Inland Revenue
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Tax and your property transactions

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Introduction

Property tax can be complex. The unique situation of each property transaction needs to be considered when working out any tax implication.

This guide gives an overview of possible tax issues related to property transactions but is not a comprehensive property tax resource. Please talk to a tax professional if your situation is not covered in this guide or you're unclear about anything.

Any of these situations could apply to a property transaction. You:

- make a gain or loss from property speculating or dealing
- move from property investment into property dealing when prices are rising
- are a property dealer and hold and rent properties during a downturn
- are a first-time landlord and do not think about the tax implications of renting your property
- are a shareholder or an owner of an interest in a look-through company (LTC) or partnership that owns a rental property
- buy an investment apartment with a managed lease and later change the rental arrangements or sell it
- sell a rental property you've claimed depreciation on
- become a dealer because you've made a number of purchase and sale transactions
- apply for GST registration when you buy property for dealing or speculation
- purchase a property on or after 1 October 2015 and sell it within a bright-line period.

Note

Property means land (including a bare section) and buildings, options or interests in "off-the-plan" properties.

Purchase means any form of acquisition of the property including transfers or gifts.

Sale means any form of disposal of the property including transfers or gifts.

If you're in any doubt concerning your property dealings, please talk to a tax professional.

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What kind of property buyer are you?

Property investor is a collective term for property speculators, dealers and investors. However, they're each treated very differently under tax law.

Even if you're not a property investor, a sale of residential property you own may be taxable.

In this guide we refer to **speculators**, **dealers** and **investors** and the **bright-line property rule**.

The following factors can determine your status as a buyer or if your residential property sale is taxable:

- your intention when you buy a property
- the patterns of your previous property transactions
- your association to a builder, property dealer or developer
- the bright-line property rule for residential property.

An investor – buys a property to generate ongoing rental income and not with any firm intention to resell it. The property is a capital asset and any profit or loss from selling the property is capital and not taxable (apart from clawing back any depreciation, which is now recoverable), unless the property is taxable under the bright-line property rule. The **bright-line property rule** applies to residential properties purchased on or after 1 October 2015.

The rules may be different if you've been associated with a person or entity involved in the business of building, dealing, developing or subdividing land.

A speculator – buys a property always intending to sell it. The property is treated like trading stock and any profit or loss from selling the property is taxable. Speculating can be a one-off purchase and sale of a property. Speculators may also receive rental income from the property before they sell it.

A dealer (also referred to as a trader) – similar to a speculator buying properties for resale. The difference is there's an established regular pattern of buying and selling properties.

The category you fall into is not determined by what the property is called or how the activity is described. For example, it may be marketed as a rental investment with strong capital gain potential, but your firm intention or prior pattern is the factor that determines its tax treatment if you're involved in or associated with someone in the business of building, dealing, developing or subdividing land.

It's important to note that only one of your firm intentions needs to be resale for you to be potentially classified as a speculator or dealer. For example, buying a property as an investment with a plan of holding it for now and selling it in a few years would likely put you into the speculator or dealer category. Simply renting a property does not automatically exclude you from paying tax on the sale. Investors, dealers and speculators may all rent out their properties from time to time.

Understanding your property investment strategy will help you decide your status. For example, the "buy and hold" approach most likely means you're a property investor for tax purposes.

Or there's the "buy and flick" strategy. This approach most likely means you're a property speculator or dealer for tax purposes.

Investors investigate and analyse future revenue streams, and any gain made on the sale of the property is incidental. Their investment is soundly based on a return from the rental income.

Property dealers or speculators try to predict the property's future price movements because that's what the deal rests on. Any rental income is secondary.

Your status may differ between properties and it may change over time as the property market rises and falls. You may have bought a property described as a good investment when your intention was actually related to property trading.

If you're not clear about your reasons for buying a property, and any possible tax issues involved, talk to a tax professional.

Property speculation

If you're buying and selling property, we recommend you get advice from a tax professional.

You might think profits from selling property are always capital gains so you do not have to pay tax on them. This is not always true. If 1 of your reasons for buying a property is to resell it, whether you live in it or rent it out, you're speculating in property and your profit is likely to be taxable. If you sell that property at a loss, the loss may be tax-deductible.

Your family home

Buying and selling your family home usually has no tax consequences if it meets the criteria for the residential exclusion.

If you buy a family home with the purpose or intention to resell it, and you or a group of persons have a regular pattern of buying and selling your family home, this would be seen as property dealing or speculation for tax purposes. The residential exclusion will not apply so the sale of it will be taxable.

Holding onto a property for capital gain

If you buy a property with the firm intention of resale, it does not matter how long you hold hold it, the gain on resale will be taxable (and any loss may be tax-deductible).

For example, you buy a property with a firm plan to resell it for a profit. The property market falls and you decide to hold onto it instead. You rent it out for 15 years and then sell it when the prices are again rising rapidly. Any gain on that sale 15 years later is likely to be taxable.

Number of properties to be considered taxable

There's no set number of properties you can have before they become taxable. In some cases the first property bought and sold may be taxable if you bought it for resale. In other cases there could be a number of factors, such as having a regular pattern of buying and selling property, before property income is taxable.

The factors looked at will vary because each taxpayer's circumstances are different. For example, buying 1 property every 2 years may be considered a regular pattern for 1 individual and not another.

Habitual buying and selling of land

From 30 March 2021 the rules around the residential and business premises exclusions changed. Now if a group of property owners work together to buy and sell the properties which are used as their residence or business premises, the sale of those properties may be taxable.

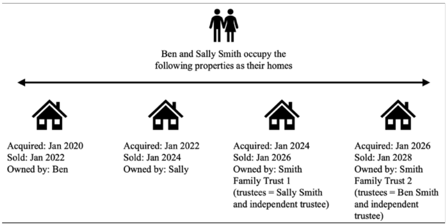
For the residential exclusion, a group of persons will be treated as undertaking buying and selling activities together where:

- all the people occupy all of the properties together as their residence, and
- where a property is owned by a trustee or other entity, at least 1 of the people who occupies all of the properties has significant involvement in, or control of, the trust or other entity.

This rule is to prevent groups of people structuring around regular pattern restrictions by using different people or entities to carry out separate transactions, or by varying what is done to the land in each transaction so that there is no pattern.

The rule applies where properties are purchased with a purpose or intention of resale.

Example



Property 1 is owned by Smith Family Trust 1

Property 2 is owned by Smith Family Trust 2

Ben and Sally Smith occupy both of the properties together as their residence.

As a trustee of the Smith Family Trust 1, Sally Smith has significant involvement in, or control of, the Smith Family Trust 1.

As a trustee of Smith Family Trust 2, Ben Smith has significant involvement in, or control of, Smith Family Trust 2.

Ben and Sally Smith occupy all of the properties and have significant involvement in, or control of, the trusts that own 2 of the properties, Ben and Sally Smith, Smith Family Trust 1 and Smith Family trust 2. They will be treated as a group of persons who undertake buying and selling activities together.

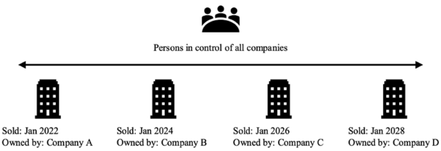
Because all the properties were acquired with an intention of resale and the group have formed a regular pattern of properties being bought and sold at regular intervals, they will not be entitled to the residential exclusion.

For the residential exclusion the most important factor is that all the people in the group occupy all the properties.

For the business premises exclusion, a group of persons will be treated as undertaking buying and selling activities together where:

- all persons in the group occupy premises mainly to carry on a substantial business, irrespective of the nature of any business carried on, and
- a person, whether or not they also occupy land as a business premises, has significant involvement in, or control of, the activities of all those in the group.

Example



Companies A, B, C and D all occupy their land as business premises mainly to carry on a substantial business. (It does not matter whether the businesses are related.) The same persons have significant involvement in, or control of, the activities of all of the companies (for example, all the companies have the same shareholders). Therefore, companies A, B, C and D form a group of persons who are treated as undertaking buying and selling activities together. Because those buying and selling activities form a regular pattern (the properties are sold at regular intervals), they will not be entitled to the business premises exclusion (assuming all the properties were acquired with an intention of resale).

The regular pattern restrictions in the residential and business premises exclusions have been expanded to align with the main home exclusion under the bright-line property rule. This ensures they apply to any regular pattern of buying and selling land used as a residence or business premises, with a focus on the regularity of the transactions rather than on what is done on the land while it is held. For example, where a first property is bought, lived in and sold, the second is renovated while lived in and sold, or the third is a bare section where a house is built and occupied then sold. The focus here will be on the regularity of transactions of buying and selling land.

Speculators claiming the deduction for the purchase of a property

Income tax

For income tax, the purchase price is treated like trading stock, except the purchase price may only be claimed in the same income year as the resale of the property.

GST

If you're in the business of property speculation and you're registered for GST for that activity, you're entitled to claim GST on the purchase of properties used in your property speculation activity.

For more information, read our **GST guide : Working with GST - IR375**.

Some confusion can arise when GST is claimed on the first property purchased for speculation. This is because you usually have to show a regular and continuous activity. Often, buying a single property will not satisfy this test.

There may be times when you cannot claim GST on a property – see page 22.

If your intention at the time you buy a property is to resell it, talk to a tax professional about any tax consequences. You may need to file an **Individual tax return - IR3** and declare any profit from the sale as income, or work out the tax implications if you sell the property at a loss.

If you think you should have paid income tax on the sale of a property but did not, please get advice from a tax professional.

If you've filed an incorrect tax return, you need to tell us about it. Please read our guide **Putting your tax returns right - IR280** to find out how to make voluntary disclosures.

Claiming a loss from property dealing or speculation

Working out if you can claim a loss from a property transaction is similar to working out if a profit is income or not.

If you're a speculator and buy property with the firm intention of selling it, but make a loss on it the loss is likely to be tax deductible. You'll need to take into account other general rules covering the deductibility of expenses or losses. You can only claim the loss on a property when you sell it.

If you're a dealer, the loss is also likely to be deductible, provided you buy the property for the dealing activity.

Some people, who did not see themselves as property dealers or speculators when they made profits from their property transactions, may take a different view when they make losses.

However, we do not just look at a one-off transaction when considering losses claimed. We review all your past property transactions to see how the profits or losses were treated for tax purposes.

If you're considering claiming a loss on a property transaction, we strongly recommend you talk to a tax professional.

When rental property investment becomes rental property dealing

Owning rental property does not automatically exclude you from paying tax when you sell it.

Depending on the reason you bought the property or on other factors, like carrying on a property-related business, you may be a speculator or dealer.

When housing prices are on the rise, "get rich quick" property schemes are often described as property investment, when they're really property dealing or speculating schemes.

Some property schemes are described as producing capital gains, which are not taxable, rather than producing income, which is. You need to consider several factors to work out if profit from property sales is capital gains or income:

- your intentions when you bought the property
- what you actually used the property for
- if you have a regular pattern of buying and selling property, and
- who you're associated with.

If you change from investor to dealer your tax situation changes too. Properties bought before this change may not be affected.

Different outcomes

An investor buys a rental property to generate rental income.

A dealer or speculator buys a rental property with a firm intention to make a gain from the increase in its value.

A dealer is anyone with a regular pattern of buying and selling properties. This includes rental properties.

To be a speculator, you need buy only 1 property, firmly intending to resell it.

Investors pay income tax on their net rental income but generally, not on the eventual sale proceeds of the property.

Dealers and speculators must pay income tax on any gain they make from reselling their property. If they have a loss, it may be tax deductible. They must also pay tax on the net rental income they may earn from the properties.

If you're counting on the rental of your property to provide a positive return on your investment (even if expenses may at first be greater than the rent you get), you're likely to be an investor. But, if you buy a property intending to resell it, or if you intend to sell it after making improvements to it, you're likely to be a speculator. Renting your property temporarily does not change your tax treatment either – you're still a dealer.

Still unable to decide?

Ask yourself, "Is the property going to give me a return on my investment, or will it only give me a positive return when I sell it at a profit?". You may receive some income from renting the property but if, from the outset your real reason for buying the property was to sell it at a profit, you're a speculator.

Some investors may find the returns from buying and selling rental properties are much higher than the actual rental income those properties can provide, so they switch from being investors to dealers.

If you start dealing in rental properties, any profits on your sales from the time you become a dealer are taxable.

This probably will not affect the sale of any rental properties you owned before becoming a dealer, assuming you bought them to provide rental income, not for resale.

Special rules for dealers and builders

Properties sold as part of a property dealing or building business are taxable in the same way trading stock of a business is.

Property dealers and builders (and those associated with them), should also take extra care when dealing with properties that were not bought as part of their business activities if those properties are sold within 10 years.

Once you're a dealer (or associated with one), special rules apply. Any profit may be taxable if you own any properties whether or not for the purpose of dealing, and:

- sell any property that is part of the assets of the activity of dealing, or
- sell any other property within 10 years of buying it.

This applies to all properties you buy from the time you begin dealing to the time you cease dealing, and includes rental properties.

There are exceptions for some family homes and business premises.

Rental properties do not qualify as a business for this exclusion.

Depreciation

Changing from rental property investment to rental property speculation or dealing can also affect depreciation on your properties. Rental investors can claim annual depreciation on chattels, but speculators and dealers who hold property as trading stock cannot claim annual depreciation.

A list of chattels can be found in the **Rental income – IR264** guide.

Note

From the 2012 income year you can no longer claim depreciation on rental property buildings.

Note

From the 2021 income year depreciation on non-residential buildings has been reintroduced. Refer to our guide **Depreciation - IR260**.

Switching back to property investment from speculation or dealing

Properties you bought as a dealer, builder or developer are treated like trading stock and are taxable when you sell them, regardless of any change in your status.

For example, if you buy a rental property when you're a dealer but decide to hold it and rent it during a market downturn, any later gain on the sale will still be taxable, even if you're no longer a dealer.

If you intended to resell your rental property when you bought it, talk to a tax professional. You may need to complete an **Individual tax return - IR3**.

Rental income for a speculator or dealer

As a speculator or dealer, you may decide the time is not right to sell a property, so you rent it out instead. If you do this, there are implications for income tax, and GST (if you're registered).

Income tax

You'll have to include rental income in your income tax return. You may claim costs or expenses associated with the rental.

Residential property deduction rules apply to most residential rental properties from the start of the 2019-20 income year, which for most people ends on 31 March 2020.

From 1 October 2021, new interest limitation rules also apply to most residential rental properties. For most people, this means these new rules start to apply during the 2021-2022 income year. These changes include:

- interest is not deductible for residential rental property in New Zealand acquired on or after 27 March 2021, unless an exclusion or exemption applies
- the ability to deduct interest is being phased out over the next four years for residential rental properties acquired before 27 March 2021 with loans first drawn down before that date
- special rules apply for refinanced loans and for interest on revolving credit and overdraft facilities
- for property taxed on the sale, the amount of interest unable to be claimed under the interest limitation rules is allowed in the year of sale.

Certain properties are excluded from the new rules and you may also claim interest if you qualify for the land business, property development or new build exemptions. If your rental property qualifies as a new build, you can claim the interest charged for 20 years from the date the code compliance certificate is issued under the Building Act 2004.

For more information go to **ird.govt.nz/property** or read our guide **Rental income – IR264**.

GST

GST-registered speculators or dealers, who claim a GST refund on the property when they buy it and then rent the property to a residential tenant, need to make an adjustment in their GST return to reflect this.

If you buy a property for the principal purpose of making taxable supplies (in this case, property dealing/speculation, or commercial rents), but then use it for another purpose other than making taxable supplies (for example residential rental), you must make a GST adjustment.

For details about making adjustments, see our **GST guide - IR375**.

We advise you to talk to a tax professional before renting out your property if it's a part of your normal dealing, especially if you're a first-time renter.

Special tax rules for those in property-related activities

Special tax rules may apply to you if you own property and you or an associate are involved in dealing in land, building and construction work, or in subdividing or developing land. For example, the amount of time you've owned your property becomes an important consideration for tax purposes.

Any profit from a sale maybe taxable if you or an associated person undertake any of the above activities and:

- sell any property that is part of the assets of the activity of dealing, building etc, or
- sell any other property within 10 years of buying it or (for builders) completing improvements to it, that was not used in your business.

These rules may apply to any properties bought during the period of your property-related business activities, even if you sell a property after you cease these business activities.

There are exceptions to these special rules, for example where the property you sell was used primarily as your family home, or if you used it as your business premises, other than for rental activities.

Example

Trent started buying and selling residential houses in 2008. By the end of 2008, he had established a regular pattern of buying and selling and was a dealer for tax purposes.

Trent co-owns Trent Rentals Ltd, a company that buys residential rental investment properties. In January 2010 the company buys a rental property to hold and rent. In December 2014, rentals in the area are falling and it sells that property. Income tax would not normally be due on the profits from the sale, because the company bought it as an investment. But, because Trent Rentals Ltd is associated with Trent, who established himself as a dealer before this property was bought and it was sold within 10 years, Trent Rentals Ltd must pay tax on the sale regardless of the company's original intention to hold it as a rental investment.

To understand the special tax rules that apply when you or an associate are dealing in property related activities, we strongly recommend you talk to a tax professional. You should get advice before selling any property you have held for less than 10 years, if it is not part of your or your associate's business.

Property transactions and associated person rules

If you have an association with people in certain property-related industries, there may be a tax impact on all or some of your property transactions, even if you're not personally a property dealer, developer or builder.

These impacts could mean the difference in the gain from the sale of a property being treated as taxable income or as a non-taxable capital gain.

The example on page 16 shows how the associated person rules could affect you when you would not have even considered such an association. So, if you're considering investing in property or selling your family home, it's important you talk to a tax professional. Particularly if you think there is any possibility of an association applying to you.

Associated person rules may make a property sale taxable when there's an association with:

- a property dealer when the property was bought
- a property developer when the property was bought, or
- a builder when significant improvements started on a property.

Note

Associated person rules changed for land acquired on or after 6 October 2009, widening some associations.

How individuals can be associated

There are a number of tests used to work out if 2 persons are associated for land transactions.

Under the basic rules you are, for example, associated with:

- your spouse, civil union or de facto partner
- your children (under 20 years old)
- a company you hold 25% or more market interest in (company and individual test)
- a company your spouse or children hold 25% or more market interest in (the aggregation rule)
- a company where the combined holdings under all these rules totals 25% or more market interest in (the aggregation rule)
- a partnership, if you're a partner.

If you're a trustee you're associated with:

- any settlor of the trust (and vice versa)
- a trustee of another trust where the trusts have a common settlor
- a person with power to appoint or remove a trustee.

Extended associations

You can be associated to a third person, where you're already associated to a second person under the above rules, and that second person is associated to the same third person under a different rule from the rule that associates you to the second person.

This is called the "tripartite" test and usually means that if person A is associated with person B, and B with C, person A is also associated with person C. There are exceptions, particularly in relation to the company tests, so it's important to talk to a tax professional if you're in doubt.

Example

Kim is married to Bruce, a property developer. Kim is settlor and trustee of a trust, which owns all the shares in Kim's family company.

So, Bruce is associated to Kim under the 2 relatives test. Kim is associated to Kim's trust under the trustee and settlor test.

Bruce is now also associated to Kim's trust because of his association to Kim as spouse and Kim's association to the trust as settlor.

Bruce is considered to hold what Kim's trust holds, which is 25% or more of Kim's company. So, Bruce is associated to Kim's company.

Any land transactions Kim's company makes would be treated as if it were being made by a property developer (Bruce's occupation).

For more information on the associated persons rules read **Tax Information Bulletin Part II, Vol 21, No 8 (October/November 2009)**.

You should talk to a tax professional if you think any of the association rules may affect you.

Living in a property owned by your LTC, company, partnership or trust

Some people buy or transfer a family home using a limited liability company, such as a look-through company (LTC) or trust or partnership, including a limited partnership. This guide focuses on LTCs but the information applies equally to trusts or partnerships.

Using an LTC for residential rental investment can be a perfectly valid structure. However, we consider some LTC arrangements are made to avoid tax.

Problems arise when an LTC buys an LTC shareholder's family home, and shareholders continue to live in the home and claim deductions (for example interest, insurance, rates and maintenance) for the property. In most instances this is considered tax avoidance.

Expenses in relation to your family home, whether owned by you, a company in which you're a shareholder, a trust in which you're a beneficiary or a partnership you're a partner in, are not deductible.

You may think that if you continue to pay market rent to the company you can continue to claim these LTC expenses against your income. However, we may still consider the arrangement to be tax avoidance.

Penalties might apply

Tax avoidance carries penalties of up to 100% of the tax shortfall, and in some cases, such as deliberately misleading Inland Revenue about how the arrangement is set up, there's a shortfall penalty of 150% for tax evasion. We may also consider prosecution.

The new residential property deduction rules apply whether you hold the property yourself, or in a partnership, look-through company, or close company. The rules also apply to trustees of a trust who earn taxable income from a residential rental property.

Now, you can generally only deduct expenses for residential property up to the amount of income you earn from the property for the year. Any deductions over your income from the property are called excess deductions, must be carried forward to the next income year you earn income from the property (or other residential property).

This means that rental property losses cannot be used to reduce your tax liability for other income, such as salary and wages or business income.

Living temporarily in a property owned by your LTC

From time to time a shareholder will move into a home owned by their LTC which they previously rented to tenants. There may be good reasons why they do this. For example:

- inability to find tenants
- relationship breakdown
- relationships formed with tenants
- renovating or building your own home.

But, if you live in the property and you're a shareholder, you generally cannot continue to claim what would otherwise be private expenses.

Whether or not this structuring and claiming of resulting losses is considered tax avoidance depends on a number of factors. For example, whether the arrangement is permanent or temporary, and whether there are commercial factors driving the decision to live in the property.

Living with your tenants in a property owned by your LTC

The situation around tax avoidance is less clear when both a shareholder/owner and other tenants live in an LTC-owned home. The shareholder/owner's proportion of the expenses is generally not considered deductible. We look at these arrangements on a case-by-case basis.

Asset protection

Some people claim the main reason for holding their personal residence in a limited liability company is for asset protection rather than to minimise tax.

In reality, these structures provide little or no asset protection. For shareholders to make use of LTC losses, they must hold the shares in their own name. The market value of the shares of an LTC company that owns residential investment property is equal to the market value of the property and represents an asset to the shareholder, less the mortgage. A creditor claim equal to the current value of the property is possible.

We look closely at the reasons for such arrangements, but usually disregard the asset protection argument when considering if an LTC arrangement is tax avoidance.

If you're considering setting up an LTC to own your family home for tax loss claim purposes, be aware that we consider these types of arrangements to be tax avoidance.

If you're moving into your LTC-owned property over the long-term, consider taking the home out of your LTC.

If you're moving into an LTC-owned property on a temporary basis, be careful not to claim a deduction for private expenses for the period you're in the home.

We strongly recommend you talk to a tax professional with expertise in this area if you're considering any of the above arrangements.

GST on apartment purchases and sales

Why do people register for GST when they buy property, particularly apartments?

If an apartment is being used for short-term stay accommodation (for example less than 4 weeks) the rental income may be taxable supplies for GST purposes.

Many apartments are sold as "going concerns" with management leases and guaranteed rental arrangements in place at the time of purchase.

No GST is paid or can be claimed on a property sold as a going concern, provided certain conditions are met, for example both parties are GST-registered and the management leases and rental arrangements remain in place. The transaction is defined as "zero-rated" for GST. However, the future sale will be subject to GST unless it too is zero-rated as a going concern.

Zero rating

Buying an apartment that's been zero-rated for GST may seem like a good idea because you do not have to pay GST on the purchase price. There's no hassle with tenants because the management company takes care of renting the apartment, and you may also have a guaranteed source of income.

There are conditions attached to this type of transaction. You need to know what they are or you might get an unexpected GST bill.

Unexpected GST to pay

If you sell your apartment with the original or an appropriate replacement management agreement still in place, to a buyer who is also registered for GST, your apartment may still be a going concern. In this case you probably do not have to pay GST on the sale.

But, if you change the apartment use, you may have to pay GST. For example:

- if you or a member of your family move into the apartment
- if you rent it to residential rental tenants.

You may also have to pay GST if you sell your apartment and the original management agreement has expired and you have not negotiated another lease with them.

We strongly recommend you talk to a tax professional before committing to any property deal involving GST or a going concern arrangement.

For more information about tax on zero-rated apartments, read our leaflet T**hinking of selling your leased apartment? - IR498**.

GST claims on property purchases

You must check if GST affects your property transactions in these situations.

- **Buying residential rental properties to rent**

  If you buy a residential rental property as an investor you cannot claim a GST credit on the purchase because long-term renting of residential accommodation is a GST-exempt activity.

- **Buying residential rental properties to trade**

  If you buy residential rental property as a dealer you may be able to claim a GST credit when you buy a property. You'll have to include GST in the sale price when you sell that property and pay the GST to us, unless the sale is zero-rated.

GST on property sales

If you claim a GST credit when you buy a property, you'll probably need to include GST in the sale price when you sell that property and pay the GST to us, unless the sale is zero-rated.

Before committing to any property deal involving GST we recommend you talk to a tax professional.

Depreciation recovered on rental properties

Before the 2012 income year you could claim depreciation on a rental property, but if you sell the property for more than the depreciated (book) value, you'll probably repay most (or all) of the depreciation you claimed previously. This depreciation recovery is taxable income.

If you sell the property for less than you paid for it, you may only have to declare a portion of the depreciation you've claimed as income.

Example	
You buy a rental property for	$400,000 (excluding the land value*)
You claim total depreciation of	$ 20,000
The property's book/adjusted tax value is	$380,000

Outcome 1

You sell the property for (excluding land value*)	$400,000
Difference between sale price and book value	$ 20,000
Depreciation recovered	$ 20,000

Include this amount as income in your tax return for the year the property was sold

Outcome 2

You sell the property for (excluding land value*)	$425,000
Difference between sale price and book value	$ 45,000
Depreciation recovered	$ 20,000

Include this amount as income in your tax return for the year the property was sold

* Land is not a depreciable asset.

Outcome 3

You sell the property for (excluding land value*)	$390,000
Difference between sale price and book value	$ 10,000
Deprecation recovered	$ 10,000

Include this amount as income in your tax return for the year the property was sold

Outcome 4

You sell the property for (excluding land value*)	$350,000
Difference between sale price and book value	($30,000)
Depreciation recovered	Nil

* Land is not a depreciable asset.

If the property is sold, you can only claim depreciation for the months the property was owned in that tax year. You cannot claim a loss as a deduction after that.

Note

You must include any depreciation you've recovered as taxable income when you sell your property. If you do not, you'll be understating your income.

It's important you consider and account for any historical depreciation claimed when you're selling the property. We recommend you talk to a tax professional.

Bright-line property rule for residential property

In addition to the usual intent and purpose rules, from 1 October 2015 residential property sales may be taxable if you purchase then sell within a certain timeframe, even if you did not intend to sell the property when you purchased it. This will generally not apply to your main home.

The bright-line property rule looks at whether the property was acquired on or after:

- 1 October 2015 through to 28 March 2018, and sold within 2 years, or
- 29 March 2018 through to 26 March 2021 and sold within 5 years. This includes property acquired on or after 27 March 2021, if it was acquired as a result of an offer the purchaser made on or before 23 March 2021 and that offer was not able to be revoked or withdrawn before 27 March 2021, or
- 27 March 2021 and sold within 10 years or 5 years to the extent the property has a 'new build' on it (see below).

The date you acquire a property is generally the date a binding sale and purchase agreement was entered into for the purchase of the property (even if some standard conditions like getting finance or a building report still need to be met). This determines which bright-line period applies (2, 5 or 10 years).

Note

You may be required to have residential land withholding tax (RLWT) deducted at the time of sale if you are an offshore RLWT person.

For more information on RLWT go to **ird.govt.nz/rlwt**

Bright-line period dates

For most people a bright-line period starts on the purchase date which is the date property ownership was registered with Land information New Zealand (LINZ) and ends on the date you sign a sale and purchase agreement to sell the property.

If the property is in another country, then it's the date the transfer was registered under that country's laws.

If the purchase or sale occurs before the change in title is registered with LINZ or if you have subdivided the property you should consult a tax professional.

Example

Marie signs an agreement to buy an investment property on 5 April 2018. The transfer to Marie is registered on the title with LINZ on 17 May 2018.

She decides to sell the property and signs a sale and purchase agreement on 25 February 2020. The transfer is registered on the title on 3 March 2020.

As she acquires the property on 5 April 2018 the property sale is subject to the 5 year bright-line period.

Because the sale date is within 5 years of the date she acquired it the bright-line property rule applies and the sale of the property will be taxable.

The start date for the bright-line period is 17 May 2018 (the day the transfer is registered) and the end date is 25 February 2020 (the day the sale and purchase agreement is entered into).

When a sale is not taxable

The sale will be taxable unless one of the following exclusions apply:

- it's your family/main home (see below)
- you have inherited the property
- the property has been transferred under a relationship property agreement, or
- the property was transferred on the death of a person to the executor or administrator of the estate.

From 1 April 2022, certain changes in legal ownership no longer trigger the bright-line property rule since the effective ownership is the same. This includes:

- transfers to or from look-through companies and partnerships
- some transfers to family trusts where there is no change in economic ownership.

Relief is provided if the amount received on transfer is equal to or less than the original owner's acquisition cost. No relief is provided if the amount received is more.

Specific relief also applies for transfers of land subject to the Te Ture Whenua Māori Act 1993 and transfers to trusts as part of settling Treaty claims.

How do I tell if the property is my main home?

Your family or main home is the property you live in. If you have more than 1 home then the home you have the greatest connection to is considered your main home.

You need to have used the property as your main home for:

- more than 50% of the time you owned it, if you acquired it between 1 October 2015 and 26 March 2021, or
- 100% of the time you owned it, if you acquired it on or after 27 March 2021.

What if my main home use changes?

If you acquired your main home on or after 27 March 2021, and you do not use it as your main home for any period of 12 months or less while you owned it, you do not need to count this as a "change-of-use", so you will still meet the 100% time test and be eligible for the main home exclusion.

For example, if you take a few months to move into a property, or own it for a few months after moving out, this is counted as main home use.

If you do not use it as your main home for any period of more than 12 months during the time you owned it then you'll be subject to the change-of-use rule and will be required to pay any income tax on the proportion of the profit that relates to the days the property was not used as your main home.

What about the area of land usage?

For property acquired before 27 March 2021, more than 50% of the area of the land must have been actually used as your main home for the main home exclusion to apply. This includes such things as the yard, gardens and garages and is based on your actual use of the property and not your intended use of the property.

If you used less than half of the land as your main home then you cannot use the main home exclusion.

However, if you acquired your property on or after 27 March 2021 and you use less than half of the land as your main home, you can still use the main home exclusion but you pay tax only on any profit relating to the non-main home portion of the land.

Example

Bill buys an apartment block on a single title in April 2018. He lives in one of the apartments as his main home and rents out the remaining 6 apartments. Bill sells the apartment block to a third party in November 2021.

Bill cannot use the main home exclusion because the land (contained on the single title) was acquired before 27 March 2021 and was not used predominantly as his main home. The majority of the land was used as rental property.

What if I own more than one home?

If you have 2 or more houses that you live in, you'll need to decide which house is your main home. This is determined by considering which of the properties you have the greatest connection with.

Various factors may decide which property you have the greatest connection with, including:

- the time you occupied the home
- where your immediate family lives
- where your social ties are strongest
- your use of the home
- your employment, business interests and economic ties to the area where the home is located, and
- whether your personal property is in the home.

What if my home is owned by a trust?

The Trust can use the main home exclusion if the property is the main home of a beneficiary of the Trust, but only if the settlor who contributed the most to the trust does not have another main home.

When the main home exclusion does not apply

The main home exclusion cannot be used if either:

- you've used the main home exclusion twice within the last 2 years of the sale of your main home, or
- you, or a group of persons, have engaged in a regular pattern of buying and selling of your main home.

What qualifies as a new build

From 27 March 2021, to qualify for the shorter 5-year bright-line period for new builds, one of the following must be satisfied:

- For an existing new build, the person must have acquired it no later than 12 months after the code compliance certificate (CCC) was issued for that new build under the Building Act 2004.

- Where the person makes an off-the-plans purchase for a new build, the CCC confirming the dwelling was added to the land must be issued by the time they sell the land.
- Where the person constructs a new build on their land, the CCC confirming the dwelling was added to the land must be issued by the time the land is sold.

In all cases, the new build must be a self-contained dwelling and must still be on the land when it is sold, otherwise the 10-year bright-line period applies.

Example

Catherine purchases a newly built residential property from a developer in May 2022. The property received its CCC in April 2022. She sells the property to Peter in January 2023. The 5-year new build bright-line period applies to the land, rather than the 10-year bright-line period, because Peter has acquired the new build no later than 12 months after it received its CCC.

Peter sells the property in December 2028. As he has sold the property more than 5 years after acquiring it, he is not subject to tax under the bright-line property rule for new builds.

Fact variation: Peter acquires property in January 2024

If Peter acquires the property in January 2024, instead of January 2023, then the 10-year bright-line period would apply to the land. Peter would not qualify for the 5-year new build bright-line period, because he acquired the land more than 12 months after the new build received its CCC. If he sells the property in December 2028, he will have sold it within 10 years of acquisition, so his gains on the land would be subject to tax under the 10-year period in the bright-line property rule.

Note

The following remediated or converted buildings can also qualify as a new build provided the work was completed on or after 27 March 2020 and certain conditions are met:

- a dwelling previously on the earthquake prone buildings register that has been remediated
- a dwelling that has been at least 75% reclad because of weathertightness issues
- a dwelling converted from a commercial premises or a hotel/motel
- is part of a building containing two or more dwellings converted from a single dwelling.

What if the land has a new build and a non-new build on it?

Only the portion of the land with a new build on it qualifies for the 5-year bright-line period, and the portion of the land with a non-new build on it is subject to the 10-year bright-line period.

Where land has a new build and a non-new build on the same legal title, any gain on the sale of the property may need to be apportioned between the new build land and the non-new build land.

The portion of land that relates to each dwelling includes the land immediately beneath the dwelling, as well as outdoor areas exclusive to the dwelling, and a reasonable proportion of shared areas.

Example

Amber purchases an existing dwelling (non-new build) situated on an 800m^2 section for $1m in 2022, which she rents out. She builds a second dwelling on the site (on the same title) in 2025 (new build). Building the new build costs $400,000, and after it is constructed, she rents it out.

After building the new build, Amber's property is comprised of the following areas:

- the non-new build, which covers 200m^2
- exclusive areas attributable to the non-new build, which cover 200m^2
- the new build, which covers 200m^2
- exclusive areas attributable to the new build, which cover 150m^2, and
- a common area (a shared driveway) of 50m^2, which is available for use by occupants of both the existing dwelling and the qualifying new build.

After constructing the qualifying new build, Amber has spent a total of $1.4m on the property. She sells the property in 2028 for $3m, so makes a total gain on sale of $1.6m.

Amber's calculation under the bright-line property rule would be as follows:

New build

The portion of the land with the new build on it is subject to the 5-year new build bright-line period. This portion of the land is 375m^2 (being the land under the dwelling, the exclusive outdoor area and a half share of the common driveway). This is 46.9% of the total 800m^2 land area.

Amber disposes of the land more than 5 years after acquiring it – the property was purchased in 2022 and sold in 2028. It does not matter that the new build was only built in 2025 – the new build bright-line period applies provided a new build is on the land when it is sold. Therefore, 46.9% of the gain is not taxable on sale.

Non-new build

The proportion of the land with the non-new build on it is subject to the 10-year bright-line period as it is disposed of within 10 years of acquisition. The non-new build makes up 425m^2 of the land (being the land under the dwelling, the exclusive outdoor area, and a half share of the common driveway). This is the remaining 53.1% of the land.

Therefore, Amber is required to pay tax on the following amount of her gain on sale:

($3,000,000 - $1,400,000) x 53.1% = $849,600

At her marginal tax rate of 39% she has tax to pay of $331,344 on her $849,600 taxable gain on sale.

Does the bright-line period restart if I add a new build?

Adding a new build to land after acquiring it does not restart the bright-line period to the date the new build is added.

The start of the bright-line period remains the purchase date, which for most people is the date property ownership is registered with Land Information New Zealand (LINZ).

Example

James signs a sale and purchase agreement for a section in March 2023. Settlement occurs and title is transferred to James on 12 April 2023. James adds a new build to the section. The new build receives its CCC confirming it has been added to the land in June 2025. James sells the property in October 2029.

The bright-line period begins on 12 April 2023 (when title was issued to James) and not from June 2025 (when the new build receives its CCC). Therefore, James would only be taxed on the gains on sale if he sold the property by 11 April 2028 (that is, within 5 years of title for the property transferring to James). Since James sold the land outside of that period, the 5-year new build bright-line period does not apply.

What if I make a loss on sale?

If your residential property sale is taxable only under the bright-line property rule and you make a loss on the sale you will not be able to claim the loss against your other income. The loss amount can only be claimed against any other taxable property sales net income in the same year.

Otherwise you'll need to claim it in a future year when you have net income from another taxable property sale. If, however, the loss is part of property trading activity different rules apply.

Example

In June 2017 Zac sells residential property (taxable under the bright-line property rule). Zac purchased the land for $600,000 and sold it for $540,000, meaning he has a loss of $60,000. In the same year he had wages of $80,000.

As Zac did not have another taxable property sale in the same year he cannot claim the $60,000 loss in his tax return. He needs to keep a note of this in case he can use it in a future year.

In August 2019 Zac sells land (taxable under the intention test), making a profit of $100,000. In this year's tax return Zac can use the $60,000 loss from the bright-line sale in 2017. This means he only has to pay tax on $40,000 of the profit, rather than the full $100,000.

How do I show income from property sales in my tax return?

If you're showing your income from property sales in your tax return, you may also need to complete a **Property sale information - IR833** form for each property sold. You can complete the IR833 in myIR or download it from **ird.govt.nz/forms-guides**

Can I claim the purchase price of the property for bright-line?

You can claim a deduction for the purchase price of the property and any costs for capital improvements made to the property. These can be claimed in the same income year you sell the property.

For more information about the bright-line property rule, read our guide **Bright-line property tax – IR1227** at **ird.govt.nz/forms-guides**

Tax on property transactions

Income tax

As an individual buying and selling property, a partner in a partnership, or an owner in a look-through company, you need to complete and send us an **Individual tax return - IR3** each year, or an **Individual tax return – non-resident - IR3NR** if you live overseas. Partnerships and look-through companies also have to complete an **Income tax return – partnerships - IR7**.

You can submit your return in myIR.

Include enough information to show how you worked out the amount of property income you've calculated after deducting expenses.

If you have made a loss from a residential property, you will need to consider if the residential property deduction rules apply. Check our website **ird.govt.nz/property** for more information about the rules.

Refer to the income tax return guide to find out where in the tax return you need to provide us the information.

You may want to use the **Residential property deductions worksheets - IR1226** to help you work out the amounts.

If you're showing property sale income in your tax return, you may also need to complete a **Property sale information - IR833** form for each property sold, if you have not already done this.

You can then work out the tax on your total taxable income. Tax credits, such as PAYE, are deducted from the tax on your total taxable income.

For most people the tax year ends at 31 March. Tax to pay is due by 7 February the following year (or 7 April if you have a tax agent with an extension of time).

If you do not already send us a tax return each year, you can complete an IR3 return using our online services **ird.govt.nz/myIR** Alternatively, you can call us on 0800 227 774 and we'll send you a form at the end of the year. The number for overseas callers is 64 4 978 0779.

Provisional tax

Taxpayers who have to pay more than $5,000 tax at the end of the year ($2,500 in 2019-20 and earlier years) are required to pay provisional tax.

Provisional tax is not a separate tax – it's another way of paying tax as you earn your income. You usually pay 3 instalments throughout the year to cover your expected end-of-year income tax.

For more details read our **Provisional tax - IR289** guide.

Residential land withholding tax (RLWT)

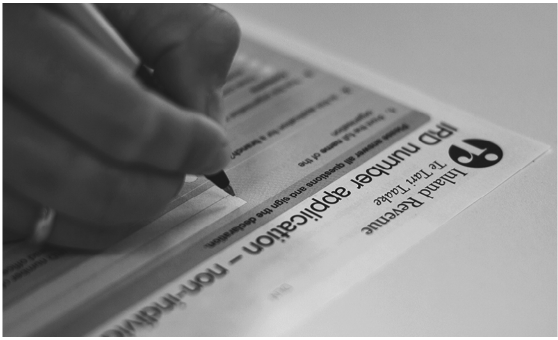
If you're an offshore RLWT person you may have RLWT deducted from your residential property sale/disposal. If you're including a taxable property sale in your end-of-year income tax return then you're entitled to claim the RLWT deducted as a tax credit - reducing your tax to pay.

Property partnerships

A partnership of 2 or more people will need an IRD number by completing an **IRD number application – resident non-individual - IR596** form. If the partnership is a non-resident partnership or meets the definition of an offshore person, it needs to complete the **IRD number application – non-resident/offshore non-individual - IR744** form. The partnership will only need to keep one set of accounts to record its income and expenses and file an **Income tax return – partnerships - IR7** each year.

This return will show how the income was calculated and the amount of each partner's share.

If you're a couple (for example husband and wife, civil union or de facto partners) buying and selling property, you do not need a partnership IRD number or IR7. Each partner includes a copy of the accounts in their individual tax returns and includes their share of the profit from the property activities.



Companies

A company needs its own IRD number. Complete and send us an **IRD number application – resident non-individual - IR596** form. Companies (other than a look-through company) complete an **Income tax return – companies - IR4** each year.

GST

GST is a tax on the supply of most goods and services in New Zealand. GST can apply to people who buy and sell property. You must register for GST if your annual turnover in the previous 12 months was more than $60,000 (or is likely to be in the next 12 months). Turnover is the total value of supplies made for all your taxable activities, excluding GST.

Putting your tax affairs right

You have an obligation to assess your own tax liability and pay the tax you owe. To do this you'll need to know your basic tax obligations.

You must:

- correctly calculate the amount of tax you have to pay (unless you do not have to complete a return)
- deduct or withhold the correct amount of tax from payments or receipts (when required)
- pay tax on time
- keep all necessary information (including books and records) and maintain all necessary accounts or balances
- disclose all information needed by us in a timely and useful way
- cooperate with us as required by the Inland Revenue Acts
- correctly respond to an income tax assessment, if you receive one
- tell us if you should have received an income tax assessment but did not receive one
- comply with other specific tax obligations.

Entering false information in a tax return or knowingly not showing all your income are examples of not meeting your tax obligations.

Penalties may be lighter if you tell us about your tax situation before we find out some other way. It's a good idea to talk to a tax professional to find out if you do have a tax obligation that should be disclosed.

Voluntary disclosure

A voluntary disclosure is when you tell us if there's something wrong with your tax return(s) before we find out in some other way, for example through routine checking or an audit.

If you've made a mistake or filed an incorrect tax return, volunteering this information means any penalties may be reduced.

If you think you need to make a voluntary disclosure, we recommend you talk to a tax professional first.

You can make a voluntary disclosure at any time:

- by completing a **Voluntary disclosure - IR281** form
- by letter, fax or email
- by calling us
- by visiting one of our offices, or
- in an interview as part of an audit.

For more information please read our guide **Putting your tax returns right - IR280**.

Useful information

0800 self-service number

Our 0800 self-service number, 0800 257 777, is open 7 days a week. Make sure you have your IRD number ready when you call.

For access to your account-specific information, you'll need to be enrolled with voice ID or have a PIN.

When you call, confirm what you want from the options given. If you need to talk with us, we'll re-direct your call to someone who can help you.

Need to speak with us?

Have your IRD number ready and call us on one of these numbers.

General tax, tax credits and refunds	0800 775 247
Employer enquiries	0800 377 772
General business tax	0800 377 774
Overdue returns and payments	0800 227 771

We're open 8am to 6pm Monday to Friday, and 9am to 1pm Saturday. We record all calls.

Our self-service lines are open 7 days a week. They offer a range of automated options, especially if you're enrolled with voice ID.

Find out more at **ird.govt.nz/contact-us**

Privacy

Meeting your tax obligations means giving us accurate information so we can assess your tax and entitlements under the Acts we administer. We may charge penalties if you do not.

We may also exchange information about you with:

- some government agencies
- another country, if we have an information supply agreement with them, and
- Statistics New Zealand (for statistical purposes only).

You can ask for the personal information we hold about you. We'll give the information to you and correct any errors, unless we have a lawful reason not to. Find our full privacy policy at **ird.govt.nz/privacy**

Te Kāwanatanga o Aotearoa
New Zealand Government