



24 February 2023

Dear [REDACTED]

Thank you for your request of 30 January 2023, made under the Official Information Act 1982 (OIA). You requested:

- 1) *Why does the Government exempt "own-homes" from the Bright-line Test?*
- 2) *Why did the Government change the legislation to the "own-home exemption" for the bright-line test to include properties that have been transferred to a trust whereby the beneficiaries and principal settlor(s) for the trust are the same people as the homeowner(s) were prior to the property being transferred. I understand that the IRD refers to this as "Roll-over Relief".*

### **The bright-line test**

The Government introduced the bright-line test in 2015 to supplement the "intention test" set out in CB 6 of the Income Tax Act 2007. The intention test, which taxes gains from the disposal of land when bought with an intention or purpose of disposal, can be difficult to enforce due to its subjectivity. The bright-line test was introduced to supplement this subjective intention test with an objective test.

#### **Question 1: Why a person's main home is exempt from the bright-line test**

The main home exclusion means that the bright-line test does not tax periods when a property is used as the owner's main home. If the property is also used as a rental property, those periods may be taxed. A different rule applies for residential property acquired before 27 March 2021.

The Government excluded main homes from the bright-line test as a person's main home is less likely to have been bought with the intention of disposal. This is referred to as the "main home exclusion", and is similar to exclusions available for the intention test and other parts of New Zealand's tax rules.

#### **Question 2: How the main home exclusion applies when it is held in a trust, and why**

Since the bright-line test was introduced in 2015, the main home exclusion has also included a specific rule for residential properties held on trust. This recognises that many New Zealanders use trusts to hold their assets.

The main home exclusion is available for a property held on trust where the property is the main home of a beneficiary of the trust, but only if a principal settlor of the trust does not have a different main home. This rule is in place so that trusts cannot be used to obtain the main home exclusion for multiple properties.

### *Rollover relief*

Rollover relief is a separate concept to the main home exclusion.

Rollover relief does not mean there is an exemption from tax. The main purpose of rollover relief is to defer the taxing point until a later date, by allowing the recipient to “step into the shoes” of the previous owner. In the context of the bright-line test, the recipient takes on the previous owner’s bright-line start date and property cost, with the previous owner being deemed to have disposed of the property at cost so that their taxable income from the disposal is zero.

Rollover relief is available for all residential property that may be subject to the bright-line test, not just the owner’s main home.

The rollover relief changes enacted in 2022 do not affect the scope of properties that qualify for the main home exclusion.

### **Further information**

You can find more information on our website ([ird.govt.nz](http://ird.govt.nz)) by searching for the *Bright-line property tax guide* (IR1227), and at the link:

<https://www.ird.govt.nz/property/buying-and-selling-residential-property/the-brightline-property-rule>.

### **Publishing of OIA response**

Please note that Inland Revenue regularly publishes responses to requests that may be of interest to the wider public on its website. We consider that this response is of public interest so will publish this response in due course. Your personal details, or any information that would identify you, will be removed before it is published.

Thank you for your request.

Yours sincerely



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