner's interests** for a look-through company to a single third party for a payment equal to the interests' market value, **if the look-through company ceases to be a look-through company because of a revocation** or otherwise, but excluding cessation as described in subsection (3). The company is treated as acquiring all of the person's interests immediately after the cessation, from the third party, for a payment equal to the interests' market value, and for the purposes of section CB 15 (Transactions between associated persons), the person disposing of, and the company acquiring, the interests are treated as associated persons. [Emphasis added]

142. Section HB 4(6) applies if the company ceases to be a LTC because of a revocation or otherwise, but not if it is a permanent cessation as described in subs (3) (where the company itself ceases to exist as an entity through liquidation, court order, or otherwise). Section HB 4(6) can apply if one or more of the owners decides to revoke the election to be an LTC. Section HB 4(6) can also apply if the company ceases to be an LTC because it no longer satisfies the eligibility criteria.<sup>25</sup>
143. Where it applies, s HB 4(6) treats:
- an LTC owner as disposing of all their owner's interests to a (notional) single third party for a payment equal to the market value of the interests; and
  - the company as acquiring all the LTC owner's interests immediately after the cessation from the third party for a payment equal to the market value of the interests.

## Whether the main home exclusion applies

144. If the disposal is made within two years of the LTC owner's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.

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<sup>25</sup> An LTC must meet the requirements in the definition of "look-through company" in s YA 1 at all times in the income year.

145. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.
146. The earlier discussion about the main home exclusion (see from [31]) also applies to this situation. Also, as discussed from [68], an LTC owner can satisfy the requirements and receive the benefit of the main home exclusion where residential land is held by an LTC.

### **Rollover relief does not apply**

147. No rollover relief applies in this situation. For rollover relief in s FD 1 to apply, there must be a transfer of residential land between persons who are associated under ss YB 2 to YB 13. This requirement is not satisfied because under s HB 4(6), the LTC owners are treated as disposing of their interest to a notional third party, which is not a transfer between associated parties. Further, s HB 4(6) specifies that the disposal is at market value, which is inconsistent with rollover relief in relation to the value of the transfer.

### **Value of transfer**

148. Because there is no rollover relief, the disposal occurs at market value (as specified by s HB 4(6)).

### **Bright-line start date**

149. The company's bright-line start date resets. For tax purposes there was a break in the company's ownership of the land. Section HB 1 treated the LTC owners as holding the land before cessation, and because of the cessation the company is treated under s HB 4(6) as acquiring the land from the notional third party.
150. The new bright-line start date is the date that the company ceased to be an LTC. The reasons for this are as follows.
151. "Bright-line start date" is defined in s CB 6A(2). The subsection defines the term by reference to a table included in the legislation after the wording of the subsection. Section CB 6A(2) states that "A person's bright-line start date for their disposal of residential land is given in column 3 of the following table if the condition in column 2 of the relevant row is met for the person and the disposal". In this situation, row 3 of the table is relevant. The condition to be satisfied in row 3 is that "An instrument to transfer the land to the person was not registered before the person's bright-line end date". Where this condition is satisfied, the bright-line start date (specified in column 3 of row 3) is the date the person acquired an estate or interest in the land under s CB 15B.

152. In this situation (for a subsequent disposal by the company), there will be no instrument registered to transfer the land to the company in relation to the company's deemed acquisition of the land before the bright-line end date (the date of the subsequent disposal) because no instrument or registration is associated with a deemed disposal. Therefore, the company's bright-line start date is the date the company acquired an estate or interest in the land under s CB 15B (When land acquired).
153. Section CB 15B provides that a person acquires an estate, interest, or option that is land "on the date that begins a period in which the person has an estate or interest in, or an option to acquire, the land". The Commissioner considers that a company that ceases to be an LTC acquires an estate or interest in the land on the date that they are treated as acquiring land from the notional third party under s HB 4(6). This is the "date that begins the period in which the person has an estate or interest in the land" referred to in s CB 15B.
154. Example | Taura 12 illustrates the analysis of the situation discussed in this section.

### Example | Taura 12 – Company ceasing to be an LTC

#### Facts

Company A is an LTC that persons 1 to 3 own in equal shares.

On 28 September 2023, company A purchased residential land for \$900,000. It used the property as a rental property.

On 31 March 2025, the LTC owners notified IR of the revocation of LTC status.

On 1 April 2025, the residential land had a market value of \$1.2 million.

#### Tax treatment

Company A ceases to be an LTC from 1 April 2025 because of the revocation of LTC status.

As LTC owners, persons 1 to 3 each had a one-third share of the residential land that company A owned. As LTC owners, they are each treated as disposing of their share of the land (along with all their other interests in the LTC) on 1 April 2025.

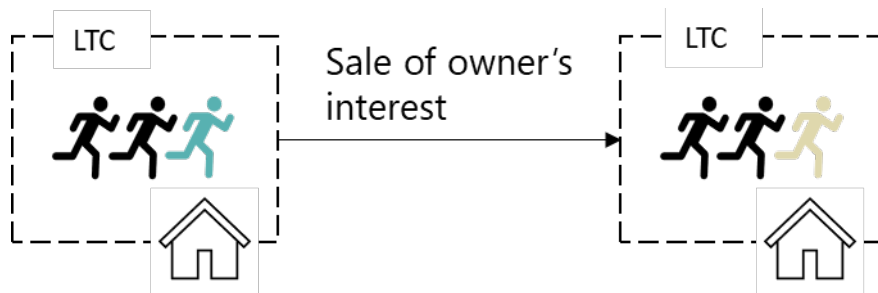
On cessation, no rollover relief is available to the LTC owners or the company. Persons 1 to 3 are treated as disposing of the land for market value. Therefore, they each have income under s CB 6A of \$400,000 ( $\$1.2 \text{ million market value} \div 3$ ) and are each allowed a deduction of \$300,000 ( $\$900,000 \div 3$ ) for the cost of the land.



Company A is treated as acquiring the land for the \$1.2 million market value. This will be company A's cost base for the land in future. The bright-line start date for company A resets on 1 April 2025.

## Where a person disposes of some or all of their owner's interests in an LTC that owns residential land

155. This section discusses the tax treatment when a person disposes of some or all of their owner's interests in an LTC that owns residential land.
156. This situation could occur when an LTC owner sells existing shares or when the LTC issues shares to a new owner, which dilutes the existing owners' interests.



### Whether there is a disposal

157. If a person disposes of some or all of their owner's interest in an LTC and the LTC owns residential land, then the person is treated under s HB 1 as disposing of a share of the residential land (based on the owner's interest that is disposed of).
158. If the disposal is made within two years of the person's bright-line start date, the bright-line test in s CB 6A could apply to the transfer.

### Safe harbour rule may apply

159. This situation differs from the previous situations discussed because in this situation the safe harbour rule in s HB 5 may apply in addition to rollover relief. This safe harbour rule can apply where an LTC owner (exiting owner) disposes of some or all of their owner's interests in an LTC to a new or existing owner (entering owner).
160. Another safe harbour rule, s HB 6 (disposal of trading stock), might appear at first to be relevant, but it does not apply because "trading stock" does not include land for this purpose.<sup>26</sup>

<sup>26</sup> The definition of trading stock in s YA 1 and s EB 2.

161. Where s HB 5 applies, it has two relevant effects:
- It treats a payment received by an exiting owner for the disposal of LTC interests as excluded income.
  - It treats an entering owner – not the exiting owner – as if the entering owner had originally acquired and held the LTC interests. This is relevant when determining the bright-line start date for the entering owner.
162. For s HB 5 to apply:
- an exiting owner must dispose of some or all of their owner’s interests to an entering owner; and
  - the amount calculated using the formula in s HB 5(1) must be less than zero.
163. The formula in s HB 5(1) examines whether the amounts paid or payable to the exiting owner (including the consideration for the current interests and any consideration for other disposals of their owner’s interests that have occurred in the last year) exceed a net asset value (discussed at [164]) by more than \$50,000. In other words, if the amount paid to the exiting owner is too high, as measured by this formula, s HB 5 does not apply.
164. In the formula, the net asset value is described as the difference between the “gross tax value” and liabilities. “Gross tax value” is the total value of the interests that are disposed of. For the purposes of determining the gross tax value amount, interests that are revenue account property, depreciable property or financial arrangements have the value that the Act gives to them. Revenue account property has its cost value; depreciable property has its adjusted tax value; and the Commissioner will accept a reasonable calculation of the value of a financial arrangement (for example, the value of any interest or principal repayment amounts receivable less any amounts payable under the financial arrangement). Other interests have their market value, for example, land held on capital account.

### **Whether the main home exclusion applies**

165. If the disposal is made within two years of the person’s bright-line start date, the bright-line test in s CB 6A could apply to the transfer.
166. However, the bright-line test in s CB 6A does not apply if the main home exclusion in s CB 16A applies.
167. The earlier discussion about the main home exclusion (see from [31]) also applies to this situation. Also, as discussed from [68], an LTC owner can satisfy the requirements and receive the benefit of the main home exclusion where residential land is held by an LTC.

## Whether rollover relief applies

168. As noted at [38], there are two alternative tests for the application of rollover relief under s FD 1 (discussed in more detail from [169]). Unlike for the situations considered in earlier sections of this statement, both tests can be relevant in this situation, not just the first. Also, for the first test, multiple associated person tests can be relevant in this situation, not just association under s YB 13 (look-through companies and owners of interests).

### First rollover relief test – transfer between associated persons

169. Under the first test in s FD 1(1)(a), rollover relief applies when residential land is transferred within the bright-line period between persons associated under any of ss YB 2 to YB 13 at the date of transfer and for at least two years before that date.
170. Sections YB 2 to YB 13 contain all the associated person rules in subpart YB, except the tripartite relationship rule contained in s YB 14. Any of these could apply, except ss YB 2 or YB 3. A person who has a look-through interest in an LTC can only be a natural person or a trustee of a trust. This means that the associated person rules in ss YB 2 (two companies) and YB 3 (company and person other than company) are not applicable in this situation.
171. In the first two situations considered in this statement, for the purposes of the association requirement in s FD 1(1)(a), s HB 1 (Look-through companies are transparent) is ignored. This is because those situations involve transfers of residential land to or from the LTC. In this situation, there is no transfer of land to or from the LTC, rather one of the LTC owners (the exiting owner) is transferring some or all of their shares in the LTC to a new owner (entering owner). In this situation, it is relevant to consider association between the exiting owner and the entering owner.
172. Guidance on the associated person rules can be found in **IR620 A guide to associated persons definitions for income tax purposes**, which can be accessed from this [page](#) on Inland Revenue's website.

### Second rollover relief test – transfer to trustee

173. Under the second test, rollover relief can apply in a case where residential land is transferred to a trustee of a trust in which all beneficiaries (ignoring the transferor if they are a beneficiary) are:
- associated with the transferor:
    - at the date of transfer; and
    - for at least two years before that date (except for beneficiaries that are less than two years old or beneficiaries who have become associated due to

marriage, civil union, de facto relationship or adoption, who must be associated with the transferor since birth, marriage, civil union, de facto relationship or adoption, as applicable); or

- an association, club, institution, society, organisation, or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere.

## **Rollover relief**

174. The rollover relief in this situation is the same as discussed earlier in the context of transfers between LTCs and LTC owners (see from [100]). The rollover relief includes rollover relief in relation to the transferor's disposal amount, the transferee's acquisition cost and bright-line start date, and the attribution of the use of the land.

### **If no rollover relief applies**

175. If the safe harbour rule (discussed at [159]) and rollover relief do not apply, the value of the transfer is the market value of the land if s GC 1 applies, or the actual consideration provided for the transfer if s GC 1 does not apply. See discussion of s GC 1 from [74].
176. Further, if the safe harbour rule and rollover relief do not apply, the bright-line start date for the entering owner will be determined under s CB 6A(2). In this situation (which involves a sale of shares in the LTC), the bright-line start date will generally be the date the entering owner acquires the shares. This is because of the definition of bright-line start date in s CB 6A(2). As discussed at [151], the subsection defines the term by reference to a table included in the legislation after the wording of the subsection. Section CB 6A(2) states that "A person's bright-line start date for their disposal of residential land is given in column 3 of the following table if the condition in column 2 of the relevant row is met for the person and the disposal". In this situation, row 3 of the table is relevant. The condition to be satisfied in row 3 is that "An instrument to transfer the land to the person was not registered before the person's bright-line end date". Because this situation merely involves the disposal or issue of shares in an LTC, the land is unlikely to be registered in the name of the entering owner before the entering owner subsequently disposes of their interest. The land will be registered in the name of the LTC, which is a company for non-tax purposes. Where row 3 applies, the bright-line start date is the date the entering owner acquired an estate or interest in the land under s CB 15B, which in this case is the date the shares in the LTC are acquired by the entering owner.
177. Example | Taura 13 illustrates the analysis in this section.

## Example | Tauria 13 - Disposal of owner's interest in LTC

### Facts

Person 1 is the sole shareholder and director of an LTC.

On 6 May 2024, the LTC acquires residential land to hold as a rental property. The land cost \$2.4 million. The land is the only asset of the LTC and the LTC does not have any liabilities.

On 8 June 2025, person 1 gets married to a person they met 3 months earlier.

Shortly after getting married, person 1 reorganises some of their finances. As part of this, on 10 June 2025, person 1 sells 25% of their owner's interests in the LTC to their daughter, 25% to their nephew and 25% to the trustee of a newly formed trust. The beneficiaries of the trust are person 1, person 1's children and person 1's spouse.

On 10 June 2025, the land has a market value of \$2.6 million. Each 25% owner's interest is transferred for \$610,000 (which in this case, is slightly lower than 25% of the market value of the land).

### Bright-line test

When person 1 sells their owner's interest in the LTC to the entering owners, person 1 is treated by virtue of s HB 1 as disposing of a share of the residential land.

This transfer, on 10 June 2025, is within two years of person 1's bright-line start date of 6 May 2024. Therefore, the bright-line test will apply to the transfer.

However, it is necessary to consider whether the safe harbour rule in s HB 5 or rollover relief under s FD 1 applies.

### Safe harbour rule

The safe harbour rule in s HB 5 applies if the amount calculated using the formula in s HB 5(1) is less than zero:

$$\text{Disposal payment} + \text{previous payments} - (\text{gross tax value} - \text{liabilities}) - \$50,000$$

Person 1 is disposing of 75% of their owner's interest. Therefore, the calculation is as follows:

$$\$1,830,000 + 0 - (\$1,800,000 - 0) - \$50,000 = -\$20,000$$

The result is less than zero, so the safe harbour rule in s HB 5 applies.

The safe harbour rule results in the disposal payment being excluded income for the exiting owner (person 1). The entering owners (the daughter, the nephew and the trustee) are treated as if they had originally acquired and held the current interests, not

the exiting owner. This means the entering owners are treated as acquiring the land on the date that person 1 (in their capacity as LTC owner) acquired the land, on 6 May 2024. This will be the entering owners' bright-line start date. It also means the entering owners will have, proportionally, the same cost base as the person 1, that is \$600,000 each.

Because the safe harbour rule applies it is not necessary to consider whether bright-line rollover relief is available.

If the 75% owner's interest had been transferred for \$1,850,000 or more, the safe harbour rule would not apply. The following discusses the bright-line rollover relief that would apply if the safe harbour rule did not apply.

### **Bright-line rollover relief**

Rollover relief would apply to the transfer to person 1's daughter and to the trustee, but not to the transfer to the nephew.

Rollover relief applies for the transfer to the daughter under s FD 1(1)(a) because person 1 and the daughter are associated under s YB 4 (two relatives) at the date of transfer and for at least two years before that date.<sup>27</sup>

Rollover relief applies for the transfer to the trustee under s FD 1(1)(b). In this case, it does not matter that person 1 has been associated with their new spouse (who is a beneficiary of the trust) for less than two years.

Rollover relief does not apply for the transfer to the nephew because association between two relatives under s YB 4 applies only for two degrees of blood relationship.

Person 1 will be treated as disposing of 50% of the interests in the land (the total interests transferred to the daughter and the trustee) for an amount that equals 50% of the cost of the land for person 1. This means they will not have a profit with respect to the disposal of this 50% interest.

The daughter and the trustee will each be treated as acquiring a 25% share of the land for amounts equal to 25% of the cost of the land for person 1. The daughter and the trustee will also have the same bright-line start date as person 1 for the interests.

Rollover relief will not apply for person 1 or the nephew for the 25% interest sold to the nephew.

Section GC 1 will treat the transfer as being made at market value. Section GC 1 will apply because the transfer is not made in the course of carrying on a business

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<sup>27</sup> The exception from association in s YB 4(2), which applies for the purposes of the "land provisions", does not apply in this context because s FD 1 is not included within the exhaustive definition of "land provisions" in s YA 1.

(s GC 1(b)(ii)). The market value of the 25% share of land is \$650,000 (25% of \$2.6 million). Person 1's cost for the 25% share is \$600,000 (25% of \$2.4 million). Therefore, person 1 will be taxable on the profit of \$50,000.

The nephew will have a cost base of \$650,000 (s GC 1(3)) and his bright-line start date will reset on 10 June 2025, the date he acquires the owner's interest and therefore the share of the land.

## Miscellaneous transfers

### Transfers following death of a person

178. Where a person who holds residential land dies (the deceased person), the bright-line test does not apply to a transfer of the residential land:
- from the deceased person to the executor or administrator of their estate;
  - from the executor or administrator of the estate to a beneficiary of the estate (beneficiary);
  - from the executor or administrator of the estate to any other person;
  - by the beneficiary of the estate to any person; and
  - by a person (rollover person) to a third party, if the rollover person acquired the land from the beneficiary, and a rollover relief provision in subpart FD applies to the acquisition of the land by the rollover person from the beneficiary.
179. The last bullet ensures that residential land is not subject to the bright-line test merely because it is transferred by a beneficiary into a more appropriate ownership structure after receiving a distribution from an estate. This structure could include an LTC, provided the transfer by the beneficiary to the LTC is eligible for rollover relief. As noted at [48], if an LTC is newly formed, the transfer will not be eligible.

### Transfer of residential land from a trustee of a trust to an LTC

180. A transfer of residential land from a trustee of a trust to an LTC could be eligible for rollover relief if the trustee and the LTC were associated at the date of transfer and for at least two years before that date.
181. The trustee could be associated with the LTC:
- under s YB 13(2), if the trustee is an LTC owner with effective look-through interests of 25% or more; or

- under the aggregation rule in s YB 13(3), if the trustee is associated with an LTC owner under any of ss YB 2 to YB 11 and YB 14 and, as a result, are treated as having effective look-through interests in the LTC of 25% or more.

182. In the latter case, if a trustee is associated with an LTC owner (for example, if the LTC owner is a beneficiary of the trust (s YB 6)), then under the aggregation rule in s YB 13(3), the trustee is treated as holding anything held by the LTC owner, which would allow the trustee to be associated with the LTC under s YB 13(2).

## Transfer of residential land from a company to an LTC

183. A transfer of residential land from a company to an LTC is not eligible for rollover relief. There is no direct associated person test between a company and an LTC. Although an LTC is a company, an LTC is excluded from the definition of company in s YA 1. Therefore, the associated person test in s YB 2 (two companies) does not apply (even if the owners of the company and the LTC are the same). The aggregation test in s YB 3(3) (company and person other than company) also does not apply to associate the company with the LTC via the shareholders of the company, because the aggregation test does not operate based on association under s YB 3.

*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, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*

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### Legislative references | Tohutoro whakatureture

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## About this document | Mō tēnei tuhinga

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