

QUESTION WE'VE BEEN ASKED QB 16/06

INCOME TAX – LAND ACQUIRED FOR A PURPOSE OR WITH AN INTENTION OF DISPOSAL

This QWBA provides guidance about when proceeds from the disposal of land acquired with a purpose or intention of disposal are taxable under s CB 6 – one of the land taxing provisions. The QWBA explains how s CB 6 applies, and its relationship with the 2-year bright-line test (another land taxing provision). The QWBA also discusses some common misconceptions about s CB 6, and includes examples to illustrate when it will apply.

One of Inland Revenue's focuses is compliance with the land taxing provisions (including s CB 6 and the 2-year bright-line test), and as part of this work Inland Revenue conducts a range of activities to identify and address non-compliance with those rules. There is more information about the land taxing provisions and rules at <http://www.ird.govt.nz/property/>, including a tool (the "property tax decision tree") to help you work out if any of the land provisions apply to you.

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

This Question We've Been Asked is about s CB 6.

Question

1. If I buy land for a purpose or with an intention of selling it, do the proceeds of the sale need to be included as income for tax purposes?

Answer

2. Yes. If you buy land for a purpose or with an intention of selling it, the proceeds of the eventual sale, whenever that occurs, will be income under s CB 6 unless one of the exclusions from that rule (for residential land and business premises) applies.

Explanation

What is the relevant taxing provision?

3. Section CB 6(1) provides that:

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.
4. As s CB 6 says, an amount that you derive on the disposal of land will be income if you acquired the land for a purpose or with an intention of disposing of it. Disposal does not have to be your dominant purpose or intention. Disposal does not just mean sale; it also includes, for example, gifting or settling on trust.
5. There are two exclusions from this – for residential land and for business premises. Even if you acquired the land for a purpose or with an intention of

disposing of it, you **will not be taxed** on the proceeds on sale if one of those exclusions (discussed further below at [7]) applies.

6. If s CB 6 does not apply, you may need to consider the other land provisions in the Act, including the 2-year bright-line test (see further from [8]). There are different exclusions depending on which of the land provisions is being considered, and they have different criteria. So you should not presume that because you can use an exclusion from one taxing provision other taxing provisions will also not apply. For example, you might potentially fall within the "residential exclusion" from s CB 6, but not within the "main home exclusion" from the 2-year bright-line test.

What are the exclusions from s CB 6?

7. As noted above, if you acquired land for a purpose or with an intention of disposing of it you will not be taxed under s CB 6 if you satisfy one of the two exclusions from that provision – for residential land (s CB 16) and for business premises (s CB 19). The requirements for those exclusions are set out below.

Residential land exclusion from s CB 6

Section CB 16 sets out the residential land exclusion from s CB 6. If the land has a house on it, or you build one, and you occupy the house mainly as a residence, you will not be taxed under s CB 6 on the proceeds from selling the property. This also applies if you are trustee of a trust, and a beneficiary of the trust occupies the house mainly as a residence.

The house has to be acquired and occupied, or built and occupied, mainly as a residence. This means your occupation of the house cannot be incidental to another more significant purpose, eg, sale (see for example *Case G76* (1985) 7 NZTC 1,348, *Case K21* (1988) 10 NZTC 218 and *Case M102* (1990) 12 NZTC 2,634).

To use this exclusion, the area of the land has to be 4,500 square metres or less, or if it is bigger, the larger area has to be required for the reasonable occupation and enjoyment of the house.

Please note that you cannot use this exclusion if you have a regular pattern of acquiring and disposing of houses, or building and disposing of houses.

Again, remember that this residential exclusion is different from the main home exclusion from the 2-year bright-line test, and has different requirements. The information published by Inland Revenue about how the main home exclusion from the bright-line test works is only relevant to considering that exclusion.

Business premises exclusion from s CB 6

Section CB 19 sets out the business premises exclusion from s CB 6. The exclusion will apply for business premises that you acquired and occupied or built and occupied mainly to carry on a substantial business from them. If the exclusion applies, you will not be taxed under s CB 6 on the proceeds from selling the property.

A property mainly used for investment (eg, being rented out) is not premises acquired and occupied mainly to carry on substantial business from, so would not fall within the exclusion (see for example *Case D20* (1979) 4 NZTC 60,558).

To use this exclusion, the land and the premises have to be reserved for the use of the business, and the area of the land can be no greater than that required for the reasonable occupation of the premises and the carrying on of the business.

Please note that you cannot use this exclusion if you have a regular pattern of acquiring and disposing of, or building and disposing of, premises for businesses.

Remember that this exclusion has its own specific requirements. The information published by Inland Revenue about what "business premises" are for the bright-line test is only relevant to considering if the bright-line test applies.

How does the purpose or intention rule relate to the 2-year bright-line test?

8. The 2-year bright-line test came into force on 1 October 2015, and can potentially apply if you first acquired an estate or interest in land on or after that date (the normal rules about when you first have an interest in land will determine this).
9. The 2-year bright-line test may apply to tax any gains from residential land if you sell the land within two years of when you are treated as acquiring it for the purposes of this test. The 2-year bright-line test is **in addition** to the other land sale rules (including s CB 6) that have been in New Zealand's tax law for many years. It can apply if none of sections CB 6 – CB 12 apply.
10. Because the 2-year rule can only apply if none of sections CB 6 to CB 12 apply, you need to consider the application of those provisions first. If you acquired land for a purpose or with an intention of disposing of it and none of the exclusions apply, you will be taxed under s CB 6 rather than s CB 6A, even if the disposal is within two years.
11. If none of ss CB 6 – CB 12 apply, the 2-year bright-line test (s CB 6A) may tax any gains from residential property if the "bright-line date"¹ for your disposal is within two years of when you acquired the property. Your purpose or intention is not relevant to the 2-year bright-line test.
12. There are special rules about when you are treated as acquiring the land for the 2-year bright-line test, which differ from when you are treated as acquiring the land for the other land sale rules. In a typical land purchase situation, the 2-year period for the bright-line test will start when the title is registered to you. There are some exclusions from the 2-year bright-line test, including an exclusion for your main home.

When will the proceeds of a land sale be income under s CB 6?

13. As noted above, an amount that you derive on the disposal of land will be income under s CB 6 if you acquired the land for a purpose or with an intention of disposing of it. But remember that there are exclusions for residential land and business premises that might apply (see [5]).
14. The key things to bear in mind in deciding if s CB 6 applies are:
 - What matters is your purpose or intention **when you acquired** the land.
 - A purpose or intention of disposing of the land does not need to be the only purpose or intention you had when you acquired the land. It also does not need to be your dominant or main purpose or intention. It is enough if disposal is one of your purposes or intentions.
 - Disposing of the land has to be more than a vague idea or just a possibility or option in the future. You have to have a firm purpose or intention of disposing of the land.

¹ This is the date you are essentially treated as disposing of the land for the purposes of the 2-year bright-line test. It is not usually the same date that you dispose of the land for the purposes of the other land sale rules. In a typical sale of land, it will be when you enter into a binding agreement to sell the land.



- The test of whether you had a purpose or intention of disposing of the land is subjective. But what you say your purpose or intention was will be assessed against all of the evidence.
- Evidence of what your purpose or intention was before you acquired the land (eg, during the whole acquisition process) can be taken into account.
- The extent of commitments you make or steps you take shortly after you acquired the land may also be relevant in testing what your subjective purpose or intention was when you acquired the land (eg, if these things contradict what you say your purpose or intention was).
- The length of time you held the land may also be taken into account, and if you have a pattern of acquiring and disposing of land within relatively short timeframes, that is likely to be relevant.
- It is up to you to show that you did not acquire the land for a purpose or with an intention of disposing of it.

(See for example: *CIR v Boanas* (2008) 23 NZTC 22,046 (HC), *Case N59* (1991) 13 NZTC 3,457, *Harkness v CIR* (1975) 2 NZTC 61,017 (SC), *Anzamco Ltd (in liq) v CIR* (1983) 6 NZTC 61,522 (HC), *Case Y3* (2007) 23 NZTC 13,028 and *Jurgens & Doyle v CIR* (1990) 12 NZTC 7,074 (HC).)

When do you test what my purpose or intention was?

15. As noted above, it is your purpose or intention when you **acquired** the land that is relevant.
16. The rules in s CB 15B establish when you are treated as acquiring land for the purposes of the land provisions (except the 2-year bright-line test).² In a typical land sale, this will be when you enter into a binding contract to purchase the land, even if there are some conditions that need to be met.

[The time of acquisition may be different in some circumstances, for example, if you acquired the land through exercising an option (s CB 15B(3)), or if a company obtains land under an agreement entered into before it was formed (s CB 15B(2)).]

What if I did not have any firm intention when I bought the land?

17. If at the time you acquired the land you did not have a firm purpose or intention of disposing of it, you will not be taxed on the proceeds of its eventual sale under s CB 6.
18. However, if the Commissioner questions whether you acquired the land with a purpose or intention of disposal, you must be able to show that you did not. What you say your purpose or intention was will be assessed against all of the evidence. As to what evidence may be relevant, see from [34].

What if my intention changes and I decide not to sell the land?

19. The only thing that is relevant is your purpose or intention **when you acquired** the land. If you acquired the land with a purpose or intention of disposing of it, but change your mind and decide to do something else (eg, rent the property out), you will still be taxed on the proceeds if you eventually sell it.

² These rules about when land is acquired apply for disposals of land on or after 22 November 2013.

What if I own the land for more than 10 years before I sell it?

20. A common misconception is that if you hold the land for more than 10 years you will not be taxed on the sale proceeds. This is not true. If you acquired the land with a purpose or intention of disposal, s CB 6 will apply to tax the proceeds **whenever** you eventually sell the land (subject to the exclusions discussed at [7]).

What if I have rented out the property and paid tax on the rental income?

21. As noted above, if you acquired the land with a purpose or intention of disposing of it, it does not matter if you rent it out in the meantime (whether because you always planned to rent the property out before selling it, or because you changed your mind and decided to rent the property out instead of selling it straight away). You will still be taxed on the proceeds when you eventually sell the land. This is the case even though the rental income will have been subject to tax. The rental income and any profit on the sale are both taxed under the Act (see s CC 1).

What if I only sell some of the land?

22. If you acquired the land with a purpose or intention of disposing of it, it does not matter if you divide the land and sell only some of it at any one time – you will still be taxed on the proceeds of all of the land whenever it is sold. Similarly, it does not matter if you sell the land you acquired together with some other land. The proceeds on the sale of the original piece of land you acquired with a purpose or intention of disposal will be taxed under s CB 6 irrespective of what you subsequently do with the land or its boundaries (see ss CB 6(3) and CB 23B).
23. If you divide land, there are other provisions that could also be relevant to whether you are taxed on the disposal of the land – for example s CB 12 (Disposal: Schemes for development or division begun within 10 years) or s CB 13 (Disposal: Amount from major development or division and not already in income).

What if I buy some land intending to subdivide it and sell some and keep some?

24. If you acquire land intending to sell some and keep some, you will only be taxed on the disposal of the part you acquired to sell. You would need to have satisfactory evidence to show how much of the land or what part of the land you did not acquire for a purpose or with an intention of disposal. (See for example: *Bedford Investments Limited v CIR* [1955] NZLR 978 (SC), *Harkness v CIR* (1975) 2 NZTC 61,017 (SC) and *Church v CIR* (1992) 14 NZTC 9,196 (HC).)

What if I buy the land through a trust, company or partnership?

25. Section CB 6 can apply regardless of whether the property is acquired by an individual person or an entity such as a trust, partnership or company. If the owner is a trust or company, it is generally the purposes or intentions of the trustees or directors that are relevant in deciding if s CB 6 applies. (See for example: *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346 (CA), *Trustees of the B Trust v C of IR* [2013] NZTRA 5, *FC of T v Whitfords Beach Pty Ltd* 82 ATC 4031 (HCAFC), *Allied Pastoral Holdings Pty Ltd v FC of T* 83 ATC 4015 (SCNSW), and *Aotea Group Securities Ltd v C of IR* (1986) 8 NZTC 5,052 (HC).) If the owner is a partnership, it is the purpose of the partnership that is relevant. (See s HG 2(1) and *CIR v Boanas* (2008) 23 NZTC 22,046 (HC).)

Does s CB 6 only apply to sales of freehold land?

26. No. "Land" is defined in the Act as including any estate or interest in land, and as including an option to acquire land or an estate or interest in land. You could be taxed under s CB 6 if you dispose of any land interest, not just the freehold estate. For example, you could be taxed if you dispose of a leasehold, unit title or cross-lease interest, an option to acquire land, or an equitable interest in land (eg, by transferring the right to acquire land under a sale and purchase agreement to someone else). However, the expiry of an interest in land is not a disposal – for example the expiry of a lease or the expiry of an option.

Can I gift the land instead so I do not have to pay tax?

27. No. Property cannot be gifted (this includes settling it on a trust) to get around paying tax on its sale. The Act would treat a gift of land you acquired with a purpose or intention of disposal as being made at market value. You would be subject to tax on that amount, less any allowable deductions (see ss FC 1 and FC 2).

What if I did not buy the land, or if I got it from someone I was associated with?

28. If you received the land passively, eg, by way of gift, you would generally not be taxed under s CB 6, because you would not have acquired it with a purpose or intention of disposal (see for example *A G Healing and Co Ltd v CIR* [1964] NZLR 222 (SC) and *McClelland v FCT* (1970) 120 CLR 487 (PC)). However, you might be taxed on the disposal of land you received passively from someone you were associated with.
29. If you obtain land (passively or otherwise) from someone you are associated with, you may potentially be taxed under s CB 6 (or one of the other land provisions) when you dispose of it. This may be the case if the person you acquired the land from would have been taxed under s CB 6 if they had kept the land and disposed of it when you did (see s CB 15). The person you acquired the land from may already have been taxed under s CB 6 when they transferred the land to you. But you would also be potentially subject to tax under s CB 6 on the difference between your cost base for the land and what you derive when you dispose of it.
30. You may also be taxed under s CB 6 on a similar basis in other circumstances – for example if you received the land under a relationship property agreement and the transferor is subject to tax under s CB 6, or from a deceased person's estate if the person would have been subject to tax under s CB 6.
31. There are also special rules that might apply if you received the land by way of a distribution from a company (s FC 1), or if an amalgamated company receives it as part of certain amalgamations (s FO 17).

Can I get any tax deductions?

32. Yes. If s CB 6 taxes you on the proceeds of selling land, you will get a deduction for the cost of the land and any capital improvements you make to it, to the extent that those costs are incurred in deriving the income and are not private in nature (ss DB 23, DA 1 and DA 2(2)). The deduction is taken in the income year in which you dispose of the land (see s EA 2).

[There is a different timing rule for deductions for the cost of revenue account property that ceases to exist (s EA 2). So, for example, if you had a revenue account leasehold interest or option and it expired or (in the case of an option)

was exercised, you may still get a deduction even though the land may not have been disposed of – see further QB 15/13.]

33. You may also be able to deduct other expenditure, such as interest on money borrowed to purchase the land, insurance premiums, and repairs and maintenance costs (to the extent those costs are not capital). Deductions for these expenses will be allowed to the extent that they are incurred in deriving the income and are not private in nature (ss DA 1, DA 2 and DB 6).

What evidence would be relevant to show that I did not have a purpose or intention of disposal when I acquired the land?

34. Any evidence that shows you did not have a purpose or intention of disposing of the land when you acquired it will be considered. For example, records about why you acquired the property made by the financial institution that provided finance for the purchase or by the real estate agent, proof of a change in your circumstances that led to the sale, minutes of board meetings, resolutions of directors or trustees, or anything else that shows what your purposes or intentions in acquiring the property were.
35. Remember that if s CB 6 applies, it does not matter when you sell the property. So you should keep any relevant documentary evidence about what your purpose or intention in acquiring property was, even beyond the normal seven-year timeframe for keeping tax records.

Other taxing provisions that could apply if s CB 6 does not

36. If s CB 6 (see from [13]) does not apply to you, there are a number of other land sale rules in the Act that may tax you on the sale proceeds. The other provisions you might be taxed under could apply if:
- you acquired the land for the purpose of a business (carried on by you or by an associated person) of dealing in land, developing land, dividing land into lots, or erecting buildings (s CB 7);
 - you dispose of the land within 10 years of acquiring it, if at the time you acquired it you were (or were associated with someone who was) in the business of dealing in land, or developing or dividing land (ss CB 9 and CB 10);
 - you dispose of the land within 10 years of completing improvements to it, if at the time the improvements were begun you were (or were associated with someone who was) in the business of erecting buildings (s CB 11);
 - the land was part of an undertaking or scheme, meeting certain criteria, that involved the development of land or the division of land into lots (ss CB 12 and CB 13);
 - the land was used as landfill (s CB 8);
 - you dispose of the land within 10 years of acquiring it and 20% or more of the increase in its value arises from any of various factors such as a change to the rules of a district plan, the granting of a consent, or a decision of the Environment Court under the Resource Management Act 1991 (s CB 14);³
 - you received the land from someone you were associated with (s CB 15); or

³ See s CB 14(2) for the full list of factors.

- none of sections CB 6 – CB 12 apply, the land is residential land, and the “bright-line date” for your disposal of the land is within two years of when you acquired it (s CB 6A).⁴

37. There are exclusions from each of these rules that might be relevant to you.

What if I have possibly taken an incorrect tax position for past property sales?

38. If you think you may have taken a tax position for property sales in past tax years that is different from the Commissioner’s position on how these provisions apply, you should discuss the matter with your tax advisor, or Inland Revenue, and consider making a voluntary disclosure.

Examples

39. The following examples are included to assist in explaining the application of s CB 6, and are aimed at dispelling common misconceptions that Inland Revenue encounters in its property compliance activity. The examples do not consider the criteria for the exclusions to s CB 6 in any great detail, as they clearly do not apply in any of the circumstances considered. The examples do not consider whether any of the other land sale rules in the Act apply.

Example 1 – Change of purpose or intention between contract and settlement

40. On 10 September 2015, Tabitha and Jono entered into a sale and purchase agreement to buy a house for \$2m. They planned to move into the house with their three children. On 21 September 2015, before settlement of the purchase, Tabitha and Jono were approached with an unsolicited offer to purchase the property for \$2.25m. Tabitha and Jono decided that this offer was too attractive to turn down, confident they could find another equally desirable family home for that amount. Tabitha and Jono therefore accepted the offer on 23 September 2015, entering into a sale and purchase agreement to sell the house. Tabitha and Jono’s purchase of the property was settled on 25 September 2015, and their sale of the property was settled the following week.
41. For the purposes of s CB 6, Tabitha and Jono acquired the land on 10 September 2015, when they entered into the sale and purchase agreement to buy the property. At that time, their intention was for the house to be their family home. It does not matter that by 25 September 2015, when their purchase of the property was settled, they intended to dispose of it, and indeed had already entered into a sale and purchase agreement to do so. It was only because of an attractive, unsolicited offer that Tabitha and Jono changed their minds about living in the property and decided to dispose of it instead. At the date they acquired the property (10 September 2015), they did not intend to dispose of it. The extent of commitments made or steps taken shortly after land is acquired may be relevant in testing what someone’s purpose or intention was. In this case, if Tabitha and Jono can provide evidence that the offer was unsolicited, the fact that they entered into a contract to sell the land shortly after they entered into the contract to buy it is not inconsistent with their stated purpose at the time they entered into the contract to buy the land.
42. The proceeds on the sale are therefore not income to Tabitha and Jono under s CB 6.

⁴ “Residential land” is defined in s YA 1. As noted above, for the purposes of this rule (known as the 2-year bright-line test), the 2-year period generally does not start at the date you acquire land for the purposes of the other land provisions in the Act. In a standard purchase of land situation, the 2-year period will start on the date the land transfer is registered to you. The “bright-line date” for a disposal of land is typically the date you enter into an agreement for the disposal, but may be different in different circumstances (see s CB 6A(7)).

43. It is presumed that none of sections CB 7 to CB 12 apply.
44. The 2-year bright-line test does not apply to Tabitha and Jono's sale of the land, because they first acquired an estate or interest in it before 1 October 2015.⁵

Example 2 – Change of purpose or intention after acquisition, and property held for over 10 years

45. On 11 October 2005, Laura and Connor entered into a sale and purchase agreement to purchase a property that they intended to renovate and on-sell. They advised their bank of this, as they needed to borrow sufficient funds to pay for the renovations. The purchase of the property was settled on 30 October 2005, and Laura and Connor started the renovations. After the renovation work was complete, Laura and Connor decided not to sell the property at that time, but to rent it out instead. Laura and Connor have paid tax on the rental income. In 2015, Laura and Connor decided to sell the property, and they did so on 4 December 2015.
46. For the purposes of s CB 6, Laura and Connor acquired the land on 11 October 2005, when they entered into the sale and purchase agreement to buy the property. At that time, their intention was to renovate the house and sell it. It does not matter that Laura and Connor subsequently changed their minds and decided to rent the property out instead of selling it. At the date they acquired the property, their purpose or intention was to dispose of it.
47. Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) apply, because Laura and Connor did not live in the property or carry on a business from it.
48. The proceeds on the sale of the property are therefore income to Laura and Connor under s CB 6.
49. It is not relevant that the rental income was subject to tax – the Act taxes rental income as well as the proceeds on the sale of the property.
50. It is not relevant that Laura and Connor held the property for more than 10 years before selling it. If land is acquired with a purpose or intention of disposal, the proceeds will be taxed whenever the property is eventually sold.
51. Laura and Connor can get a deduction against the sale proceeds for the amount they paid to acquire the property and for the cost of any renovations that were capital in nature.
52. Laura and Connor are also allowed deductions for the interest on the money they borrowed to purchase the property and undertake the renovations, the cost of insurance on the property, and the cost of any repairs and maintenance on the property that are not capital in nature.

Example 3 – Purpose or intention to be assessed against all of the evidence

As noted above, the examples in this QWBA do not consider whether any of the land sale rules other than s CB 6 apply. More specifically, it is noted that this example is not considering whether Taj is carrying on a business relating to land, so s CB 7 is not considered.

53. Taj acquired 10 properties over a 10-year period – all before 1 October 2015. Eight of those properties have been sold to date. Taj considers that none of those sales give rise to income under s CB 6, stating that all of the properties were

⁵ Section 4(2) of the Taxation (Bright-line Test for Residential Land) Act 2015.

acquired for long-term rental. Taj states that the eight properties in question were only sold due to financial pressure, the cost of servicing the mortgages, difficult tenants, or because of unsolicited offers to purchase the properties. Taj states that any renovation work done on the properties was for the purpose of deriving higher rental income.

54. However, all of the eight properties were on-sold within relatively short periods after their acquisition, most of them after some renovation work. The average time the properties were held is approximately one year. Three of the properties were held for less than six months. After each of the eight properties was sold, a new property was purchased within an average of six months. Taj has only returned rental income from two of the properties.
55. The test of whether a taxpayer had a purpose or intention of disposing of land when they acquired it is subjective. However, a person's stated purpose or intention needs to be assessed against all of the evidence.
56. In this case, Taj's explanations for each of the sales are not supported by the evidence as a whole. None of the properties were held for long-term rental purposes, which is what Taj says they were acquired for. Indeed, rental income was only returned (for a brief period) from two of the properties. The explanations for each of the sales are not supported by the evidence – including for the properties that were briefly rented out. The fact that new properties were purchased within an average of six months after each sale undermines Taj's assertion that the sales were due to financial pressure and the cost of servicing the mortgages. The pattern of purchases, renovation (in most cases) and relatively fast re-sale of the properties without them having been rented out (for the most part) indicates that Taj acquired the properties with a purpose or intention of disposing of them. Taj must be able to show that he did not acquire each of the properties with a purpose or intention of disposing of them, and he has not done this.
57. Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) apply to any of the properties, because Taj did not live in any of them or carry on a business from any of them.
58. Therefore, the Commissioner considers that the proceeds on the sales of the eight properties in question are income to Taj under s CB 6.
59. Taj can get a deduction against the sale proceeds for the amounts he paid to acquire the properties and for the cost of any renovations that were capital in nature.
60. Taj is also allowed deductions for the interest on the money he borrowed to purchase the properties and undertake the renovations, the cost of insurance on the properties, and the cost of any repairs and maintenance on the properties that are not capital in nature.

Example 4 – It is for the taxpayer to show that land was not acquired with a purpose or intention of disposal

61. Hugh and Meg purchased five residential properties in 2014. They renovated the properties, and sold them in 2015 for a total profit of \$2.2m. Hugh and Meg have stated that they have relatives overseas who had applied for New Zealand residency and who intended to live in the properties indefinitely once they came to New Zealand. Hugh and Meg assert that the properties were only sold in 2015 because the residency applications were unsuccessful. Hugh and Meg have not provided any evidence that any relatives overseas had applied for New Zealand residency and had those applications rejected.

62. If the Commissioner forms the view that you acquired the land with a purpose or intention of disposal, it is up to you to show that you did not.
63. Hugh and Meg purchased five properties that they renovated and sold for a profit in a short space of time. They have not provided any evidence that any relatives overseas had applied for New Zealand residency and had those applications rejected. In these circumstances, the Commissioner is not satisfied that Hugh and Meg did not acquire the properties with a purpose or intention of disposal. There is no evidence to support their stated purpose of acquiring the properties as future homes for relatives seeking residency.
64. Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) apply to any of the properties, because Hugh and Meg did not live in any of them or carry on a business from any of them.
65. The Commissioner therefore considers that the proceeds on the sales of the properties are income to Hugh and Meg under s CB 6.
66. Hugh and Meg can get a deduction against the sale proceeds for the amounts they paid to acquire the properties and for the cost of any renovations that were capital in nature.
67. Hugh and Meg are also allowed deductions for the interest on the money they borrowed to purchase the properties and undertake the renovations, the cost of insurance on the properties, and the cost of any repairs and maintenance on the properties that are not capital in nature.

Example 5 – More than one purpose or intention

68. Chris purchased a property in August 2012. The property was marketed as being an attractive investment – ideal as a rental property, and expected to have “great annual capital growth”. Chris decided to buy the property to rent it out for three to five years, by which stage he expected to be able to realise the capital gain he sought to make on the property. Chris has paid tax on the rental income. He sold the property in October 2015 for a sizeable profit.
69. An amount that a person derives on the disposal of land will be income under s CB 6 if they acquired the land for a purpose or with an intention of disposing of it. A purpose or intention of disposing of the land does not need to be the **only** purpose or intention the person had when they acquired the land. It also does not need to be their dominant or main purpose or intention. It is enough if disposal is one of their purposes or intentions.
70. The suggestion in the marketing material that the property was expected to have great annual capital growth and could be rented out in the meantime does not determine Chris’s purpose or intention in buying the property. However, Chris acknowledges that he purchased the property with a short-medium term investment horizon in mind, after which he anticipated selling it to realise the capital gain he expected to make.
71. It does not matter that Chris acquired the property for more than one purpose, and disposal was only one of those purposes. When he acquired the property, Chris had a firm purpose of disposing of it in three to five years, though it was to be rented out in the interim.
72. Neither the residential exclusion (s CB 16) nor the business exclusion (s CB 19) apply, because Chris did not live in the property or carry on a business from it.
73. The proceeds on the sale of the property are therefore income to Chris under s CB 6.

74. It is not relevant that the rental income was subject to tax – the Act taxes rental income as well as the proceeds on the sale of the property.
75. Chris can get a deduction against the sale proceeds for the amount he paid to acquire the property and for the cost of any capital improvements he made to the property.
76. Chris is also allowed deductions for the interest on the money he borrowed to purchase the property, the cost of insurance on the property, and the cost of any repairs and maintenance on the property that are not capital in nature.

References

Related rulings/statements

QB 15/13 "Income tax Whether the cost of acquiring an option to acquire revenue account land is deductible" *Tax Information Bulletin* Vol 28, No 1 (February 2016)

Subject references

Income tax, sale of land, purpose or intention of disposal

Legislative references

Income Tax Act 2007 – ss CB 6A, CB 6, CB 7, CB 8, CB 9, CB 10, CB 11, CB 12, CB 13, CB 14, CB 15, CB 15B, CB 16, CB 19, CB 23B, CC 1, DA 1, DB 6, DB 7, DB 23, EA 2, FC 1, FC 2, FO 17, HG 2(1) and the definition of "residential land" in s YA 1
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