

INTERPRETATION STATEMENT

Income tax – Application of the land sale rules to co-ownership changes and changes of trustees

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IS 22/03

This interpretation statement considers whether the land sale rules in the Income Tax Act 2007 (the ITA) apply to changes to co-ownership of land and changes of trustees of a trust.

All legislative references are to the ITA unless otherwise stated.

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Summary

1. This Interpretation Statement considers whether the land sale rules in the ITA (ss CB 6A to CB 15 and CZ 39) apply to changes to co-ownership of land and changes of trustees of a trust.
2. This Interpretation Statement concludes that the ordinary meaning, case law and legislative history and context indicate that “disposal” in the land sale rules:
 - requires complete alienation of the land by the disposer – the land must be ‘got rid of’ by the person;¹
 - requires dealing with the land – so that one person loses ownership of the land and another² gains it (or gains a corresponding interest in respect of the same underlying land).

As such, in the Commissioner’s view, “disposal” in the land sale rules **does not include** transfers to self (in the same capacity).³

3. In terms of the transactions considered in this Interpretation Statement, this means that:
 - A change to the form of co-ownership, where the proportional shares or notional shares do not change, will not be a “disposal” for the purposes of the land sale rules.
 - If there is a transfer between co-owners where neither’s interest is fully alienated but the proportional share or notional share of a co-owner is reduced, there would be a “disposal” for the purposes of the land sale rules by that person to the extent their interest is reduced. This is because while they have not fully alienated the whole estate or interest they had in the land, they have fully alienated part of their interest in land.
 - If there is a transfer that adds a new co-owner, there would be a “disposal” for the purposes of the land sale rules to the extent the share (or notional share) of the original owner(s) in the land is reduced.

¹ Though this does not mean there could not be a deemed disposal, applying the *Sharkey v Wernher* principle – see further footnote 42 on page 20.

² Which would include the same person in a different capacity.

³ But again, see footnote 42 on page 20.

- If there is a transfer that removes a co-owner, there would be a “disposal” by the departing co-owner of their share (or notional share) in the land.
- A transfer of land on a change of trustees of a trust will not be a disposal for the purposes of the land sale rules. The ITA treats all of the trustees of a trust as essentially a single person, and “disposal” in the land sale rules does not include transfers to self (in the same capacity).

4. Table 1 below sets out examples of these conclusions:

Table 1 - Is there a “disposal” for the purposes of the land sale rules?

Example scenario	Is there a “disposal” for the purposes of the land sale rules?
<p><i>Change to form of co-ownership only</i></p> <p>A change to co-ownership from 50:50 tenants in common to joint tenants, or vice versa (same two owners).</p>	<p>No.</p>
<p><i>Change to proportionality of co-ownership</i></p> <p>A change to co-ownership from A and B as either 50:50 tenants in common or joint tenants to tenants in common, A as to 25%, B as to 75%.</p>	<p>Yes – disposal by A of an interest in the land as to 25%.</p>
<p><i>Addition of a co-owner</i></p> <p>A change to co-ownership from A and B as equal co-owners (either joint tenants or 50:50 tenants in common) to A, B and C as equal co-owners (either joint tenants or tenants in common as to 1/3 each).</p>	<p>Yes – disposal by A of a 1/3 interest in the land to C, and disposal by B of a 1/3 interest in the land to C.</p>
<p><i>Removal of a co-owner</i></p> <p>A change to co-ownership from A, B and C as equal co-owners (either joint tenants or tenants in common as to 1/3 each) to A and B as equal co-owners (either joint tenants or 50:50 tenants in common).</p>	<p>Yes – disposal by C of a 1/3 interest in the land to A, and disposal by C of a 1/3 interest in the land to B.</p>
<p><i>Transfer of land on change of trustee</i></p> <p>Transfer of land to reflect that there has been a change of trustees of a trust which owns the land.</p>	<p>No.</p>

5. By way of summary, the main reasons for the above conclusions are that:

- The ITA contains various definitions of “dispose”. The one that is relevant for the land sale rules requires consideration of the ordinary meaning of “dispose”. The courts have noted that “dispose” may have a very wide meaning, but that the context in which the word is used is key to determining the meaning it should be given.
- In the Commissioner’s view, the ordinary meaning, case law and legislative history and context indicate that “disposal” in the land sale rules requires the characteristics set out at [2]. In particular, this is because:
 - Consistent with dictionary definitions, at the most fundamental level a disposal involves complete alienation from the disposer of the property being disposed of. That is, the property is “got rid of” – being no longer in the control or possession of the disposer in any capacity.
 - Nothing in the history of the land sale rules suggests they were ever intended to apply to something that may technically be a ‘disposal’ for property law purposes but does not involve any dealing with land (ie, ownership moving from one person to another).
 - There are contextual indications in the land sale rules that support this view – in particular:
 - the heading to subpart CB – income from business or trade-like activities – which seems consistent with a view that the land sale rules are intended to apply where there is some kind of dealing with land; and
 - the existence of s CB 6A(3B) – which ensures the ‘bright-line clock’ does not re-start when title is transferred because the trustees of a trust change. In the Commissioner’s view, it would be anomalous to consider that Parliament intended that the mechanical transfer in this situation, with no change in the legal or equitable ownership of the underlying land, would be ignored for the purposes of the bright-line clock but could itself trigger the application of the bright-line test.

Introduction

6. The Commissioner has been asked to clarify her position on whether the land sale rules in the ITA (ss CB 6A to CB 15 and CZ 39) apply to changes to co-ownership of land and the transfer of land on a change of trustees of a trust. In particular, the Commissioner has been asked whether these transactions involve a “disposal” of land, for the purposes of the land sale rules.

7. The question of whether there is a “disposal” in these situations is key to whether a tax liability may arise. This matter is often raised in the context of the bright-line test for residential land (s CB 6A), but is also relevant to the other land sale rules.
8. Often, there will be no actual “amount” derived from transactions to effect a change in co-ownership. However, if there is a “disposal”, and it is for less than market value consideration, the ITA may deem the person who disposed of the land to have derived an amount equal to the market value of the land at the time of the disposal (s GC 1). This means that if there is a “disposal”, there could be “income” from the transaction under one of the land sale rules, whether an actual amount was derived from it or not.

Transactions considered in this Interpretation Statement

9. This Interpretation Statement considers whether there is a “disposal” for the purposes of the land sale rules in the following situations:
 - The form of co-ownership of land changes (ie, from a tenancy in common to a joint tenancy, or vice versa) with no change in the proportional or notional proportional share of the parties.

For example, co-owners hold the land as 50:50 tenants in common and then move to holding it as joint tenants (who have an equal notional share).
 - The proportional or notional proportional shares of co-owners of land change, whether or not the form of co-ownership changes.

For example, co-owners hold the land as 50:50 tenants in common and then move to holding it as 75:25 tenants in common.
 - A land transfer is registered on a change of trustees of a trust.
10. This Interpretation Statement also explains when the bright-line ‘clock’ starts in these situations.

Background to the different forms of co-ownership

11. Before considering whether co-ownership changes give rise to “disposals” for the purposes of the land sale rules, the following discussion explains what joint tenancies and tenancies in common are, and how changes to co-ownership are effected.

What are joint tenancies and tenancies in common?

12. Co-ownership of land is when two or more persons are entitled to the same parcel of land at the same time (concurrently).⁴
13. New Zealand law recognises three types of co-ownership: joint tenancies, tenancies in common, and co-ownership under the Joint Family Homes Act 1964.
14. This Interpretation Statement considers only joint tenancies and tenancies in common, as they are by far the most common forms of co-ownership.

Joint tenancies

15. A joint tenancy arises when land is transferred between persons, or devised by will to two or more persons, without words of severance (that is, without any words to show they are to take distinct and separate shares in the land).⁵
16. A joint tenancy has two essential attributes or features: the right of survivorship (see [17]), and the existence of the “four unities” (see [18]).⁶
17. The right of survivorship means that on the death of one of the joint tenants, their interest is extinguished and accrues to the others. If there were more than two joint tenants, this continues until there is only one survivor, who then holds the land as sole owner.
18. The “four unities”, required for a joint tenancy to exist, are:⁷
 - **Unity of possession**, which means no joint tenant has an exclusive right to possession of any particular part of the land – each is equally entitled to all of it.
 - **Unity of interest**, which means the joint tenants hold a single estate – the interest held by each is the same in extent, nature and duration.

⁴ T Bennion, D Brown, R Thomas and E Toomey, *New Zealand Land Law* (2nd edition, Wellington, Brookers, 2009), at [6.1.01].

⁵ DW McMorland and others, *Hinde McMorland and Sim Land Law in New Zealand* (online ed, LexisNexis, accessed 25 August 2021), at [13.004].

⁶ *Ibid*, at 13.004 and *New Zealand Land Law*, at [6.3.01].

⁷ *Hinde McMorland and Sim Land Law in New Zealand*, at [13.006], and *New Zealand Land Law*, at [6.3.02].

So for example, there cannot be a joint tenancy between persons holding different interests (for example, a freehold and a leasehold), or between persons with interests of different duration (for example, a life tenant and a reversioner).

- **Unity of title**, which means all the joint tenants must have derived their title from the same instrument.
- **Unity of time**, which means the estate of each joint tenant must have become vested at the same time.

19. Joint tenants together constitute a single owner, each with an entitlement to the whole property as long as the joint tenancy exists. But they each have a prospective or “notional”⁸ equal and separate share, and the inalienable right to sever their share during their own lifetime. The severed share is then an equal fraction of the whole. For example, if there were two joint tenants each will have a half, and if one of four joint tenants severs their share they will have a quarter (the remaining co-owners will continue to hold as joint tenants unless they have also severed their share).⁹ Severing a joint tenancy brings it to an end, and the parties then hold the land as tenants in common.

Tenancies in common

20. Co-owners holding land as tenants in common hold undivided shares in the same parcel of land – each with a present entitlement to a distinct share.¹⁰ It has been said:¹¹

Each tenant in common is entitled to the possession of the whole of the land, and yet, unlike a joint tenant, is entitled only to a distinct share thereof, a combination of concepts possible only because the physical boundaries of his share, called an undivided share, have not yet been determined.

[Footnotes omitted]

⁸ *Hinde McMorland and Sim Land Law in New Zealand*, at [13.013], *New Zealand Land Law*, at [6.2.02], and *Dewhurst v Conning* (FC Waitakere FAM-2006-090-002333, 4 September 2008).

⁹ *New Zealand Land Law*, at [6.2.02].

¹⁰ *Hinde McMorland and Sim Land Law in New Zealand*, at [13.015] and *New Zealand Land Law*, at [6.5.01].

¹¹ da Costa, D Mendes, “Co-ownership under Victorian land law” (1961) 3 *Melbourne University Law Review* 137 at 167.

21. A tenancy in common can be created in three ways:¹²
- expressly, by a disposition that includes words of severance, indicating that the co-owners are to have separate shares in the property;
 - by implication of equity – in situations where equity would presume joint tenants at law hold the beneficial interest as tenants in common (for example, where purchasers provide the purchase money in unequal shares); or
 - by severance of a joint tenancy (which may be at law or in equity).
22. There is no right of survivorship if land is held by co-owners as tenants in common, and only the unity of possession is essential for a tenancy in common.¹³

Changes to the form and/or proportionality of co-ownership

23. The form of co-ownership can be changed – either legally or equitably. A legal change in the nature of co-ownership requires registration of the appropriate instrument (ie, an instrument of transfer). Where this has not occurred, a transaction may nonetheless be effective in equity.¹⁴
24. Severance of a joint tenancy can be effected by a joint tenant transferring their interest to themselves. Where that is done, only the party severing the joint tenancy is entered in the transfer instrument as the transferor – ie, the transferor will be shown as “A”, and after the transfer the land will be held as “A ½, B ½”. However, it is also possible for both of the parties¹⁵ to be transferors. In that case, the register of land¹⁶ will show a transfer from “A + B” to “A ½, B ½”.
25. The co-owners’ proportional share (or notional proportional share) can also be changed. For example, “A” and “B” hold land as tenants in common – “A” as to ¼, “B”

¹² *Hinde McMorland and Sim Land Law in New Zealand*, at [13.014], and *New Zealand Land Law*, at [6.5.01].

¹³ *Hinde McMorland and Sim Land Law in New Zealand*, at [13.016], and *New Zealand Land Law*, at [6.5.01] – [6.5.02].

¹⁴ Ie, it may sever the equitable joint tenancy, with the result that the legal co-owners hold the legal title as joint tenants on trust for the beneficial owners as tenants in common (see *New Zealand Land Law*, at [6.4.08]).

¹⁵ Or all of the parties if there are more than two.

¹⁶ The register of land is subject to the Land Transfer Act 2017. It is kept by the Registrar-General of Land (who is appointed under the LTA).

as to $\frac{3}{4}$ – but later change this so they hold the land as 50:50 tenants in common. Or, co-owners who held land as joint tenants (each with a prospective (or notional) equal and separate share, as noted at [19]) then change this so they hold the land as tenants in common in unequal shares (for example, “A” as to $\frac{2}{3}$ “B” as to $\frac{1}{3}$).

What is “land” for tax purposes?

26. So what land do the land sale rules potentially apply to? The definition of “land” in s YA 1 of the ITA says that “land” includes “any estate or interest in land”. The term “*estate or interest in land*” is then defined as follows:

estate in relation to land, ***interest*** in relation to land, ***estate or interest in land***, ***estate in land***, ***interest in land***, and similar terms—

- (a) **mean an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder;** and
- (b) include a right, whether direct or through a trustee or otherwise, to—
 - (i) the possession of the land (for example: a licence to occupy, as that term is defined in section 122 of the Land Transfer Act 2017);
 - (ii) the receipt of the rents or profits from the land;
 - (iii) the proceeds of the disposal of the land; and
- (c) do not include a mortgage

[Emphasis in para (a) added]

27. The disposal of any estate or interest in land (legal or equitable) is, therefore, potentially within the scope of the land sale rules. Most dealings in land involve transfers of title to the legal estate, so the examples in this Interpretation Statement all involve transfers of legal title. But the conclusions would be equally applicable to transfers of equitable interests in land.

Are different forms of co-ownership different “interests in land”?

28. As discussed above, there are different rights and incidents arising from joint tenancies than there are from tenancies in common – namely, whether the right of survivorship exists and whether the owners have separate and distinct shares in the land. But does

that mean that a change to the form of co-ownership amounts to co-owners having a different “interest in land” to what they had before?

29. The main part of the definition of “estate or interest in land” (set out at [26]) is para (a), which says the term means “an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder”.
30. In the Commissioner’s view, para (a) of the definition of “estate or interest in land” is referring to **proprietary estates or interests** in land. The Commissioner does not consider that “interest in land” is broad enough to encompass the particular rights or incidents of the *manner of co-ownership* of a particular estate or interest. This view is supported by the words “whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder”. Those terms all reference different proprietary interests in land, and none references anything non-proprietary; such as the rights and incidents that flow from the manner in which a particular estate or interest is co-owned.
31. The Commissioner’s view that “estate or interest in land” is referring to the different proprietary interests one may have in land is consistent with the ordinary meaning of “estate” or “interest” in land. For example, the *Dictionary of New Zealand Law*¹⁷ defines “interest in land” (relevantly) as:

2. A property right in land that is not an estate. An interest in land is therefore not classified according to its duration. As a proprietary right, it must be definable, permanent or stable, identifiable by third parties and capable of assumption by third parties.

defines “interest” as:

1. A right or title to, or estate in, any real or personal property.

and defines “property” as:

1. A thing owned; that over which title is exercised, whether tangible or intangible, real or personal. The (NZ) Property Law Act 2007 s 4, provides that property means everything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; and includes any estate or interest in property. See also the (NZ) Protection of Personal and Property Rights Act 1988.

¹⁷ *Dictionary of New Zealand Law*, (Online ed, LexisNexis New Zealand, accessed 25 August 2021).

2. A title to or right of ownership in goods or other property. See the (NZ) Sale of Goods Act 1908 s 20.

32. Accordingly, the Commissioner does not consider that the form of co-ownership of land is itself an “interest in land”, as “estate or interest in land” is referring to the different proprietary interests that may be held in land (things that can be owned), not the ways in which those interests may be held or owned.
33. It follows from this that, in the Commissioner’s view, if co-owners hold land as joint tenants and then transfer it to themselves as tenants in common (or vice versa), they do not each then have different interests in land to what they previously had. Rather, they have the same interest in land (for example, the estate in fee simple) but the *manner in which they hold that interest* (the form of co-ownership) has changed – and different consequences flow from that.
34. The question then arises as to whether the transfer under the Land Transfer Act 2017 (the LTA) from the owner or owners to themselves,¹⁸ to change the form of co-ownership of the land, is a disposal **for the purposes of the land sale rules in the ITA**. Specifically, does “disposal” require alienation of or dealing with the property (ie, disposal to someone who did not previously own it), or is ‘disposal to self’ caught?

What is a “disposal” of land?

35. The land sale rules may apply if a person **derives an amount** from **disposing of land**.
36. As noted at [8], if no actual amount is derived, the person disposing of the land may be treated as having derived an amount (equal to the market value of the land). So the land sale rules may apply whether the land is sold or otherwise disposed of.

What is the definition of “dispose” in the ITA?

37. The ITA does not set out a comprehensive definition of “dispose” for the land sale rules. It just says that for the land sale rules, “dispose” includes compulsory acquisitions and mortgagee sales – things that would not necessarily otherwise be considered “disposals”.

¹⁸ Depending on the way the transfer is recorded in the transfer instrument (see [62]).

38. So aside from those specific inclusions, “dispose” in the land sale rules just takes its ordinary meaning.

What is the ordinary meaning of “dispose” and what does the case law say?

39. The *Oxford English Dictionary*¹⁹ defines “disposal” and “dispose” (relevantly) as follows:

disposal, n.

...

2. The action of disposing of, putting away, getting rid of, settling, or definitely dealing with.

3.

a. The action of bestowing, giving or making over; bestowal, assignment.

b. Alienation, making over, or parting with, by sale or the like.

dispose, v.

1.

...

†c. *gen.* To dispose of, deal with in any way.

...

8. **to dispose of** (with indirect passive **to be disposed of**).

...

b. To put or get (anything) off one's hands; to put away, stow away, put into a settled state or position; to deal with (a thing) definitely; to get rid of; to get done with, settle, finish. ...

c. To make over or part with by way of sale or bargain, sell.

40. The *Dictionary of New Zealand Law*²⁰ has the following definitions:

dispose

¹⁹ *Oxford English Dictionary*, (Online ed, Oxford University Press, accessed 25 August 2021).

²⁰ *Dictionary of New Zealand Law*, (Online ed, LexisNexis New Zealand, accessed 25 August 2021).

Pass into the control of another person, alienate, relinquish, part with or get rid of.

disposition

The distribution or transfer of property or money to someone, especially by bequest.

41. The words “dispose”, “disposal”, and “disposition” have been discussed in numerous cases in New Zealand and overseas, in taxation and other contexts. The courts have said that these words are of the widest application and are expressions of the widest import.²¹
42. In *Henty House Pty Ltd (in vol liq) v FCT* (1953) 88 CLR 141 (HCA), the court observed (at [7]) that the words “is disposed of” are wide enough to cover all forms of alienation.²² The court also said (at [7]) that the expression “disposed of” embraces every event by which the property ceases to be available for the use of the taxpayer – because it ceases to be the taxpayer’s, be accessible by the taxpayer, or exist.
43. In *Equity Trustees Executors & Agency Co Ltd v Commr of Probate Duties* (1976) 135 CLR 268 (HCA), Stephen J observed (at 273) that “in any disposal of ownership one person loses title and another gains it”.²³
44. However, the context in which the words “dispose” and “disposition” are used is key. The courts have noted that the features or characteristics of “disposal” that are relevant *depend on the context* in which the question of whether there has been a disposal is being considered. In *Griffiths v Ellis* [1958] NZLR 840 (SC), Henry J said (at 868):

... The words “dispose” and “disposition” are equivocal and their meaning depends upon the context in which they are used. **They may mean, and be confined to, an actual transfer of an interest in land to some other person.** An example of this may be found in *Astley v Manchester, Sheffield & Lincolnshire Railway Co.* (1858) 2 De G. & J. 453; 44 E.R. 1065. On the other hand it was said in *Carter v Carter* [1896] 1 Ch. 62 that they are not technical words but ordinary English words of wide meaning, which, **where not limited by the context, are sufficient to extend to all acts effectively creating a new interest in property whether legal or equitable** (*ibid.*, 67).

[Emphases added]

²¹ *Duke of Northumberland v A-G* [1905] AC 406 (HL) at 411; *Rose v FCT* (1951) 84 CLR 118 (HCA).

²² Citing the words of Dixon and Fullagar JJ from *FCT v Wade* (1951) 84 CLR 105 (HCA) at 110.

²³ Cited by Hill J in *FCT v Cooling* (1990) 90 ATC 4,472 (FCAFC).

45. Henry J also stressed the importance of the statutory context when analysing the words “dispose” and “disposition”, observing that their meaning must accord with the overall tenor of the legislative provision in order not to make it nugatory.
46. So the case law shows, consistent with the dictionary meanings set out at [39] and [40], that at the most fundamental level a disposition (or disposal), involves complete alienation from the disposer of the property being disposed of. The property is “got rid of” – being no longer in the person’s control or possession. But “dispose” can have broader or narrower meanings, depending on the particular context in which it is used.
47. It is, therefore, necessary to consider whether the legislative context of the land sale rules requires the term “disposal” to be given a particular meaning for the purposes of those rules. In addition to the meaning of “dispose” being context dependent, s 5 of the Interpretation Act 1999 requires that the meaning of an enactment must be ascertained from its text and in light of its purpose.

Is there a disposal in even the broadest sense where the form of co-ownership changes but the proportional shares or notional shares do not change?

48. Before getting to whether the context of the land provisions indicates a particular meaning be given to “disposal”, it is worth commenting that, arguably, there is not a disposal even in the broadest possible sense where a joint tenancy is changed to a tenancy in common (or vice versa) and the proportional shares or notional shares do not change.
49. As noted at [32], the Commissioner does not consider that the form of co-ownership of land is itself an “interest in land”. So owning land as joint tenants is not a different “interest in land” to owning the same land as tenants in common.
50. But it has been suggested that there is nonetheless a “disposal” on a transfer to change the form of co-ownership. This argument is based on s 56 of the Property Law Act 2007 (the PLA), and the fact that under the Torrens title system²⁴ a legal interest in land is created or transferred on the act of registration. Section 56 of the PLA says that a person may dispose of property to himself:

²⁴ The generally applicable land transfer system in New Zealand.

56 Person may dispose of property to himself, herself, or itself

- (1) A person may dispose of an estate or interest in property to himself, herself, or itself, alone or jointly with some other person.
- (2) A disposition to which subsection (1) applies is enforceable in the same manner as a disposition to another person.

51. The PLA defines “disposition” broadly, and as including any transfer (s 4 of the PLA).
52. However, the fact that the PLA provides that a person can dispose of property to themselves (and defines “disposition” as including any transfer), and the fact that under the Torrens title system a legal interest in land is created or transferred on the act of registration, does not determine the meaning of “dispose” for all purposes.
53. The application provision of the PLA provides that if a provision of the PLA is inconsistent with a provision in another enactment, the provision in the other enactment prevails (s 8(4)).
54. In the Commissioner’s view, the fact that the ITA contains specific definitions of “dispose” and “disposition of property” for the purposes of different provisions in the ITA shows it was intended that the ITA definitions be applicable for ITA purposes, not the definition of “disposition” in the PLA,²⁵ or the concept of ‘disposal to self’ provided for in s 56 of the PLA. The s YA 1 definitions overlap with the PLA definition, but they are not entirely consistent with it, which means the definitions in the ITA must prevail.
55. The Commissioner considers that the ordinary meaning of “dispose”, which is what is relevant for the land sale rules, is the meaning as ascertained from dictionary definitions and case law, not statutory constructs, like the ability to dispose of property to oneself – a creation of the PLA.
56. In addition, as discussed from [41], the case law shows that the meaning to be given to “dispose” or “disposal” is dependent on the statutory context. If the statutory context of the land sale rules indicates a meaning of “dispose” that is inconsistent with the concept of a ‘disposal to self’ (which is discussed from [48]), that would show an inconsistency between the land sale rules and s 56 of the PLA. This would mean that

²⁵ And it is noted that s 32 of the Interpretation Act 1999 provides that “[p]arts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment”.

the ordinary meaning of “dispose” (that the statutory context indicates) must prevail over the s 56 concept of ‘disposal to self’.

57. The Commissioner does not consider that a transfer to self would be within even the broadest possible meaning the case law indicates “dispose” may have. A transfer to oneself would not be recognised at common law. The effect of s 56 of the PLA is to enable such a transfer for the purpose of simplifying the severance of a joint tenancy.²⁶
58. As owning land as joint tenants is not a different “interest in land” to owning the same land as tenants in common, in the Commissioner’s view there would not be a “disposal” in the ordinary meaning of that word, even in the broadest sense. The ordinary meaning of “disposal” or “dispose” would not include a disposal to self (with the parties holding the land in the same capacity before and after the transfer, and with proportionality of interests unchanged). In the Commissioner’s view, such a transaction would not involve the required **alienation** of the property (for example, the estate in fee simple) that is necessary for there to be a “disposal”. In particular, it is noted that:
- Before and after the change to the form of co-ownership, each co-owner has an interest in the whole property (but whether they have a prospective separate share or a present entitlement to a distinct share depends on whether the co-ownership is a joint tenancy or a tenancy in common).
 - The Commissioner does not consider that the right of survivorship (the only ‘right’ that disappears) can be regarded as an “interest in land” as it is not a proprietary interest, but rather a consequence flowing from the form of co-ownership of the proprietary interest in land. As such, the right of survivorship ceasing to exist is not a disposal of an “interest in land”.
 - Different rights and incidents flow from the different forms of co-ownership, but there is never a time when either party does not have an interest in the land (ie, the estate). “Disposal” requires **total alienation** of the property.
59. It is acknowledged that for tax purposes a person can be treated as having disposed of property to themselves (*Sharkey (Inspector of Taxes) v Wernher* [1956] AC 58 (HL)). But that is in contexts like moving property from revenue account to capital account (ie, a change in terms of whether property is within the tax base or not), which is not

²⁶ As noted in *New Zealand Land Law*, at [6.4.10].

analogous to what is just a change to the form of co-ownership (where the property remains either in or out of the tax base).

60. There is further support for the Commissioner's view that there is not a "disposal" for the purposes of the land sale rules in *Junior Farms Ltd v CIR* (2011) 25 NZTC ¶20-064 (HC). In *Junior Farms*, it was held that there was no disposal of the legal or equitable title to land as a result of sale and buy-back agreements. Brewer J considered that the sale and buy-back agreements created a constructive trust over the legal title to the land the taxpayer bought back. The legal title in the land the taxpayer was to buy back was conveyed only for the specific purpose of a subdivision being undertaken, but the taxpayer retained beneficial ownership of that land. As such, Brewer J considered that the taxpayer had not disposed of either the legal or equitable title to the land in question, and therefore there could not have been a (re)acquisition of it for the purposes of what is now s CB 6.
61. Similarly, it is considered that the fact an instrument of transfer is registered with LINZ to effect a change to the form of co-ownership does not mean there is a "disposal" of land by the co-owners.
62. As noted at [24], severance of a joint tenancy can be effected by a joint tenant transferring their interest to themselves. Alternatively, it is possible for both parties to be recorded as the transferors.
63. However, at no point in the process of transferring the land from the severing party to themselves (or from all of the co-owners to themselves) to effect a change to the form of co-ownership do any of the co-owners cease to have either legal or beneficial ownership of the land (ie, the estate), or any proportion of the land (given we are considering a situation where the proportional shares or notional shares remain the same).

Does the context of the land sale rules suggest a particular meaning of "disposal"?

64. As discussed above, it is necessary to look at whether the **context of the land sale rules** suggests that "disposal" has a particular meaning for those purposes.
65. The key question in respect of changes to the form of co-ownership and changes of trustees is whether "disposal" in the land sale rules includes a '**disposal to self**'.

What the history of the land sale rules indicates about their purpose

66. The history of the land sale rules in the ITA and the purpose behind them shed some light on what "disposal" is intended to mean in those provisions. The following is a

brief overview of the history to some of the land sale rules – in particular ss CB 6 (the ‘purpose or intention’ provision) and CB 6A (the bright-line test).

67. New Zealand’s income tax legislation has specifically taxed gains from the sale of land since the enactment of the Land and Income Assessment Act 1900.
68. The original provision taxed gains derived from the “purchase, sale, or other disposition of real property, if the taxpayer’s ordinary business comprises dealing in such property, but not otherwise”.²⁷
69. The Land and Income Tax Act 1916 expanded this scope to also tax profits from the sale or disposition of land “if the property was acquired for the purpose of selling or otherwise disposing of it at a profit”.²⁸ This meant that isolated transactions (not as part of a business of dealing in land) would be taxed. It is clear from *Hansard* that the provision was intended to deal specifically with property speculators.²⁹
70. The Land and Income Tax Act 1951 further expanded the scope of the taxation of profits from land by removing the requirement that the purpose must be to dispose of the land “for a profit”. The provisions also included personal property from this time, and a “catch-all” to tax profits or gains derived from “the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit”.³⁰ This provision became s 88(1)(c) of the Land and Income Tax Act 1954.
71. In 1973, the land taxing rules were changed³¹ to deal with the two issues identified by the Taxation Review Committee in its 1967 report.³² In particular:
 - removing the “artificial” distinction between ‘purpose’ and ‘intention’;³³ and

²⁷ Section 59(3) of the Land and Income Assessment Act 1900.

²⁸ Section 85(c) of the Land and Income Tax Act 1916.

²⁹ *Hansard* (3 July 1916) 176 NZPD 396 (discussion on the Land and Income Tax Bill).

³⁰ Section 10 of the Land and Income Tax Amendment Act 1951.

³¹ Made by the Land and Income Tax Amendment Act 1973.

³² Taxation Review Committee (chaired by LN Ross), *Taxation in New Zealand: Report of the Taxation Review Committee* (Wellington, New Zealand Government, October 1967).

³³ In what is now section CB 6.

- introducing rules to ensure the taxation of sales resulting from profit-making undertakings or schemes that were devised *after* the purchase of the property (irrespective of the purpose or intention when the property was acquired).³⁴
72. Difficulties with enforcing the “purpose or intention” provision (s CB 6) led to the introduction of the bright-line test. The bright-line test was intended to be an objective, easy to apply proxy for there being a purpose or intention of disposal (ie, a speculative purpose).³⁵ The bright-line test was originally introduced with a bright-line period of 2 years.³⁶ In 2018, this period was extended to 5 years,³⁷ and in 2021 it was extended again to 10 years.³⁸
73. The Commissioner considers that the land sale rules are clearly aimed at taxing disposals of land where there is a land-related business (dealing, development etc),³⁹ or speculation in land (whether as part of a business or an isolated transaction).⁴⁰ There are also provisions dealing with transactions involving associated persons.⁴¹ Where those provisions apply, while the associated person would not have a land-related business and may not have a speculative purpose, those provisions ensure: (1) that associated persons cannot be used to effectively divert income that would be within one of the business or speculation focussed provisions to someone else instead, and (2) that land cannot be transferred out of the tax base via an associated person.
74. The bright-line test was introduced as an objective test to supplement the intention test (s CB 6), given difficulties in enforcing s CB 6 because of the subjectivity of the intention test. Essentially, disposal within the bright-line period is used as a proxy for the kind of dealing in land or speculative purpose that the land sale rules are aimed at.
75. There are also provisions in the Act to ensure that property can’t be transferred or disposed of outside the tax base for no consideration or less than market value

³⁴ Now sections CB 12 and CB 13.

³⁵ See for example, Minister of Revenue (Hon Todd McClay), [Taxation \(Bright-line Test for Residential Land\) Bill: Commentary on the Bill](#) (Wellington, Inland Revenue, 2015).

³⁶ By way of the Taxation (Bright-line Test for Residential Land) Act 2015.

³⁷ By way of the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018.

³⁸ By way of the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021.

³⁹ Section CB 7.

⁴⁰ Sections CB 6A, CB 6, CB 12 and CB 13.

⁴¹ Sections CB 9(2), CB 10(2), CB 11 and CB 15.

consideration. If there's a disposal of property outside the tax base (for example by way of gifting, or sale for less than market value consideration), there will be a deemed market value amount derived (ss FC 2 and GC 1).

76. Nothing in the history of the land sale rules suggests it was ever intended they would apply to something that may technically be a disposal for property law purposes but does not involve any dealing with land such as a transfer to someone else.
77. There are contextual indications in the land sale rules that support this view – in particular the heading to subpart CB and the existence of s CB 6A(3B), both of which are touched on below.

The heading to subpart CB

78. The heading to subpart CB of the ITA (which contains the land sale rules) was inserted in 1994, and then read "Activities in the nature of trade". It was changed to "Income from business or trade-like activities" in 2004 as part of the process of the ITA being rewritten for improved clarity (which was done progressively from 1994).
79. In the Commissioner's view, the heading to subpart CB indicates that the provisions in subpart CB are concerned with amounts that may be *likened in some way* to business or trade income, even if they cannot be classified as business or trade income. This would include amounts from a speculative or profit-making purpose or undertaking. The associated persons provisions are concerned with taxing amounts that may be likened in some way to business or trade income, but the income is diverted to someone else instead.
80. The heading to subpart CB seems consistent with the apparent intention behind the land provisions – that they are intended to tax disposals of land where there is a land-related business or speculation in land. While of not much weight, this contextual clue seems consistent with a view that the land sale rules are intended to apply where there is some kind of dealing with land (ie, ownership moving from one person to another), and that they are not intended to capture a disposal that is just a mechanical transfer

from an owner to themselves (in the same capacity), which cannot in any sense be considered a dealing with land.⁴²

Specific provision that ensures the bright-line clock does not re-start

81. Another contextual indication that “dispose” in the land sale rules (in particular the bright-line test) is not intended to include a ‘disposal to self’ is the existence of s CB 6A(3B).⁴³ This provision ensures the ‘bright-line clock’ does not re-start when title is transferred because the trustees of a trust change.
82. If “dispose” in the bright-line test included ‘disposal to self’, the transfer of title on a change of trustees would be a disposal and a taxing event (if within the bright-line period).
83. It would be anomalous to suggest Parliament specifically legislated for the bright-line clock not re-starting in this situation, but nevertheless intended the transfer on a change of trustees to be a ‘disposal’ that could be subject to tax.
84. Therefore, the existence of what is now s CB 6A(3B) provides a contextual indication that ‘disposal’ in the context of the bright-line rules (and by logical extension the other land sale rules) is not intended to include the mechanics of changes in title where no change in ownership of the equitable or legal estate occurs.

Conclusion on what “disposal” means in the land sale rules

85. In the Commissioner’s view, the ordinary meaning, case law, and legislative history and context indicate that “disposal” in the land sale rules:
 - requires complete alienation of the land by the disposer – the land must be ‘got rid of’ by the person;⁴⁴

⁴² Though this does not mean there could not be a deemed disposal, applying the *Sharkey v Wernher* principle. However, it may be that the *Sharkey v Wernher* principle applies only in relation to some land provisions (for instance, the Commissioner does not consider that it could apply in the context of s CB 6, which turns on the taxpayer’s purpose or intention **on acquisition** of land, and a change of intention does not take the land out of the tax base).

⁴³ And s CZ 39(6) – the equivalent provision for the 5-year bright-line test.

⁴⁴ Though this does not mean there could not be a deemed disposal, applying the *Sharkey v Wernher* principle – see further footnote 42 on page 20.

- requires dealing with the land – so that one person loses ownership of the land and another⁴⁵ gains it (or gains a corresponding interest in respect of the same underlying land).

As such, in the Commissioner’s view, “disposal” in the land sale rules **does not include** transfers to self (in the same capacity);⁴⁶

86. The following discussion looks at what this conclusion means for changes to co-ownership.

Is there a “disposal” when the form of co-ownership changes, but the proportional or notional shares do not change?

87. The first transaction to consider is where there is a land transfer to effect a change to the **form of co-ownership** (ie, from a tenancy in common to a joint tenancy, or vice versa) with **no change** in the proportional or notional shares of the parties.

For example, co-owners hold the land as 50:50 tenants in common and then move to holding it as joint tenants (who have an equal notional share).

88. In the Commissioner’s view, a transfer to change the form of co-ownership, where the proportional or notional shares do not change, will not be a “disposal” for the purposes of the land sale rules.
89. In this situation there is no alienation of land by the transferee(s). The co-owners hold the same estate or interest in land before and after the change in co-ownership. At no point do the parties lose control of the property (the estate or interest in land) or any part thereof.
90. There is also no “dealing with” the land – the transfer to effect the change in co-ownership does not involve land (or any part thereof) moving from the one party to another. The change to the form of co-ownership merely alters whether the right of survivorship exists, and whether the co-owners have a present entitlement to a distinct share of the land or a prospective or notional equal and separate share that they have

⁴⁵ Which would include the same person in a different capacity.

⁴⁶ But again, see footnote 42 on page 20.

the right to sever during their lifetime. They continue to have an interest in the whole of the property, and the proportionality of their share or notional share does not change.

How does this reconcile with QB 17/09?

We have been asked how this conclusion reconciles with the position in [QB 17/09](#) *Is there a full or partial disposal when an asset is contributed to a partnership as a capital contribution?* The conclusion in QB 17/09 would mean that if land jointly owned by A & B was transferred to a 50:50 partnership of A & B, there would be a full disposal.

There are a number of reasons for the conclusion in QB 17/09, but relevantly for present purposes, it is noted in the QWBA that when an asset is contributed to a general partnership the legal ownership of the asset, its juristic character, and the person's interest in the asset all fundamentally change. Before the contribution, the person is the owner of the asset. After the contribution of the asset to the partnership, the asset ceases to be the person's property – it belongs to the partners of the partnership and becomes partnership property. While the partners are treated as each owning the asset in proportion to their partnership interest, they no longer own the asset in their personal capacity.

This is different to a situation where joint tenants sever the joint tenancy to hold the land as 50:50 tenants in common, or where a 50:50 tenancy in common is converted to a joint tenancy. Before and after the transfer to effect the change to the form of co-ownership, each party's interest in the land was owned in their personal capacity. Their proportionate or notional proportionate shares in the land are unchanged. In the Commissioner's view this is different from a situation where land is transfer from A & B jointly to A & B in their capacity as partners in a partnership. In that situation, there is a change in terms of ownership of the land, as it is now partnership property and owned by the partners in their capacity as such.

Does the transfer reset the start date for the bright-line test?

91. The general start date⁴⁷ for the bright-line test is the date of registration of the instrument of transfer under the LTA. A legal change to the form of co-ownership requires registration of an instrument of transfer. However, there are specific provisions that ensure the start date for the bright-line test does not reset on the registration of a transfer to effect a change to the form of co-ownership where the proportional or notional shares do not change.⁴⁸ These provisions came into force on 27 March 2021. Their effect is illustrated in Examples 1 and 2.

Example 1 – Change from a joint tenancy to a tenancy in common, with no change to the parties’ proportional or notional shares

Wiremu and Rebecca started a relationship in 2018. Both have children from previous relationships. In 2019, Wiremu and Rebecca purchased a rental property together as joint tenants. Two years later, they decide that in the event of one of them dying, they want to financially assist their children, so want the share of the partner who dies to go to that partner’s children. They submitted a land transfer, which LINZ registered in June 2021, to change their ownership of the property from a joint tenancy to a tenancy in common (50:50).

For the bright-line test (s CZ 39) to apply, there needs to have been a “disposal” of residential land by Wiremu and/or Rebecca. In this case, there **has not been** a disposal of land by either of them.

Wiremu and Rebecca own the same land (the estate in fee simple) before and after the transfer. Before the transfer, they each had an interest in the whole of the property, and a notional equal separate share (ie, 50%) that they had the right to sever during their lifetime. After the transfer, they each still have an interest in the whole of the property, and they now have a present entitlement to a 50% share. No land (or any part thereof) has passed from one party to another.

⁴⁷ Except for: (1) situations where an instrument to transfer the land to the person is not registered on or before the bright-line date, in which case the start date of the bright-line period will be the date the person acquired the land, and (2) other situations specifically legislated for, such as subdivisions, off-the-plan purchases, and relationship property settlements.

⁴⁸ Section CB 6A(5B) and (5C) and s CZ 39(5B) and (5C).

The bright-line period does not restart on the date in June 2021 when LINZ registered the transfer to change the form of co-ownership of the property; the bright-line period continues to be counted from the date in 2019 when the property was originally transferred to Wiremu and Rebecca.

Example 2 – Change from a tenancy in common to a joint tenancy, with no change to the parties’ proportional or notional shares

Mary and Bill are a couple who bought a house in April 2021 as 50:50 tenants in common. They are renting out the house while travelling extensively for at least the next couple of years. Both have children from previous relationships. Some months later, they realise that in the event of one of them dying, the share of the spouse who dies will go to their estate and then to their children, and the surviving spouse may not be able to move into the house should they want to. They decide to change the form of their co-ownership of the property, from a tenancy in common to a joint tenancy, so when one of them dies the other will become the sole owner of the property. They submitted a land transfer, which LINZ registered in September 2021, to change their ownership of the property from tenancy in common (50:50) to a joint tenancy.

For the bright-line test (s CB 6A) to apply, there needs to have been a “disposal” of residential land by Mary and/or Bill. In this case, there **has not been** a disposal of land by either of them.

Mary and Bill own the same land (the estate in fee simple) before and after the transfer. Before the transfer, they each had an interest in the whole of the property, with a present entitlement to a 50% share. After the transfer they each still have an interest in the whole of the property, and they now have a notional equal separate share (ie, 50%) that they had the right to sever during their lifetime. No land (or any part thereof) has passed from one party to another.

The bright-line period does not restart on the date in September 2021 when LINZ registered the transfer to change the form of co-ownership of the property; the bright-line period continues to be counted from the date in April 2021 when the property was originally transferred to Mary and Bill.

Is there a “disposal” when the parties’ proportional or notional shares change?

92. The next transaction to consider is where a transfer effects a change in the proportional or notional shares of the parties, (whether or not the form of co-ownership changes – ie, from a tenancy in common to a joint tenancy or vice versa).

For example, co-owners hold the land as 50:50 tenants in common and then move to holding it as 75:25 tenants in common.

93. In the context of changes to the form of co-ownership, this Interpretation Statement has so far looked only at situations where the co-owners’ proportional or notional shares do not change. But is there a “disposal” where **there is a change** in the co-owners’ proportional or notional shares (whether or not the form of co-ownership changes)? And if so, to what extent would this be a disposal?
94. In the Commissioner’s view, if there is a transfer between co-owners where neither’s interest is fully alienated but the proportional or notional share of a co-owner is reduced, there is a “disposal” for the purposes of the land sale rules by that person to the extent their interest is reduced. This is because while they have not fully alienated the whole estate or interest they had in the land, they have fully alienated part of their interest in land.
95. Relevant to this situation is s CB 23B, which provides as follows:

CB 23B Land partially disposed of or disposed of with other land

Sections CB 6A to CB 23, CZ 39, and CZ 40 (which relate to the bright-line test for residential land) apply to an amount derived from the disposal of land if the land is—

- (a) **part of the land to which the relevant section applies:**
- (b) the whole of the land to which the relevant section applies:
- (c) disposed of together with other land.

[Emphasis in para (a) added]

96. Section CB 23B(a) confirms that the land sale rules will apply to the disposal of **part of the land** to which the relevant section applies. This is illustrated in Examples 3 and 4.

Does the transfer reset the start date for the bright-line test?

97. A legal change to the form or proportionality of co-ownership is effected by registration of an instrument of transfer, and the general start date⁴⁹ for the bright-line test is the date of registration of the instrument of transfer under the LTA. But there are specific provisions that ensure the registration of a transfer to change the proportionality of co-ownership will result in the bright-line clock restarting only to the extent a particular party's interest has increased.⁵⁰ To the extent they already owned the land, the bright-line clock does not reset. These provisions came into force on 27 March 2021. Their effect is illustrated in Examples 3 and 4.

Example 3 – Change of the proportional share of co-owners who are tenants in common

In December 2018, Michaela and Daniel bought a rental property as tenants in common, Michaela as to $\frac{1}{2}$, Daniel as to $\frac{1}{2}$. Daniel's financial position changes in 2021, and he asks Michaela if she is interested in buying out part of his share of the property. She is keen to do this, so she buys half of Daniel's 50% interest at market value. LINZ registers the transfer in April 2021, and the register shows that the land is now held by Michaela as to $\frac{3}{4}$, Daniel as to $\frac{1}{4}$.

For the bright-line test (s CZ 39) to apply, there needs to have been a "disposal" of residential land by Michaela and/or Daniel. In this case, there **has been** a disposal of land by Daniel. Daniel has disposed of a $\frac{1}{4}$ interest in the land. While Daniel's interest in the estate is not fully alienated, his interest as to $\frac{1}{4}$ is fully alienated.

Before the transfer, Daniel had an entitlement to a distinct share of the land (50%), and after the transfer he has an entitlement to a smaller distinct share (25%). He has completely alienated himself of his interest in the land as to $\frac{1}{4}$ (or 25%), though he still has an interest in the land. The fact he has not disposed of all the land he had does not mean there has not been complete alienation of part of the land (the $\frac{1}{4}$ interest).

The amount Daniel sold the $\frac{1}{4}$ interest to Michaela for is income to Daniel, as the disposal was within the relevant bright-line period (5 years). He can deduct half of the

⁴⁹ See footnote 47 on page 23.

⁵⁰ Section CB 6A(5D) and s CZ 39(5D).

amount he paid for his original 50% share of the property, because he is selling half of his original share.

For the ¼ share of the land Michaela purchased from Daniel, the bright-line period starts on the date in April 2021 that LINZ registers the transfer to effect the sale of that share. The bright-line period does not restart for the 50% interest Michaela has owned since December 2018, nor for the 25% interest Daniel retains.

Example 4 – Change from a joint tenancy to a tenancy in common, with a change to the parties’ proportional or notional shares

In January 2019, brothers Simon and Cameron buy a residential rental property as joint tenants. The property was purchased for \$900,000, with each contributing \$450,000 to the purchase price. Cameron’s tourism business takes a considerable hit over 2020/2021, and he wants to sell some of his share in the rental property to try to keep his business afloat until the tourism industry picks up. Simon agrees to buy two fifths (40%) of Cameron’s share at market value. The market value of the property is \$1.5m, so Simon buys 40% of Cameron’s share (an additional 20% interest in the land) for \$300,000. LINZ registers the transfer in August 2021, and the register shows that the land is now held by Simon as to seven-tenths (70%), Cameron as to three-tenths (30%).

For the bright-line test (s CZ 39) to apply, there needs to have been a “disposal” of residential land by Simon and/or Cameron. In this case, there **has been** a disposal of land by Cameron. Cameron is regarded as having disposed of a 20% interest in the land. Joint tenants each have a prospective or “notional” equal and separate share, which they can sever during their lifetime. As such, before the transfer, Simon and Cameron each had a notional equal proportional share (50%) that they could sever. In effecting the transfer, the joint tenancy is severed, and afterwards Simon has a 70% share and Cameron has a 30% share. There is a disposal to the extent that Cameron’s previous notional proportional share has reduced. While Cameron’s interest in the estate is not fully alienated, his previous notional share as to 20% (of the whole) is fully alienated.

The amount Cameron sold the 20% interest to Simon for (\$300,000) is income to Cameron, as the disposal was within the relevant bright-line period (5 years). Cameron can deduct 40% of the amount of his share of the purchase price for the property (40% of \$450,000 = \$180,000), because he is selling 40% of his original share. So Cameron has \$120,000 net income from the sale.

For the 20% share of the land Simon purchased from Cameron, the bright-line period starts on the date in August 2021 that LINZ registers the transfer to effect the sale of

that share. The bright-line period does not restart for the (notional) 50% interest Simon has owned since January 2019, nor for the 30% interest Cameron retains.

Is there a “disposal” when a co-owner is added or removed?

98. Applying the conclusions reached above, if a transfer adds a new co-owner, there would be a “disposal” for the purposes of the land sale rules to the extent the share (or notional share) of the original owner(s) in the land is reduced. Similarly, if a transfer removes a co-owner, there would be a “disposal” by the departing co-owner of their share (or notional share) in the land.

Does the transfer reset the start date for the bright-line test?

99. The legal addition or removal of a co-owner is effected by registration of an instrument of transfer, and the general start date⁵¹ for the bright-line test is the date of registration of the instrument of transfer under the LTA. But there are specific provisions that ensure that the registration of a transfer to add or remove a co-owner will result in the bright-line clock restarting (or starting) only to the extent a particular party’s interest has increased.⁵² To the extent someone already owned the land before the addition or removal of a co-owner, the bright-line clock does not reset. These provisions came into force on 27 March 2021. Their effect is illustrated in Examples 5 and 6.

Example 5 – Adding a new co-owner

Jacob and Zhuo were getting married in March 2020, and Jacob wanted to transfer his rental property (acquired in July 2018) into their joint names. He was advised that if he did this within five years of when the property was transferred to him, there would be bright-line implications. So he decides to wait until August 2023 to transfer the property to himself and Zhuo as joint tenants.

⁵¹ See footnote 47 on page 23.

⁵² Section CB 6A(5D) and s CZ 39(5D).

When the property is transferred from Jacob to “Jacob + Zhuo” in August 2023, there will be a disposal of land by Jacob. Jacob will be regarded as having disposed of a 50% interest in the land. Before the transfer, Jacob owns 100% of the land. After the transfer, he and Zhuo will be joint tenants, so they will each have a notional equal proportional share (50%) that they could sever during their lifetime. There will be a disposal to the extent that Jacob’s previous 100% interest in the property is reduced – after the transfer he will have a notional 50% share. But if Jacob waits until after the 5-year bright-line period and none of the other land sale rules apply, the disposal will not give rise to any tax consequences for Jacob. If Jacob transfers the property into the couple’s joint names within the 5-year bright-line period, Jacob will have to pay tax in respect of the notional 50% share he disposes of to Zhuo, based on the market value of the share (s GC 1) minus a deduction for 50% of the cost of the land to Jacob (ie, 50% of the original purchase and the cost of any capital improvements).

The bright-line period will start for Zhuo on the date in August 2023 that LINZ registers the transfer of the property into the parties joint names (presuming the transfer goes ahead as planned). The bright-line period will not restart for the (notional) 50% interest Jacob will continue to own after the transfer.

Example 6 – Removing a co-owner

Susan, Charles and Donald bought a residential investment property in February 2018, as tenants in common as to $\frac{1}{3}$ each. In April 2021, Donald decides he wants to sell his share to Susan and Charles, and they agree to buy out Donald’s $\frac{1}{3}$ share (buying half of it each). LINZ registered the transfer to effect the sale in May 2021.

When the property is transferred from Susan, Charles and Donald (as tenants in common as to $\frac{1}{3}$ each) to Susan and Charles (as tenants in common as to $\frac{1}{2}$ each) in January 2021, there was a disposal of land by Donald. Donald disposed of his $\frac{1}{3}$ interest in the land. Because the disposal was outside the relevant 2-year bright-line period and none of the other land sale rules apply, there are no tax consequences for Donald. Had Donald sold his share of the property within the 2-year bright-line period, he would have had tax to pay in respect of the disposal.

For the $\frac{1}{6}$ interest each of Susan and Charles purchased from Donald, the bright-line period starts on the date in May 2021 that LINZ registers the transfer to effect the sale and purchase of Donald’s $\frac{1}{3}$ share of the land. The bright-line period does not restart for the $\frac{1}{3}$ interests Susan and Charles have owned since February 2018.

Is there a “disposal” when land is transferred on a change of trustees of a trust?

100. Where land is held in a trust, the trustees are the legal owners of the land. Some or all of the trustees of the trust may change during the existence of the trust. If this happens, the legal title to the land held in the trust would be transferred from the existing trustees to the new trustees.
101. For example, if the trustees of a trust were “A, B and C”, and “C” was to be replaced as trustee by “D”, the land would be transferred from “A, B and C as trustees of the X Trust” to “A, B and D as trustees of the X Trust”.
102. The ITA treats all the trustees of a trust as essentially a single person. This is because of the definition of “trustee” in s YA 1, which provides (relevantly) that:

trustee,—

(a) for a trust,—

(i) means the trustee only in the capacity of trustee of the trust; and

(ii) **includes all trustees, for the time being, of the trust:**

[Emphasis in para (a) added]

103. Because of this definition, where land is transferred because the trustees of the trust have changed, any “disposal” would have to be a ‘disposal to self’.
104. As noted at [85], in the Commissioner’s view, “disposal” in the land sale rules does not include transfers to self (in the same capacity). As such, the Commissioner does not consider that a transfer of land on a change of trustees of a trust will be a disposal for the purposes of the land sale rules.

Example 7 – Transfer of land when the trustees of a trust change

A piece of land is held in The Jones Family Trust, so the title is registered in the names of the three trustees – Janice, Jeremy, and Joan. Joan does not want to continue being a trustee, so it is agreed that James will take over from her as a trustee. Once the change of trustees has been effected, a transfer is registered with LINZ, to transfer the

title to the land from Janice, Jeremy and Joan as trustees for The Jones Family Trust to Janice, Jeremy and James as trustees for The Jones Family Trust.

The transfer is not a "disposal" of land for the purposes of the land sale rules. For tax purposes, the transfer was from the "trustee" (which includes all trustees for the time being) to the "trustee". The "trustee" has not parted with the land, and has the same interest before and after the transfer. As such, there is not a "disposal" in terms of the land sale rules.

105. The Commissioner has been asked whether there will be a disposal where land is transferred from the trustees of "Trust A" to the trustees of "Trust B", where the trustees of both trusts are the same – ie, whether that would constitute a 'disposal to self' and therefore not a disposal for the purposes of the land sale rules. The Commissioner considers this would be a "disposal". It is not a 'disposal to self', as the trustees are acting in different capacities as trustees of Trust A and trustees of Trust B (just as they are acting in different capacities in their trustee capacities and in their personal capacities). Likewise, there would be a disposal if someone transfers land from themselves in their personal capacity to themselves as trustee for a trust (for example, "A" disposes of property to "A as trustee for the A Family Trust"). That would not be a 'transfer to self' because of the different capacities.

Does the transfer reset the start date for the bright-line test?

106. There are provisions in the ITA that provide that the bright-line period does not restart on the registration of a transfer instrument to effect a change of trustees (ss CB 6A(3B) and CZ 39(6)). The bright-line start date for the trust will be the date of registration of the original transfer of the land into the trust (provided it has been held in the trust continually since then).

Appendix: Legislation

107. The conclusions in this Interpretation Statement are applicable to all the land sale rules in the ITA. The most commonly relevant provisions are ss CB 6A (the bright-line test) and CB 6 (the intention test), which are set out below along with other relevant legislative provisions.

Income Tax Act 2007

CB 6A Disposal within 10 years: Bright-line test for residential land

When this section applies: relationship with subject matter

(1A) This section applies if none of sections CB 6 to CB 12 apply.

Some definitions

- (1) In this section,—
- (a) **10-year test land** means residential land to the extent to which, using a land area test, it is not new build land, and the land's bright-line disposal date is within 10 years of the earliest of any of the applicable dates (**bright-line acquisition dates**) described in subsections (3) to (7C):
 - (b) **5-year test land** means residential land to the extent to which, using a land area test, it is new build land, and—
 - (i) the person acquires it no later than 12 months after the land becoming **new build land**; and
 - (ii) the land's bright-line disposal date is within 5 years of the earliest of any of the applicable dates (**bright-line acquisition dates**) described in subsections (3) to (7C); and
 - (iii) at the time of its disposal or at the time the instrument to transfer the land to another person is registered as described in subsection (3)(a), it meets the requirements of paragraph (a), (b), (d), (e), or (f) of the definition of **new build land** or would have met 1 of those requirements but for the destruction of the relevant place by natural disaster or fire.

Income

- (2) Subject to quantification under subsection (8), an amount that a person derives from disposing of residential land is income of the person to the extent to which the amount is for residential land that is—
- (a) 10-year test land:
 - (b) 5-year test land.

...

Change of trustees: disposal

- (3B) For the purposes of subsection (3), and despite subsection (3)(a), in the case of a transfer of land to a trustee of a trust from a trustee of the trust, the date on which the relevant instrument was registered is treated as—
- (a) the earliest date on which an instrument to transfer the land to a trustee of the trust was registered under the relevant law referred to in the subsection (the first date), if there has been no intervening transfer to a person who is not a trustee; or
 - (b) the first date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee.

...

Joint tenancy converted to tenancy in common

- (5B) In the case and to the extent to which the residential land is held as a tenant in common in a share equal to all joint owners, acquired subsequent to, and to the extent to which it was previously being held as a joint tenant nominally in the same share equal to the same joint owners, the bright-line acquisition date for the purposes of the definitions of 10-year test land and 5-year test land is the date the joint tenancy was acquired.

Tenancy in common converted to joint tenancy

- (5C) In the case and to the extent to which the residential land is held as a joint tenant nominally in a share equal to all joint owners, acquired subsequent to, and to the extent to which it was previously being held as a tenant in common in the same share equal to the same joint owners, the bright-line acquisition date for the purposes of the definitions of 10-year test land and 5-year test land is the date the tenancy in common in equal shares was acquired.

Dividing from and merging with pre-existing land

- (5D) To the extent to which land (land A) is either transferred by a person and, before transfer from them, was part of other land (pre-existing land) that a person owned, or is transferred to a person and, after transfer to them, merges with other land (also pre-existing land) that the person owns, an instrument of transfer for the transfer is treated as not being for the pre-existing land.

...

CB 6 Disposal: land acquired for purpose or with intention of disposal

Income

- (1) An amount that a person derives from disposing of land is income of the person if they acquired the land—
- (a) for 1 or more purposes that included the purpose of disposing of it:
 - (b) with 1 or more intentions that included the intention of disposing of it.

...

CB 23B Land partially disposed of or disposed of with other land

Sections CB 6A to CB 23, CZ 39, and CZ 40 (which relate to the bright-line test for residential land) apply to an amount derived from the disposal of land if the land is—

- (a) part of the land to which the relevant section applies:
- (b) the whole of the land to which the relevant section applies:
- (c) disposed of together with other land.

...

GC 1 Disposals of trading stock at below market value

When this section applies

- (1) This section applies when a person disposes of trading stock for—
 - (a) no consideration:
 - (b) an amount that is less than the market value of the trading stock at the time of disposal.

Market value consideration

- (2) The person is treated as deriving an amount equal to the market value of the trading stock at the time of disposal.

...

YA 1 Definitions

In this Act, unless the context requires otherwise,—

...

amount—

- (a) includes an amount in money's worth: ...

...

dispose,—

- (a) in sections CB 6A to CB 16, CB 18, CB 19, CB 21, CB 22, CZ 39, and subpart EL (which relate to the disposal of land), for land, includes—
 - (i) compulsory acquisition under any Act by the Crown, a local authority, or a public authority:
 - (ii) if there is a mortgage secured on the land, a disposal by or for the mortgagee as a result of the mortgagor's defaulting under the mortgage: ...

...

estate in relation to land, **interest** in relation to land, **estate or interest in land**, **estate in land**, **interest in land**, and similar terms—

- (a) mean an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder; and
- (b) include a right, whether direct or through a trustee or otherwise, to—
 - (i) the possession of the land (for example: a licence to occupy, as that term is defined in section 122 of the Land Transfer Act 2017);
 - (ii) the receipt of the rents or profits from the land;
 - (iii) the proceeds of the disposal of the land; and
- (c) do not include a mortgage

...

land—

- (a) includes any estate or interest in land;
- (b) includes an option to acquire land or an estate or interest in land;
- (c) does not include a mortgage: ...

...

trustee,—

- (a) for a trust,—
 - (i) means the trustee only in the capacity of trustee of the trust; and
 - (ii) (includes all trustees, for the time being, of the trust: ...

Property Law Act 2007

4 Interpretation

In this Act, unless the context otherwise requires,—

...

disposition—

- (a) means any sale, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, disclaimer, appointment, settlement, or other assurance; and
- (b) includes the creation of—
 - (i) an easement, profit à prendre, or any other interest in property; and

(ii) a trust in the lifetime of the settlor or by will, and a devise, bequest, or appointment by will in respect of property; but

(c) in subpart 6 of Part 6, has the meaning given to that term by section 345(2)

...

8 Application

(1) This Act applies to the land, other property, and instruments specified in subsection (2) to the extent that the law of New Zealand applies to the land, other property, and instruments.

(2) The land, other property, and instruments are—

(a) land in New Zealand:

(b) other property whether in or outside New Zealand:

(c) instruments whether—

(i) executed in or outside New Zealand; and

(ii) coming into operation before, on, or after 1 January 2008.

(3) This Act does not apply to Māori customary land within the meaning of Te Ture Whenua Maori Act 1993.

(4) If a provision of this Act is inconsistent with a provision in another enactment, the provision in the other enactment prevails.

(5) Without limiting subsection (4), this Act applies subject to the Land Transfer Act 2017.

(6) This section applies subject to any other provision of this Act or of another enactment providing otherwise.

...

56 Person may dispose of property to himself, herself, or itself

(1) A person may dispose of an estate or interest in property to himself, herself, or itself, alone or jointly with some other person.

(2) A disposition to which subsection (1) applies is enforceable in the same manner as a disposition to another person.

References

Case references

Dewhurst v Conning (FC Waitakere FAM-2006-090-002333, 4 September 2008)

Duke of Northumberland v A-G [1905] AC 406 (HL)

Equity Trustees Executors & Agency Co Ltd v Commr of Probate Duties (1976) 135 CLR 268 (HCA)

FCT v Cooling (1990) 90 ATC 4,472 (FCAFC)

FCT v Wade (1951) 84 CLR 105 (HCA)

Griffiths v Ellis [1958] NZLR 840 (SC)

Henty House Pty Ltd (in vol liq) v FCT (1953) 88 CLR 141 (HCA)

Junior Farms Ltd v CIR (2011) 25 NZTC ¶20-064 (HC)

Rose v FCT (1951) 84 CLR 118 (HCA)

Sharkey (Inspector of Taxes) v Wernher [1956] AC 58 (HL)

Legislative references

Income Tax Act 2007

Subpart CB (income from business or trade-like activities), ss CB 6A to CB 15, CB 23B, CZ 39, FC 2, GC 1, and the definitions in s YA 1 of "estate or interest in land", "dispose", "disposition of property", "land" and "trustee"

Interpretation Act 1999

Sections 5 and 32

Property Law Act 2007

Sections 8 and 56, and the definition of "disposition" s 4

Other legislative references

Joint Family Homes Act 1964

Land and Income Assessment Act 1900, s 59(3)

Land and Income Tax Act 1916, s 85(c)

Land and Income Tax Act 1954, s 88(1)(c)

Land and Income Tax Amendment Act 1951, s 10

Land and Income Tax Amendment Act 1973

Taxation (Bright-line Test for Residential Land) Act 2015

Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018

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Other references

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McMorland, DW and others, *Hinde McMorland and Sim Land Law in New Zealand* (online ed, LexisNexis, accessed 25 August 2021)

Minster of Revenue (Hon Todd McClay), [*Taxation \(Bright-line Test for Residential Land\) Bill: Commentary on the Bill*](#) (Wellington, Inland Revenue, 2015)

Oxford English Dictionary, (Online ed, Oxford University Press, accessed 25 August 2021)

[QB 17/09](#) *Is there a full or partial disposal when an asset is contributed to a partnership as a capital contribution?* (Inland Revenue)

Taxation Review Committee (chaired by LN Ross), *Taxation in New Zealand: Report of the Taxation Review Committee* (Wellington, New Zealand Government, October 1967)

About this document

Interpretation Statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, Interpretation Statements are not binding on the

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