

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

# Income tax – bright-line test – main home exclusion – renting to flatmates

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QB 24/02

This Question We've Been Asked explains how the main home exclusion to the bright-line test applies where a person rents out a room in their home to a flatmate.

## Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 6A, CB 16A and YA 1 “main home”

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## Question | Pātai

If a person lives in their home and rents out a room to a flatmate and then sells the land within two years of when they bought it, can they qualify for the main home exclusion to the bright-line test?

## Answer | Whakautu

Yes, a person can qualify for the main home exclusion if they live in their home and rent out a room in their home to a flatmate.

For land sold on or after 1 July 2024, the main home exclusion applies if more than 50% of the land is used, for most of the bright-line period, for a dwelling that is the person's main home.

Whether the dwelling is the person's "main home" is a matter of fact and depends on where a person resides and has a fixed presence. The fact a person rents out a room in their home to a flatmate does not stop the home being the person's main home.

In most situations where the person rents out a room in their home to a flatmate, the home will be mainly used as a residence by the person. However, there may be situations where the person's residence in their home is incidental to their main purpose of carrying on a rental activity.

## Explanation | Whakamāramatanga

### Introduction

1. From 1 July 2024, the bright-line test taxes residential land sold within two years of the bright-line start date (s CB 6A).
2. Generally, the bright-line start date will be the date the transfer of land is registered to the person under the Land Transfer Act 2017. However, there are different start dates for particular circumstances, for example, where property is acquired off the plans.
3. The bright-line test will apply<sup>1</sup> if a contract to sell the land is entered into within two years of the bright-line start date. This is known as the "bright-line end date".

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<sup>1</sup> Unless an exclusion or rollover relief is available

4. The bright-line test does not apply when the land was used predominantly for a dwelling that was the person's main home for most of the bright-line period (the period beginning on the bright-line start date and ending on the bright-line end date). This is known as the main home exclusion.
5. This Question We've Been Asked (QWBA) explains how the main home exclusion to the bright-line test applies where the owner rents out a room in their home to a flatmate.
6. We have been asked to consider:
  - whether a home is a person's "main home" if the person shares their home with one or more flatmates; and
  - how to apply the main home exclusion where the person rents out space in their home to one or more flatmates.
7. This item assumes the:
  - renting activities do not constitute the carrying on of a business;<sup>2</sup>
  - person disposing of the land is not the trustee of a trust; and
  - land has an existing single dwelling constructed on it.<sup>3</sup>
8. While this item assumes the person disposing of the land is not a trustee of a trust, the principles set out in this item also apply if:
  - the property is owned by a trust; and
  - the property is occupied by a beneficiary of the trust as their main home; and
  - either the principal settlor of the trust does not have a main home or, if they do, the subject property is their main home; and
  - the beneficiary (as licensee) rents out one or more rooms to flatmates.
9. If a person has more than one home, the greatest connection test determines which one is eligible to be considered as their main home – see **QB 24/01 If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test?**
10. All legislative references are to the Income Tax Act 2007 unless otherwise stated.

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<sup>2</sup> See Rental Income – IR264 for guidance on the tax treatment of rental income

<sup>3</sup> Different issues will need to be considered where there is more than one dwelling situated on the land

## Bright-line test

11. The bright-line test taxes residential land sold on or after 1 July 2024 where the person's bright-line end date is within two years of their bright-line start date. If a person disposed of land prior to 1 July 2024, they would need to consider whether the previous 5 year or 10 year bright-line tests and the relevant main home exclusions would apply.
12. The bright-line test applies only where none of the other land taxing rules in ss CB 6 to CB 12 apply (for example, s CB 6, which applies to the sale of land acquired for the purpose or with the intention of resale).

## Main home exclusion

13. The bright-line test for land (s CB 6A) does not apply if the land is used predominantly, for most of the bright-line period, for a dwelling that was the person's main home (s CB 16A).
14. To determine whether the main home exclusion applies, a person needs to consider two elements – whether the:
  - land was used predominantly for a dwelling (space threshold); and
  - dwelling was used as the owner's "main home" for most of the bright-line period (time threshold).
15. If the person acquired the land from an associated party, the person should consider whether any of the rollover relief rules may apply (s FD 1(4)). Further, a person should ensure the exceptions to the main home exclusion do not apply (see [29] for details).

## Land was used predominantly for a dwelling

16. For the main home exclusion to apply, the first element is that the land must have been "used predominantly" for a "dwelling".
17. A "dwelling" includes any place configured as a residence or abode.
18. In the phrase "used predominantly ... for a dwelling", the word "predominantly" qualifies the extent to which the residential land must be used for a dwelling for the exclusion to apply. Predominantly in this context means more than 50%. Land will have been used predominantly for a dwelling where the physical area of the land used for a dwelling is more than 50% of the total land area.

19. The Commissioner has concluded that land that is “used ... for a dwelling” is not limited to the land on which the dwelling is situated or to the surrounding curtilage (such as a yard or garden). Land used for a dwelling can also include other areas the person uses frequently, repeatedly or customarily in connection with or for the benefit of the dwelling: **QB18/17: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks**.<sup>4</sup>
20. Where there is only one dwelling on the land and the land is not used for any other purpose, it is likely the land is used predominantly for a dwelling. This is illustrated in the Example | Tauira (at [31]).

### **Dwelling was used as a “main home” for most of the time**

21. The second element is whether the dwelling is used as the person’s main home for most of the bright-line period.
22. “Main home” is defined in s YA 1 as:

**main home** means, for a person, the 1 dwelling—

- (a) that is mainly used as a residence by the person (a **home**); and
- (b) with which the person has the greatest connection, if they have more than 1 home

23. The definition provides that for a person the main home is the one dwelling they mainly use as a residence. If a person has more than one home, the greatest connection test determines which one is eligible to be considered as their main home. The focus of the main home definition is on the nature of the place and the relationship between the person and that place.

### **“Mainly used as a residence”**

24. The Commissioner has concluded that “residence” means a place where a person has a fixed presence and a degree of permanence. It is a place the person uses as a base for their daily activities and the seat of their domestic life and interests. “Used” means actual physical use of the dwelling as a residence and not intended use. Therefore, a

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<sup>4</sup> QB 18/17: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks, *Tax Information Bulletin* Vol 31, No 1 (February 2019): 48 at 52

dwelling is used as a residence when it is customarily or repeatedly physically used for this purpose.<sup>5</sup>

25. A dwelling will be “mainly” used as a residence where it is principally used by the owner as their residence and not for any other more significant purposes. That is, the person’s occupation of the house cannot be incidental to another more significant purpose.
26. In most situations involving renting to flatmates this test will be satisfied. The definition of main home does not contain any restrictions that preclude a dwelling being a person’s main home due to the presence of flatmates.
27. However, there may be situations where the person’s residence is incidental to their primary purpose of deriving rental income. The following factors may be of relevance in determining whether the dwelling is “mainly used as a residence”:
  - the person’s purpose in renting rooms to flatmates – renting rooms to flatmates to help defray the costs of home ownership may suggest that the dwelling is mainly used as a residence. This is in contrast, to situations where a person rents rooms to flatmates with the purpose of deriving a profit from rental activities.
  - the proportion of the dwelling that is for the person’s use – if the person is able to use a significant area of the dwelling (either exclusively or as common use), this may suggest that the dwelling is mainly used as a residence.
  - the scale of the person’s rental activity – a large number of flatmates may suggest that the person’s rental activity is significant. In some cases, this may be similar in nature to a “boarding establishment” and the dwelling is not mainly used as their residence. (That said, if the person’s rental activity is of a nature and scale that it is a “boarding establishment”, the house will not be a dwelling and the property will not be subject to the bright-line test.)<sup>6</sup>
28. While the above factors may be of relevance in considering whether a person’s home is “mainly used as a residence”, none of the factors are by themselves determinative. Each person’s situation should be considered in determining whether they have used their dwelling mainly as a residence.

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<sup>5</sup> QB 24/01 If a person has two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test?

<sup>6</sup> s CB 6A(2) and s YA 1 definitions of “dwelling” and “residential land”

## Exceptions to the main home exclusion

29. Two exceptions that may prevent the main home exclusion applying are if the:
- person has used the main home exclusion twice within the two years immediately preceding the bright-line end date (s CB 16A(3)(a)); and
  - person or a group of persons has engaged in a regular pattern of acquiring and disposing of their main home (s CB 16A(3)(b) and (4)).<sup>7</sup>
30. A “group of persons” means two or more people when they occupy or have occupied the residential land together as their main home. It also includes a non-natural person (such as a trustee of a trust or another entity) if at least one of the people who occupies the main home has significant involvement in or control of the activities of the non-natural person (s CB 16A(5)).

## Example | Taurira

31. The following example shows how the law applies. In the example:
- the person is assumed to have only one home;
  - any exclusions or exceptions referred to above do not apply; and
  - none of ss CB 6 and CB 12 applies.

### Example | Taurira – sharing home with a flatmate – main home

Seilala purchased a four-bedroom apartment, with the sale being settled on 16 February 2023. The apartment is in a unit title complex. Seilala owns the apartment and has shared ownership in the common areas (e.g., lifts, lobby and driveway).

Seilala lives in the apartment and rents out three bedrooms to flatmates. Seilala occupies the largest of the four bedrooms and his flatmates each occupy a standard double room. The apartment has a large open plan living and dining space that is used by all the occupants.

Seilala continues to live in the apartment with his flatmates until he sells it on 11 July 2024.

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<sup>7</sup> QB16/07: Income Tax – Land Sale Rules – Main Home and Residential Exclusions – Regular Pattern of Acquiring and Disposing, or Building and Disposing, *Tax Information Bulletin* Vol 28 No 9 (October 2016): 4

The bright-line test applies as the apartment was sold after 1 July 2024 and the sale was less than two years after Seilala's bright-line start date (16 February 2023).

The main home exclusion applies to Seilala if:

- more than 50% of the land was used for a dwelling that was Seilala's main home; and
- the dwelling was used as Seilala's main home for more than 50% of the bright-line period.

As the apartment consists of a single dwelling Seilala's land has been used predominantly for a dwelling.

Seilala has use of most of the apartment and decided to share with flatmates to reduce some of the cost of home ownership. As the apartment has been mainly used as Seilala's residence, the property is Seilala's main home.

As the land was used by Seilala as his main home for most of the days in the bright-line period (in fact, all the days in the bright-line period), Seilala qualifies for the main home exclusion. Any gain on the sale of the property is not taxable under the bright-line test.



## References | Tohutoro

### Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss CB 6A, CB 6 to CB 12, CB 16A, YA 1 (“main home”)

### Other references | Tohutoro anō

QB 24/01: If a person uses two or more homes, which home is their main home for the purpose of the main home exclusion to the bright-line test?

<https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2024/qb-24-01>

QB 18/17: Income tax – bright-line test – farmland and main home exclusions – sale of lifestyle blocks, *Tax Information Bulletin* Vol 31, No 1 (February 2019): 48.

[www.taxtechnical.ird.govt.nz/tib/volume-31---2019/tib-vol31-no1](http://www.taxtechnical.ird.govt.nz/tib/volume-31---2019/tib-vol31-no1)

<https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2018/qb1817-qb-1817-income-tax-bright-line-test-farmland-and-main-home-exclusions-sale-of-lifestyle-block>

QB 16/07: Income tax – land sale rules – main home and residential exclusions – regular pattern of acquiring and disposing, or building and disposing *Tax Information Bulletin* Vol 28, No 9 (October 2016): 4

[www.taxtechnical.ird.govt.nz/tib/volume-28---2016/tib-vol28-no9](http://www.taxtechnical.ird.govt.nz/tib/volume-28---2016/tib-vol28-no9)

<https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2016/qb-1607-income-tax-land-sale-rules-main-home-and-residential-exclusions-regular-pattern-of-acquiring>

## About this document | Mō tēnei tuhinga

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