

## QUESTION WE'VE BEEN ASKED QB 17/02

### INCOME TAX – DATE OF ACQUISITION OF LAND, AND START DATE FOR 2-YEAR BRIGHT-LINE TEST

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

This Question We've Been Asked (QWBA) is about ss CB 6A and CB 15B.

Some of the land provisions in the Act (ss CB 6, CB 7, CB 9, CB 10, CB 12, CB 14 and CB 19) require identification of the date that someone acquired land. This can be relevant to the provisions that:

- involve 10-year timeframes;
- might apply if at the time the person acquired the land they were, or were associated with, someone in the business of dealing in land, developing or subdividing land, or building; and
- might apply depending on **the person's** intended use of the land, or their purpose or intention at the time they acquired the land.

This QWBA explains when someone acquires land for the purposes of those provisions. It also sets out when the 2-year period starts for the bright-line test in s CB 6A. The date of acquisition and the start date for the 2-year period are usually different dates.

This QWBA updates the Commissioner's previously published views in two respects.

- It qualifies a statement in the item "Taxation (Bright-line Test for Residential Land) Act 2015" *Tax Information Bulletin* Vol 28, No 1 (February 2016): 78. That item suggests that the date someone acquires their first estate or interest in land (relevant to whether the bright-line legislation potentially applies to them) is the same as when they acquire land under s CB 15B. While that is true in most cases (ie, in a typical land purchase), there are some exceptions. See [27] on this point.
- It supersedes "Taxation (Bright-line Test for Residential Land) Act 2015" *Tax Information Bulletin* Vol 28, No 1 (February 2016): 78 in relation to the application of the bright-line test to nominations. See from [46] on this point.

### Question

1. On what date is a person treated as acquiring land for the purposes of the land sale rules in ss CB 6 to CB 14? And when does the 2-year period for the bright-line test in s CB 6A start?

### Answer

2. Table 1 shows the date on which land is acquired in different situations, for the purposes of the land sale rules in ss CB 6 to CB 14. Table 2 shows the date on which the 2-year period for the bright-line test in s CB 6A starts in different situations.

**Table 1 – When land is acquired for the purposes of the land sale rules in ss CB 6 to CB 14**

<b>Circumstance</b>	<b>When land is acquired for tax purposes (other than the 2-year bright-line test)</b>
Standard purchase of land.	When a binding contract to purchase the land is formed (even if some conditions still need to be met – see further from [42]).
Land other than freehold (eg, a leasehold estate, an equitable interest in land, or an option to acquire land).	The date on which the person first had an interest in the land (subject to the rest of the rules in this table).
Land acquired from the exercise of an option.	When the person exercised the option.
Agreement for acquisition of land on behalf of a company not yet formed.	The date the agreement was entered into.
Land that a person subdivides.	The date the person acquired the original undivided piece of land.
Land acquired from an associated person.	The date the associated person acquired the land ( <i>relevant for only ss CB 7 to CB 12 and CB 14</i> ).
<ul style="list-style-type: none"> <li>• Special rules (see [86] and [87]) about when land is treated as acquired might apply if a person acquired the land by way of a: <ul style="list-style-type: none"> <li>- settlement of relationship property;</li> <li>- <b>distribution on someone’s death;</b></li> <li>- distribution from a trust;</li> <li>- transfer of value from a company;</li> <li>- gift; or</li> <li>- <b>resident’s restricted amalgamation.</b></li> </ul> </li> </ul>	

**Table 2 – When the 2-year period for the bright-line test starts**  
(relevant if the first interest in the land was acquired on or after 1 October 2015 – see further from [22])

Circumstances	Start of the 2-year period
Standard purchase of land.	When the land transfer is registered and the person gets the legal title.  (If the land is held in a trust, transfers because of a change of trustee(s) will not reset the start date. The start date is the date of registration of the transfer of the land into the trust.)
If a person had an agreement to acquire freehold land on the completion of a development or subdivision, and they subsequently acquired the land (discussed at [32]).	The date the person entered into the contract to acquire the land.
If a person acquired land and subsequently subdivided it.	The date of registration of the transfer of the original undivided piece of land to the person.  (If the land is held in a trust, transfers because of a change of trustee(s) will not reset the start date. The start date is the date of registration of the transfer of the original undivided piece of land into the trust.)  OR  If the title for the undivided land was not registered to the person before they dispose of the divided land, the start date will be the date they acquired an estate or interest in the original undivided piece of land. This is determined under the standard rules discussed in this QWBA.
Lease with perpetual right of renewal converted into freehold title.	The date the person was first granted the leasehold estate.
Settlement of relationship property.	The date the transfer of the land to the transferor under the settlement was registered (or the date they acquired it, if there was no registered transfer to them).
Where no title is registered to a person before the earliest of the date they have an agreement to dispose of the land or the date they in fact dispose of it.	When the person acquired an estate or interest in the land they are disposing of. This is determined in the same way as for the general rule in s CB 15(1) – see from [42].  For these purposes, the special rules about when land is acquired <b>do not apply</b> (ie, the rules for land acquired from the exercise of an option, land acquired under an agreement for the acquisition of land on behalf of a company not yet formed, land acquired from an associated person, and the special rules mentioned at [86] and [87]).

3. Some of the land provisions require identification of the date that someone acquired land (see further at [12]). The main rules about when a person is treated as acquiring land for tax purposes are set out in s CB 15B (see Table 1 and from [36]).
4. There are special rules about when the 2-year period for the bright-line test in s CB 6A starts (see Table 2 and from [27]). This date is generally not the same as when the person acquires land for the other tax provisions.

5. The general rule in s CB 15B is that someone acquires land on the date that they first have an estate or interest in the land or first have an option to acquire the land (the “first interest”).
6. A person **will often acquire different interests (each being “land”) in the same** piece of underlying physical land at different times. For example, in a typical purchase of land situation, the purchaser acquires an equitable interest in the estate when a binding contract to purchase the land is formed, which is before they acquire the legal interest (when the land is transferred to them). What is relevant is when they acquired their **first interest** in the land (ie, the particular estate) that they are disposing of. This will typically be when a binding contract to purchase the land is formed, even if some conditions still need to be met (such as obtaining finance, a building report or a Land Information Memorandum (LIM)) – see further from [42].
7. Any other interests the person has had in the same underlying physical land will not be relevant. For example, if they might be taxed on the sale of a freehold estate and the date of acquisition is relevant to that, the fact they previously had a leasehold interest in the land will not be relevant. They are treated as acquiring the freehold estate on the date they first had an interest in **that** estate.
8. Where someone acquires land by way of an option, the date of acquisition will be the date they exercised the option.
9. Where a company acquires land under an agreement entered into on its behalf before it was formed, the company is treated as acquiring the land when the agreement was entered into (see further from [83]).
10. If someone acquires land from an associated person, for the purposes of some provisions (ss CB 7 to CB 12 and CB 14) they are treated as acquiring it on the date that the associated person acquired it (s CB 15(2)).
11. A person may be treated as having a different date of acquisition than the date under s CB 15B in some other situations; for example, if they acquired the land on a settlement of relationship property, on a distribution on **someone’s** death, on a distribution from a trust, on a transfer of value from a company, or as a gift (see subparts FB and FC), or on a **resident’s restricted amalgamation** (see s FO 17).

## Explanation

### Relevance of the date of acquisition of land

12. Some of the land provisions require identification of **when** a person acquired land. The date someone acquired land is relevant to the following provisions:

#### *Section CB 6*

- If a person acquired land for the purpose of disposing of it, or with the intention of disposing of it, the amount they derive on the disposal of the land will be income (if no exclusion applies). Therefore, it is necessary to look at what **the person’s** purposes and intentions were **when they acquired the land**.

#### *Sections CB 7, CB 9, CB 10, CB 12, CB 14 and CB 19*

- The date of acquisition is relevant to these provisions because:
  - in some circumstances, if a person disposes of land or commences an undertaking or scheme **within 10 years of when they acquired the land**, the sale proceeds will be income; or

- it is necessary to identify whether **at the time a person acquired land** they were, or were associated with, someone in the business of dealing in land, developing or subdividing land, or building (which may mean certain taxing provisions apply); or
- **the person's** intended use of the land **at the time they acquired it** is relevant.

### **Start date for the 2-year bright-line test**

13. If none of ss CB 6 to CB 12 apply, the 2-year bright-line test (in s CB 6A) may tax any gains from residential land if someone sells or disposes of the land within two years of their bright-line start date. It is necessary to identify when the 2-year period for the bright-line test in s CB 6A starts, so the person can determine if they are potentially taxed under that provision. As noted at [4], there are special rules about when the 2-year period starts, and this date is generally not the same as when the person acquires land for the other tax provisions. The start date for the 2-year bright-line test is discussed from [27].

### **Why we have been asked to clarify the date of acquisition of land**

14. Section CB 15B was enacted to clarify when land is acquired for tax purposes. Section CB 15B applies for the land provisions in subpart CB, except the 2-year bright-line test. It was suggested that some explanation about how s CB 15B operates would be useful. In particular, the Commissioner has been asked to confirm when a person will acquire an estate or interest in land for the purposes of s CB 15B, and to provide examples of the date of acquisition of land in different scenarios.
15. Because in most cases the 2-year period for the bright-line test in s CB 6A does not start on the date land is acquired under s CB 15B, this QWBA also sets out when the bright-line period starts in different situations.

### **Date of disposal of land**

16. In most cases, the date that land is acquired for the purposes of the land provisions will not be the date it is disposed of by the vendor or transferor. This QWBA does not consider the date of disposal of land.

### **Definition of "land"**

17. "Land" is defined in s YA 1 as including any estate or interest in land, and as including an option to acquire land or an estate or interest in land:

#### **YA 1 Definitions**

In this Act, unless the context requires otherwise,—

...

**land—**

**(a) includes any estate or interest in land:**

**(b) includes an option to acquire land or an estate or interest in land:**

(c) does not include a mortgage:

...

[Emphasis added]

18. "Estate", "interest", "estate or interest in land" and similar terms are defined as meaning:

#### **YA 1 Definitions**

In this Act, unless the context requires otherwise,—

...

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

- (a) mean an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder; and
  - (b) include a right, whether direct or through a trustee or otherwise, to—
    - (i) the possession of the land (for example: a licence to occupy, as that term is defined in section 121A(1) of the Land Transfer Act 1952):
    - (ii) the receipt of the rents or profits from the land:
    - (iii) the proceeds of the disposal of the land: and
  - (c) do not include a mortgage
19. Any estate or interest in land (whether legal or equitable, and whether vested or **contingent**) is “land”, and an option to acquire land or an estate or interest in land is also “land”.
20. The land sale rules in the Act can apply to the disposal of any estate or interest that is “land” as defined.

### **The 2-year bright-line test**

21. As noted at [13], the 2-year bright-line test can only potentially apply if none of the land sale rules in ss CB 6 to CB 12 apply. While it is necessary to consider the application of ss CB 6 to CB 12 before considering the 2-year bright-line test, the following discussion looks at the start date for the bright-line test before going on to consider when land is acquired for the purposes of the other land sale rules. This is because the examples throughout the discussion of the date of acquisition rules also note when the bright-line start date would be.

### **Application of the 2-year bright-line legislation**

22. The 2-year bright-line test came into force on 1 October 2015. It can only potentially apply when someone disposes of land if they **first acquired an estate or interest in that land on or after 1 October 2015**.<sup>1</sup>
23. In a typical land purchase, the purchaser will first acquire an interest in the land when a binding contract to purchase the land is formed (even if some conditions still need to be met). And, if that date is on or after 1 October 2015, the bright-line legislation could potentially apply to their disposal of the land.
24. In most cases, the date on which someone first acquires an estate or interest in land (which is what is relevant to whether the bright-line legislation can apply to them) is **the same** as the date they are treated as acquiring the land for the purposes of the land provisions in ss CB 6 to CB 14. This is the case in a typical land purchase.
25. But, in some situations, the date on which someone first acquires an estate or interest in land will **not be the same** date as when they are treated as acquiring land for the purposes of the land provisions in ss CB 6 to CB 14. For example, if they acquire land through the exercise of an option, their date of acquisition for ss CB 6 to CB 14 will be the date they exercise the option. But the relevant date for determining if the bright-line legislation potentially applies is the date that they first acquired an interest in the land. In most situations, this would be when the option was granted to them. In a situation where the person **had a “first right**

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<sup>1</sup> Section 4(2) of the Taxation (Bright-line Test for Residential Land) Act 2015.

option” to acquire the land (eg, a right of first refusal or a right of first offer), they would typically first acquire an interest in the land when the owner makes an offer in accordance with the “first right option” (see *Motor Works Ltd v Westminster Auto Services Ltd* [1997] 1 NZLR 762 (HC)). Similarly, the date of acquisition and the date someone first acquires an estate or interest in land will be different if they are a company that acquired land under an agreement entered into on its behalf before it was formed, or in the situations mentioned at [11]. In all of those situations it is necessary to consider land law principles to determine the point at which the person first acquired an interest in the land and, therefore, whether the bright-line legislation could apply to them (ie, if the date they first acquired an interest in the land was on or after 1 October 2015).

26. The item “Taxation (Bright-line Test for Residential Land) Act 2015” *Tax Information Bulletin* Vol 28, No 1 (February 2016): 78 suggests that the date someone acquires their first estate or interest in land is the same as when they acquire land under s CB 15B. As noted at [24], while that is true in most cases (ie, in a typical land purchase), the situations mentioned at [25] are exceptions to that. This QWBA qualifies the *Tax Information Bulletin* item in this respect.

### **Start of the 2-year bright-line period**

27. If none of the land sale rules in ss CB 6 to CB 12 (see [12]) apply, the 2-year bright-line test (in s CB 6A) may tax any gains from **residential land**, if someone enters into an agreement to dispose of the land or in fact disposes of it within two years of their bright-line start date. It is necessary to identify when the 2-year period for the bright-line test in s CB 6A starts, so the person can determine if they are potentially taxed under that provision. (Note that in some situations the bright-line test will not apply; for example, if the person satisfies the main home exclusion (s CB 16A).)
28. The following paragraphs explain the special rules about when the 2-year period for the bright-line test starts in different situations.
29. If a document transferring the land to a person was registered under the Land Transfer Act 1952<sup>2</sup> on or before they sell or dispose of the land, the date of registration will be the start date for the 2-year bright-line test. **In a typical land purchase, this will mean that the 2-year period starts when the land transfer was registered and the purchaser got the legal title.**
30. If the land is held in a trust, transfers because of a change of trustee(s) will not reset the start date. The start date is the date of registration of the transfer of the land into the trust. But, if the land was transferred out of the trust and then back into the trust at a later date, the start date would be reset at that point.
31. If there was no registered transfer of the land to someone on or before the date they sell or dispose of the land, the 2-year period will start when they acquired the relevant estate or interest in land. This is determined under the standard rules, discussed from [42].
32. If someone had an interest in relation to freehold land that was contingent on the completion of a development or subdivision, and they subsequently acquired the land when the development or subdivision was completed, the 2-year period will start on the date they acquired the contingent interest. For example, if someone entered into a contract to acquire land that was to be subdivided, there would not be a title for the specific land they were buying at the time they entered into the contract. Therefore, their interest in the land is contingent on the completion of **the subdivision. This is referred to as buying land “off the plans”.** If, after the

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<sup>2</sup> Or a similar foreign law if the land is outside New Zealand (ss CB 6A(1)(a)(ii) and CB 6A(2)(a)(ii)).

subdivision is completed, the sale is finalised and the title is transferred to the person, the 2-year period will start on the date that they entered into the binding contract, not the date the title was transferred to them. If the person sold or disposed of their contingent interest in the land and never obtained the title, this would be a disposal of land and the 2-year bright-line test could apply if none of ss CB 6 to CB 12 apply. The start date for the 2-year period in that situation would also be the date that they entered into the binding contract.

33. If someone acquired land and subsequently subdivided it, the 2-year period for each of the resulting lots will start on the date of registration of the transfer of the original undivided piece of land to them. The fact that separate new titles were issued is not relevant. If the title for the undivided land was not registered to them before they dispose of the divided land, the start date will be the date they acquired an estate or interest in the original undivided piece of land. This is determined under the standard rules, discussed from [42].
34. If someone had a lease with a perpetual right of renewal that they converted into freehold land, the 2-year period starts when the leasehold estate was granted.
35. On the breakdown of a relationship, land may be transferred from one party to the other as part of the settlement of relationship property. In that situation, the transfer between the parties to the relationship property agreement will generally not give the party who is acquiring the land a new start date. The 2-year period for the person acquiring the land on the settlement will start on the date that the instrument transferring the land to the transferor under the settlement was registered (or the date the transferor acquired it, if there was no registered transfer to them).

### **When land is acquired for the land provisions other than the 2-year bright-line test**

36. Any estate or interest in land (whether legal or equitable, and whether vested or contingent) is “land”, and an option to acquire land or an estate or interest in land is also “land”.
37. Given this, a person will often acquire different estates or interests (each being “land”) in the same piece of underlying physical land at different times. For example, during the typical course of acquisition of a freehold estate in fee simple, a person will usually acquire an equitable interest in the estate before acquiring the legal interest in the estate.
38. However, while different interests that are each “land” in their own right may be acquired at different times, what is relevant is the date **the land that is disposed of**, and potentially subject to tax under one of the land provisions in subpart CB, was acquired. For example, if someone is disposing of a freehold estate in fee simple and the date of acquisition is relevant to a particular taxing provision, the question is – when did they acquire *that land* (ie, the freehold estate)? Any other interest they have had in the land (for example, a leasehold interest) is not relevant.

### **The general rule**

39. The general rule about when land is acquired for the purposes of the land provisions (except the 2-year bright-line test – discussed from [27]) is set out in s CB 15B(1), which says:

**CB 15B When land acquired**

*General rule*



- (1) For the purposes of this subpart except section CB 6A, a person acquires an estate, interest, or option that is land (the **land**) on the date that begins a period in which the person has an estate or interest in, or an option to acquire, the land, alone or jointly or in common with another person.
40. Under this general rule, a person acquires land on the date that they first have an estate or interest in the land, or first have an option to acquire the land. When land is acquired, different interests will typically arise at different times, and then ultimately merge when the full title is conferred. The fact that s CB 15B refers to **the date that "begins a period" in which the person** has an estate or interest in the land, or an option to acquire it, indicates that it is the **first** estate or interest in the land in question that is relevant.
41. As the High Court noted in *AAA Developments (Ormiston) Ltd v CIR* (2015) 27 NZTC 22,026 (HC), under s CB 15B a person is treated as acquiring land at the stage in the process of acquisition when they have a right or an interest in the land and are entitled to apply to a court for protection of that right.

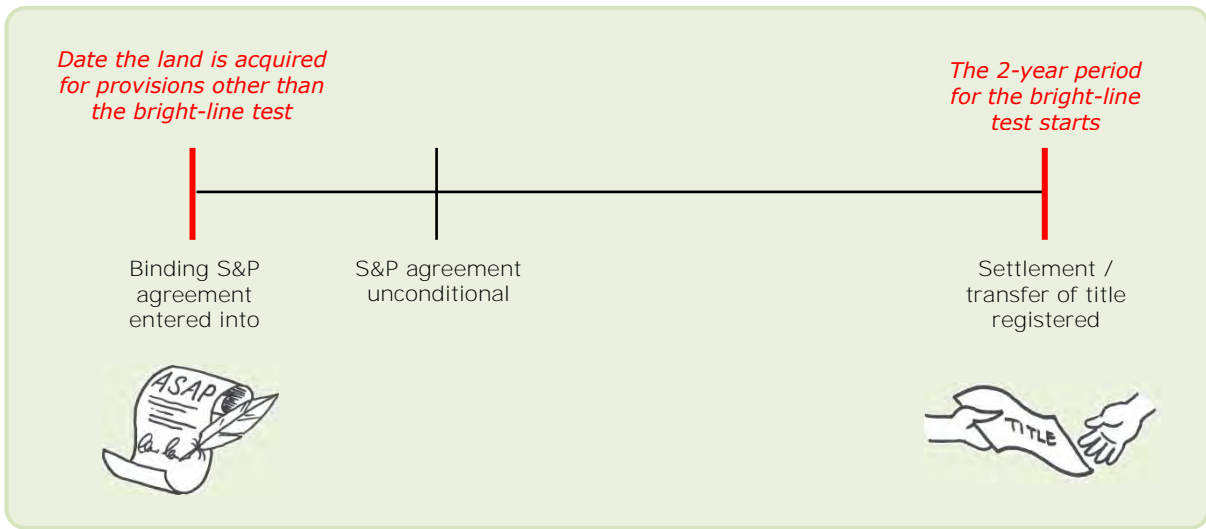
***When does someone first have an estate or interest in land under a sale and purchase agreement?***

42. The legislation does not specify when someone is considered to first have an estate or interest in land. However, in *Bevin v Smith* [1994] 3 NZLR 648 (CA) it was held that a purchaser has an equitable interest in land from the time a binding contract exists, even if it is conditional. This is when equitable remedies **are available to protect the purchaser's rights under the contract, though specific performance in the strict sense (ie, for the transfer of title) would not yet be available.**
43. The most common conditions in contracts for the sale and purchase of land (such as the need to obtain finance, a building report or a LIM) would not prevent there being a binding contract. But sometimes conditions that will mean that there is not in fact a binding contract yet, so the land is not considered to be acquired yet. For example, there may not be a binding contract if a condition requires the **approval of a company's directors or requires due diligence to be carried out.** It is necessary to consider the terms of the particular contract and the nature of the conditions to determine whether there is a binding contract (see, for example, *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 (CA), *Willetts v Ryan* [1968] NZLR 863 (CA), and *Barrett v IBC International Ltd* [1995] 3 NZLR 170 (CA)).
44. As noted at [40], the date a person acquires land under s CB 15B is the date they first have an estate or interest in the land, or an option to acquire the land. **In a typical land purchase, this will be the time at which a binding contract to purchase the land is formed (even if some conditions still need to be met).**
45. This is supported by the extrinsic materials from the time of the introduction of s CB 15B. Those materials make it clear that a person is regarded as acquiring land at the time a binding agreement for the acquisition is formed, even if there are conditions that still need to be fulfilled. See, for example, *Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Commentary on the Bill* (Inland Revenue, Wellington, November 2013).
46. What is relevant is the time that the person acquires the first interest in **the land in question** – ie, the land they are disposing of and is potentially subject to tax under one of the provisions in subpart CB. Other interests in the same underlying physical land will not be relevant. For example, if the sale of a freehold estate may give rise to taxation and the date of acquisition is relevant, the fact that the

person previously had a leasehold interest in the land will not be relevant. The date on which their first interest in the freehold estate arose will be the date that land was acquired.

47. The following two examples illustrate when land is acquired under the general rule in s CB 15B(1). They also note when the 2-year period for the bright-line test starts.

**Example 1 – Binding sale and purchase (S&P) agreement**



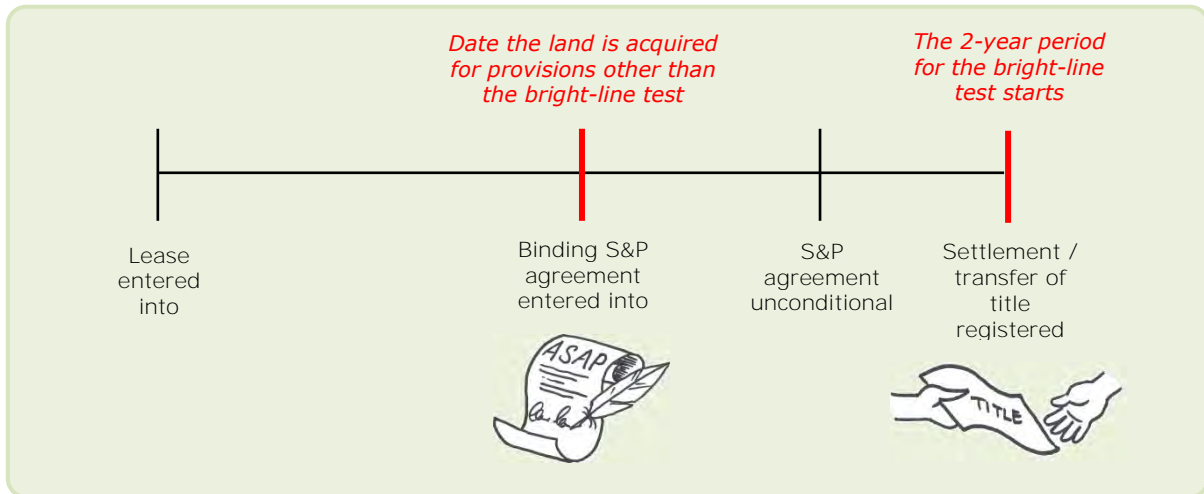
Sally entered into a sale and purchase agreement to purchase some land (the freehold estate). The agreement was subject to Sally obtaining satisfactory LIM and building reports within a specified timeframe. Those conditions were fulfilled, and the sale was settled in due course. When Sally sold the property some time later, one of the land provisions in subpart CB potentially applied and the date that she acquired the land was relevant.

For the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Sally acquired the land when she and the vendor entered into the binding sale and purchase agreement, even though that agreement was subject to conditions, because that was when Sally first had an equitable interest in the land.

Because Sally first got an estate or interest in the land when she and the vendor entered into the binding sale and purchase agreement, that is also the relevant date for determining if the bright-line legislation potentially applies. If the agreement was entered into on or after 1 October 2015, the bright-line legislation can apply to Sally's disposal of the land if none of ss CB 6 to CB 12 apply.

The 2-year period for the bright-line test (which may apply if none of ss CB 6 to CB 12 apply) starts on the date the transfer of title was registered to Sally.

**Example 2 – Lease before acquisition of freehold**



Tony and Cleo were renting a house that the owner decided to sell. Before putting the property on the market, the owner asked Tony and Cleo if they were interested in purchasing the property. They were, so entered into a sale and purchase agreement for the property. The agreement was subject to finance. That condition was fulfilled, and the sale was settled in due course. When Tony and Cleo sold the property some time later, one of the land provisions in subpart CB potentially applied and the date that they acquired the land (the freehold estate) was relevant.

For the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Tony and Cleo acquired the land (the freehold) when they and the vendor entered into the binding sale and purchase agreement, even though it was subject to finance, because that was when Tony and Cleo first had an equitable interest in the land. It is not relevant that they previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

Because Tony and Cleo first got an estate or interest in the land (the freehold) when they and the vendor entered into the binding sale and purchase agreement, that is also the relevant date for determining if the bright-line legislation potentially applies. If the agreement was entered into on or after 1 October 2015, the bright-line legislation can apply **to Tony and Cleo's disposal of the land if none of ss CB 6 to CB 12 apply.**

The 2-year period for the bright-line test (which may apply if none of ss CB 6 to CB 12 apply) starts on the date the transfer of title was registered to Tony and Cleo.

***Nominations, assignments of contractual rights, and novations of contracts – what is the difference, how do these arrangements affect determining the date of acquisition, and are there bright-line implications for these arrangements?***

48. One nomination situation that can arise is where the named purchaser is acting **on someone else’s behalf, and** that person is subsequently nominated as the purchaser.
49. Another nomination situation that often occurs is where someone enters into a **binding sale and purchase agreement to purchase land and that person “and/or nominee” are named as the purchaser.** Before settlement, the person may then choose to nominate someone else (a nominee) to complete the purchase. A common situation where this occurs is where, after entering into the sale and purchase agreement, the purchasers decide to hold the property in a trust or other entity.
50. In this type of nomination situation, the nominee is able to enforce the contract through ss 4 and 8 of the Contracts (Privity) Act 1982,<sup>3</sup> but the original contracting party (the nominator) remains a party to the contract and may also enforce its terms.
51. It may also be that the named purchaser assigns their rights under the sale and purchase agreement to someone else. If there is an assignment of contractual rights, the assignor **transfers** their rights to the assignee, who is then entitled to the benefit of the contract and can enforce those rights against the other party to the contract.
52. There will be an assignment of the contractual rights under a sale and purchase agreement to purchase land if there is a deed or other signed document that shows that the intention is that the original named purchaser is transferring all of their rights under the sale and purchase agreement to the other person – whether absolutely, conditionally, or by way of charge. A common situation where there is an assignment of contractual rights is where someone purchases land off the plans and then on-sells it before settlement. Note that the document does not need to purport to be an assignment to be one. It may be that a document that is described as a nomination in fact amounts to an assignment of the contractual rights. That said, someone simply nominating a different person or entity as the purchaser would not inadvertently effect an assignment of the contractual rights, given the nature of the wording that would need to be used for there to be an assignment.
53. It is also possible for there to be a novation, in which case the original contract is discharged, and a new contract with a different purchaser entered into. This requires the vendor to consent to both the cancellation of the original contract and the creation of the new contract. Consent may be inferred from the behaviour of the vendor, but a normal nomination situation is unlikely to be regarded as a novation. See, for example, *Karangahape Road International Village Ltd v Holloway* [1989] 1 NZLR 83 (HC) and *Stonne Ltd v Ronyx Holdings Ltd* (2005) 7 NZCPR 18 (HC).

Nominations

54. In the nomination situation where the named purchaser is acting on someone **else’s behalf and that person is subsequently nominated as the purchaser,** a special provision (s YB 21) will apply. Under that provision, because the named **purchaser was acting on the other person’s behalf, the other person is treated as**

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<sup>3</sup> See for example, *Rattrays Wholesale Ltd v Meredyth-Young & A’Court* [1997] 2 NZLR 363 (HC) and *Laidlaw v Parsonage* [2010] 1 NZLR 286 (CA).

having done what the named purchaser did (ie, enter into the contract), and **holding the resulting rights. The person acting on the other's behalf is ignored.** Because of this, the person who the nominee is acting for will be treated as having acquired the land at the time the nominee first had an estate or interest in the land. In a standard purchase of land situation this will be when there is a binding contract between the vendor and the nominee to purchase the land.

55. As noted at [49], the other type of nomination situation is where the named **purchaser is not acting on someone else's behalf**, but before settlement they nominate someone else to complete the purchase. In that situation, the nominee acquires the land under s CB 15B (relevant for the land provisions in subpart CB except the 2-year bright-line test) on the date they are nominated as the purchaser. This is when the nominee first has an equitable interest in the land. This is because the nominee is able to enforce the contract through ss 4 and 8 of the Contracts (Privity) Act 1982. While the original named purchaser remains a party to the contract, and may also enforce its terms (in addition to remaining liable for the performance of the burden of their promises under the contract), the nomination gives the nominee an equitable interest in the land too.<sup>4</sup>
56. Usually, in this type of nominee situation, the nominator and nominee are associated. Where land is transferred between associated persons, s CB 15(2) alters the date of acquisition for the transferee for the purposes of most of the land provisions (ss CB 7 to CB 12, and s CB 14). Section CB 15(2) treats the transferee as having acquired the land on the date on which the transferor acquired it. However, s CB 15(2) will not apply to alter the date of acquisition for a nominee who is associated with the original named purchaser who nominated them. This is because the original named purchaser does not **transfer** their interest in the land to the nominee when they make the nomination. As noted at [50], they continue to have their rights under the contract and, therefore, their interest in the land. The nomination simply creates additional rights (for the nominee).
57. The **nominee's** date of acquisition is, therefore, established under the general rule in s CB 15B(1). As noted at [55], this will be the date they are nominated as the purchaser.
58. The 2-year period for the bright-line test would start for the nominee on the date the transfer of title is registered to them (which typically happens on the settlement date). If there is no registered transfer of the land to the nominee on or before the date they sell or dispose of the land, the 2-year period will start on the date they were nominated as purchaser.
59. The nomination of someone else as purchaser will not give rise to any potential bright-line implications for the nominator (the original named purchaser). This is because, as noted above, the nominator does not transfer their interest in the land to the nominee when they make the nomination – there is no disposal. When the legal title transfers to the nominee (typically on the settlement date), **the nominator's interest in the land simply ceases to exist, it is not disposed of.** This is somewhat analogous to the lapsing of an option to acquire land, which has been considered by the Taxation Review Authority not to be a disposition of land (*Case M4* (1990) 12 NZTC 2,021 (TRA)).
60. **The item "Taxation (Bright-line Test for Residential Land) Act 2015" Tax Information Bulletin** Vol 28, No 1 (February 2016): 78 included an example (at 82) showing how s CB 6A applies in a nominee situation. That example stated that a nomination was a disposal, so s CB 6A could apply to tax any increase in

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<sup>4</sup> *Rivette v Atrax Group New Zealand Ltd* (2010) 11 NZCPR 723 (HC).

the value of the property. This QWBA supersedes the *Tax Information Bulletin* item in this respect.

#### Assignment of contractual rights

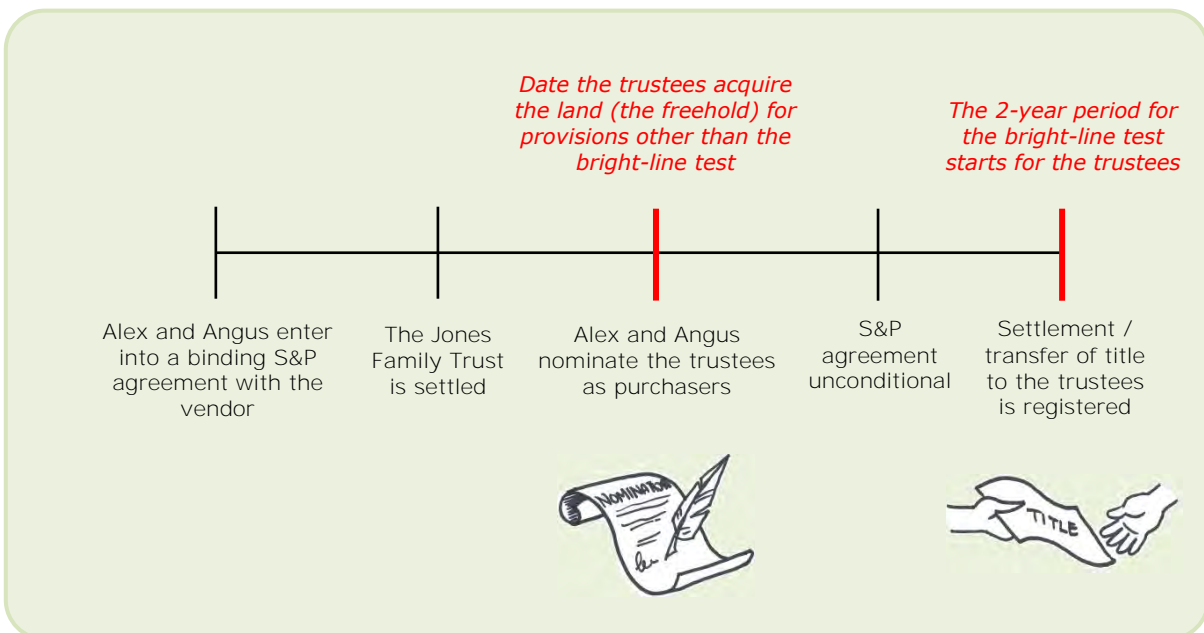
61. If what has occurred is an assignment of contractual rights (see [51] – [52]) and the parties are not associated, the assignee acquires the land under s CB 15B (so for the land provisions in subpart CB except the 2-year bright-line test) on the date of the assignment. This is when the assignee first has an equitable interest in the land.
62. If the assignor and assignee are associated, **the assignee's date of acquisition** for the purposes of most of the land provisions (ss CB 7 to CB 12, and s CB 14) will be the date that the assignor first had their equitable interest in the land (ie, typically, the date they entered into the contract to purchase the land, even if some conditions still needed to be met).
63. This is because s CB 15(2) treats someone who acquires land from an associated person as having acquired it on the date the associated person did. That means that the assignee is treated as having acquired the equitable interest in the land **that the assignor had at the date the assignor acquired it. If the assignee's** subsequent disposal of the estate in fee simple is potentially subject to tax and the date they acquired the land is relevant, the question in terms of s CB 15B is when did they first acquire an estate or interest in that land. Because they were associated with the assignor, so are treated as having acquired the equitable interest at the time the assignor did, they first had an interest in the estate in fee simple from that time.
64. The 2-year period for the bright-line test would start for the assignee on the date the transfer of title is registered to them (which typically happens on the settlement date).
65. If the land is residential land, the assignment of the contractual rights to someone else within two years of the sale and purchase agreement being entered into may mean any amount the assignor derives on the disposal (the assignment of the rights) is taxed under the bright-line test (if none of ss CB 6 to CB 12 apply).
66. If there is no amount paid for the assignment (or if the consideration is less than market value), the assignor would be treated as having derived an amount equal to the market value of the land that is disposed of (the equitable interest). The assignee would similarly be treated as having incurred expenditure of an amount equal to the market value of the land (the equitable interest).
67. The deeming of a market value amount being derived by the assignor and incurred by the assignee is because of s GC 1, which deals with disposals of trading stock at below market value. Section GC 1 would apply because the land **is "trading stock" (as defined in s YA 1)** for the purposes of s GC 1. For s GC 1 purposes, **"trading stock" includes land**, if the disposal of the land would produce income under any of the land provisions (including the bright-line test). Because the assignment of the contractual rights is within two years, it is a disposal of land that would produce income under the bright-line test, so the land is trading stock.
68. This deeming of a market value amount being derived by the assignor and incurred by the assignee means that even if there is no consideration for the assignment, there will be tax implications under s CB 6A if the market value of the land changes between the time an original named purchaser enters into the sale and purchase agreement and the time they assign their rights under that contract to someone else. It is important to bear in mind that as with any other

sale or disposal of land, there may be residential land withholding tax obligations **if the assignor is an "offshore RLWT person"** (defined in s YA 1).

Novation of the contract

- 69. If what has occurred is a novation of the contract (see [53]), there will be no implications under the land sale rules for the original purchaser. This is because their interest in the land is not disposed of; it simply ceases to exist when the original contract is discharged. The purchaser under the new contract will acquire the land under the rules discussed in this QWBA, and their bright-line start date will be established as discussed in this QWBA.
- 70. The following two examples illustrate when land is acquired under s CB 15B where there is a nomination, and when there is an assignment of contractual rights. They also note when the 2-year period for the bright-line test starts.

**Example 3 – Acquisition of land where there is a nominee**



Alex and Angus entered into a sale and purchase agreement to buy a property they thought would be a great investment. They planned to hold the property in a trust, but had not yet settled a trust when they found the property they wanted to buy. The sale and purchase agreement named "Alex and Angus and/or nominee" as the purchaser. Alex and Angus subsequently settled a trust (the Jones Family Trust), and advised the vendor that they nominated the trustees of the Jones Family Trust to be the purchasers and take title at settlement. The sale and purchase agreement subsequently went unconditional when a satisfactory building report and LIM were obtained. The sale was concluded, and the title was registered in the names of the trustees of the trust. When the Jones Family Trust sold the property some years later, one of the land provisions in subpart CB potentially applied and the date that the trustees of the trust acquired the land was relevant.

For the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, the trustees of the Jones Family Trust acquired the land on the date Alex and Angus nominated the trustees as the purchasers. This was when they first had an equitable interest in the land.



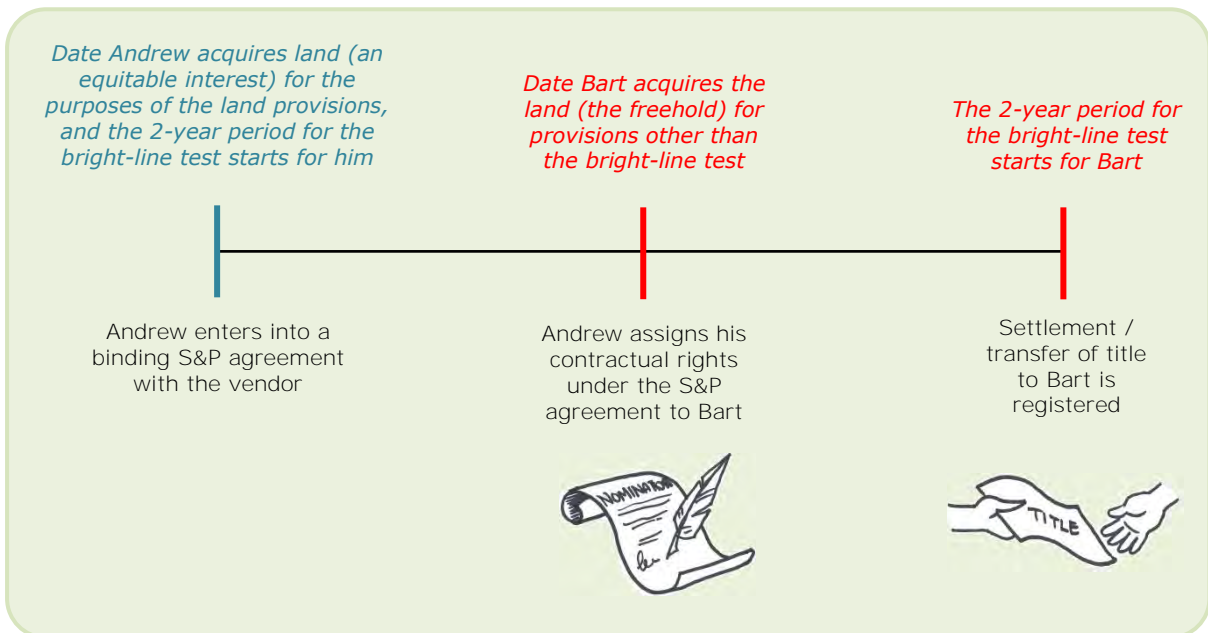
Alex and Angus are each associated with the trustees of the trust, because they are settlors of the trust (see s YB 8). But s CB 15(2) does not apply in this case to treat the trustees of the Jones Family Trust as having acquired the land when Alex and Angus did. This is because the nomination did not give rise to a transfer of land from Alex and Angus to the trustees. Alex and Angus continued to hold their rights under the contract, and therefore their interest in the land. The nomination simply created additional rights (for the trustees).

Because the trustees of the Jones Family Trust first got an estate or interest in the land when Alex and Angus nominated them as the purchasers, that is also the relevant date for determining if the bright-line legislation potentially applies. If the nomination was on or after 1 October 2015, the bright-line legislation can apply to **the trust's disposal** of the land if none of ss CB 6 to CB 12 apply.

For the trust, the 2-year period for the bright-line test (which may apply if none of ss CB 6 to CB 12 apply) starts on the date the transfer of title was registered to the trustees.

The nomination of the trustees as purchaser will not give rise to any tax implications under the land rules for Alex and Angus. This is because, as noted above, Alex and Angus did not transfer their interest in the land to the trustees when they made the nomination – there was no disposal. On settlement, when the legal title transferred to the trustees, Alex and Angus's interest in the land simply ceased to exist, it was not disposed of.

**Example 4 – Acquisition of land where there is an assignment of contractual rights to purchase the land**



Andrew entered into a sale and purchase agreement to buy a house, and paid a deposit of \$60,000. Andrew subsequently received an unsolicited offer from a non-associated party, Bart, to buy the property. Andrew agreed to the sale and, as settlement had not yet occurred, Andrew and Bart decided that Andrew would assign his rights under the sale and purchase agreement to Bart in exchange for a fee of \$110,000. This was recorded in a deed, which was signed two months after Andrew entered into the sale and purchase agreement with the vendor. The deed



was entitled “Deed of Nomination”, but it was clear from the words of the deed that the intention was that Andrew was transferring all of his rights under the sale and purchase agreement to Bart. Therefore, the transaction was an assignment of the contractual rights, not a nomination. The label the parties put on the document does not determine its legal effect. The sale was concluded with Bart as the purchaser. When Bart sold the property some years later, one of the land provisions in subpart CB potentially applied and the date that he had acquired the land was relevant.

For the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Bart acquired the land on the date the deed that assigned the contractual rights to him was executed. This was when Bart first had an equitable interest in the land.

Because Bart first got an estate or interest in the land when the deed that assigned the contractual rights to him was executed, that is also the relevant date for determining if the bright-line legislation potentially applies. If the assignment of the contractual rights was on or after 1 October 2015, the bright-line legislation can apply **to Bart’s disposal of the land if none of ss CB 6 to CB 12 apply.**

For Bart, the 2-year period for the bright-line test (which may apply if none of ss CB 6 to CB 12 apply) starts on the date the transfer of title was registered to him.

When Andrew entered into the sale and purchase agreement to buy the house, he **acquired an equitable interest in the land (which is “land” as defined).** If that was on or after 1 October 2015, the bright-line legislation could apply **to Andrew’s disposal of his rights under the sale and purchase agreement to Bart, if none of ss CB 6 to CB 12 apply.** When Andrew assigned the rights under the contract to Bart, he transferred his equitable interest to Bart. Because Andrew entered into an agreement to dispose of land before the registration of title, his start date for the bright-line test is the date he acquired the equitable interest – ie, the date the sale and purchase agreement was entered into. Because the land is residential land, and the assignment of the contractual rights to Bart was within two years of the sale and purchase agreement being entered into, the amount Andrew derived on the disposal (\$110,000) is income under the bright-line test in s CB 6A (if Andrew entered into the sale and purchase agreement on or after 1 October 2015 and if none of ss CB 6 to CB 12 apply). The main home exclusion from the bright-line test (in s CB 16A) cannot apply because Andrew never lived in the house. Andrew would be able to deduct the cost of his acquisition of the equitable interest (ie, the amount of the deposit he paid, \$60,000).

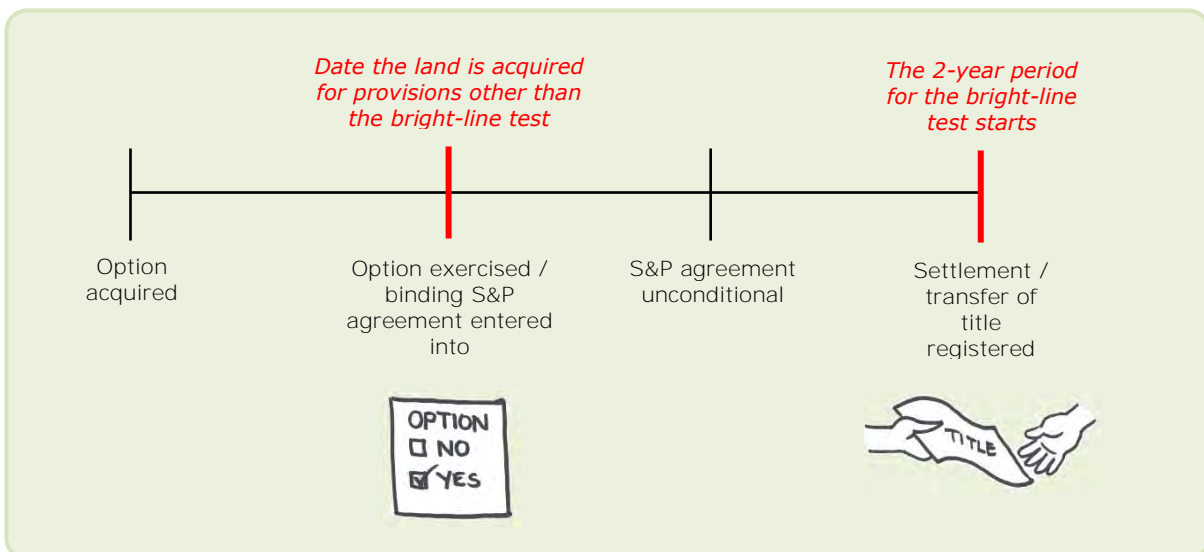
### **What if someone acquires land by way of an option?**

71. A special rule (s CB 15B(3)) applies if someone acquires land through the exercise of an option to acquire it.
72. An option to acquire land might be a right contained within a lease, or it might be granted separately. An option is essentially an offer to sell, together with a contract not to revoke the offer (see, for example, *Alexander v Tse* [1988] 1 NZLR 318 (CA), and DW McMorland, *Sale of Land* (3<sup>rd</sup> ed, Cathcart Trust, Auckland, 2011) at 3.16).
73. Someone may also be granted what is known as a pre-emptive right or “**first right option**” to acquire land – eg, a right of first refusal or a right of first offer. Although these pre-emptive rights are not, strictly speaking, options, if someone acquires the land through the exercise of such a right, it will have become an option by that point. This means the special rule about acquiring land through

the exercise of an option will also apply if someone acquires the land through the exercise of a pre-emptive right.

74. Under the special rule for land acquired through the exercise of an option, the person is regarded as acquiring the land **on the date that they exercised the option**. As noted above, what is relevant is when they acquired the land in question (ie, the land they are disposing of). It is not relevant if they previously had a different interest in the same underlying physical land. For example, if a person had a leasehold interest in the land and an option to acquire the freehold, and they exercise the option, acquire the freehold and subsequently dispose of it, what is relevant is when they acquired the freehold. In that situation it would be the date that they exercised the option. Their prior leasehold interest is not relevant.
75. Another thing to note is that an option to acquire land (or an estate or interest in land) is also itself **“land” as defined** in the Act. Therefore, if someone disposes of an option to acquire land, the date the option was acquired may be relevant. On this point, see from [78].
76. The following four examples illustrate when land is acquired under s CB 15B where an option or **“first right option”** is involved. They also note when the 2-year period for the bright-line test starts.

**Example 5 – Option to purchase land**



Sanjay purchased an option to buy some land for a specified sum. Sanjay exercised the option. By doing so, a binding contract for the sale and purchase of the land was created on the terms set out in the option contract. The sale was settled in due course. When Sanjay went to sell the land several years later, one of the land provisions in subpart CB potentially applied and the date that Sanjay had acquired the land (the freehold estate) was relevant.

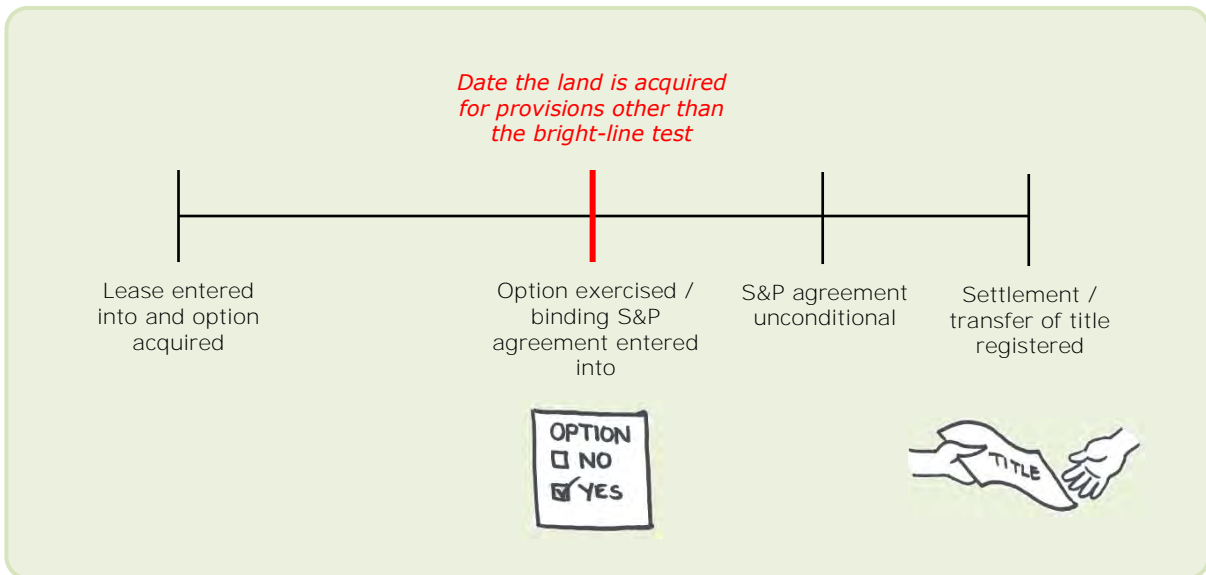
Because Sanjay acquired the freehold through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the special rule in s CB 15B(3), for the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Sanjay acquired the land (the freehold) when he exercised the option.

However, because Sanjay first got an estate or interest in the land when he acquired the option, that is the relevant date for determining if the bright-line legislation potentially

applies. If Sanjay acquired the option on or after 1 October 2015, the bright-line legislation **can apply to Sanjay’s disposal of the land if none** of ss CB 6 to CB 12 apply.

The 2-year period for the bright-line test (which may apply if none of ss CB 6 to CB 12 apply) starts on the date the transfer of title was registered to Sanjay.

**Example 6 – Lease with option to purchase land**



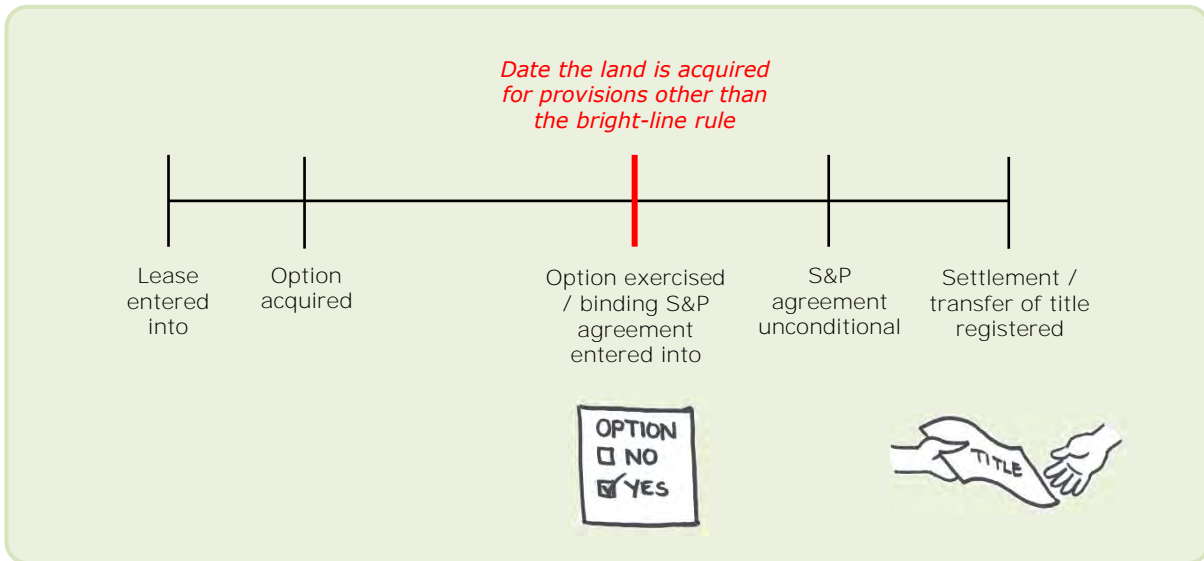
Baymax Robotics Limited entered into a lease of business premises and at the same time acquired an option, exercisable within the next two years, to buy the premises for a specified sum. Baymax Robotics exercised the option. By doing so, a binding contract for the sale and purchase of the land was created on the terms set out in the option contract. The sale was settled in due course. Baymax Robotics used the land predominantly as business premises. When Baymax Robotics went to sell the premises, one of the land provisions in subpart CB potentially applied and the date that Baymax Robotics had acquired the land (the freehold estate) was relevant.

Because Baymax Robotics acquired the freehold through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the special rule in s CB 15B(3), for the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Baymax Robotics acquired the land (the freehold) when it exercised the option.

However, because Baymax Robotics first got an estate or interest in the land when it acquired the option, that is the relevant date for determining if the bright-line legislation potentially applies. If Baymax Robotics acquired the option on or after 1 October 2015, the bright-line legislation **can apply to Baymax Robotics’ disposal of the land if none of** ss CB 6 to CB 12 apply.

Because Baymax Robotics used the land predominantly as business premises, the 2-year bright-line test would not apply to **the sale, as the land would not be “residential land” as** defined in the Act.

**Example 7 – Lease and subsequent option to purchase land**



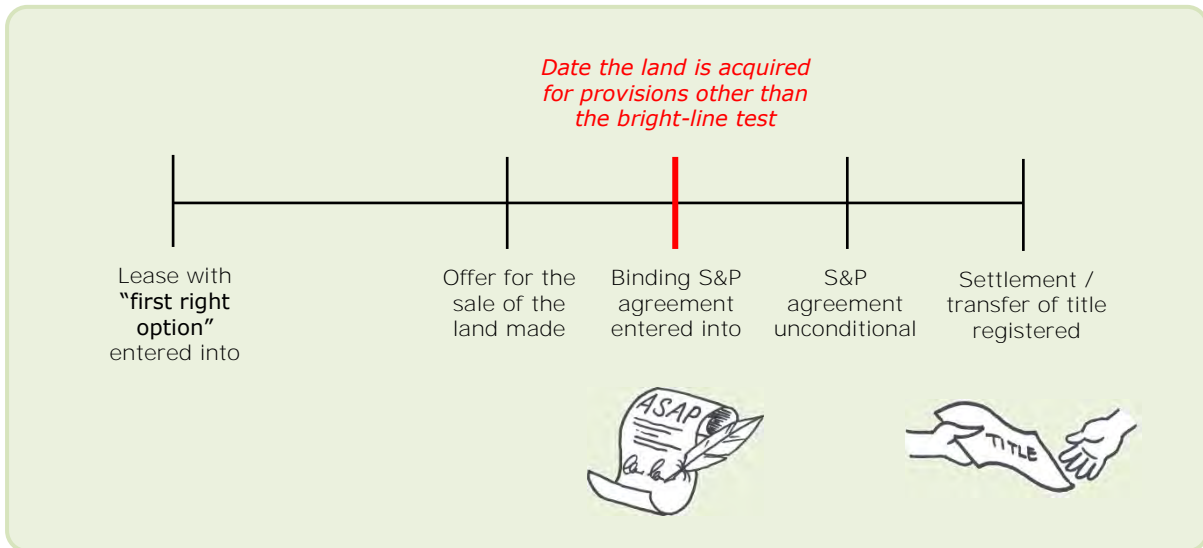
Scissorhands Sculpting Limited was leasing some land from which it operated its business. As the business became increasingly successful, Scissorhands Sculpting wanted to lock in the ability to purchase the land if things continued to go well. Scissorhands Sculpting entered into negotiations with the owner and, as a result, acquired an option, exercisable within a set period, to buy the land for an agreed sum. Scissorhands Sculpting exercised the option. By doing so, a binding contract for the sale and purchase of the land was created on the terms set out in the option contract. The sale was settled in due course. Scissorhands Sculpting used the land predominantly as business premises. When Scissorhands Sculpting went to sell the land, one of the land provisions in subpart CB potentially applied and the date that Scissorhands Sculpting had acquired the land (the freehold estate) was relevant.

Because Scissorhands Sculpting acquired the freehold through the exercise of the option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the special rule in s CB 15B(3), for the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Scissorhands Sculpting acquired the land (the freehold) when it exercised the option. It is not relevant that the company previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

However, Scissorhands Sculpting first got an estate or interest in the freehold land when it acquired the option. That is therefore the relevant date for determining if the bright-line legislation potentially applies. If Scissorhands Sculpting acquired the option on or after 1 October 2015, the bright-line legislation **can apply to Scissorhands Sculpting’s disposal of the land** if none of ss CB 6 to CB 12 apply.

Because Scissorhands Sculpting used the land predominantly as business premises, the 2-year bright-line test **would not apply to the sale, as the land would not be “residential land”** as defined in the Act.

**Example 8 – Lease with “first right option” to purchase land**



Jimmy Chews Limited leased its restaurant premises and had a “first right option” (a right of first refusal) to purchase the land in the event the owner decided to sell it. As it transpired, the owner decided to sell the land during the term of the lease. The owner made an offer to Jimmy Chews, which Jimmy Chews accepted, and the parties entered into a sale and purchase agreement. The sale and purchase agreement was subject to finance and to the obtaining of satisfactory building and LIM reports. Those conditions were fulfilled, and the sale was settled in due course. Jimmy Chews used the land predominantly as business premises. When Jimmy Chews went to sell the land, one of the land provisions in subpart CB potentially applied and the date that Jimmy Chews acquired the land (the freehold estate) was relevant.

When the previous owner made an offer to Jimmy Chews, the “first right option” became an option to acquire the freehold. Because Jimmy Chews acquired the freehold through the exercise of that option, the exception to the general rule (contained in s CB 15B(3)) applies. Under the special rule in s CB 15B(3), for the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, Jimmy Chews acquired the land (the freehold) when it exercised the option by accepting the offer and entering into the binding contract for the sale and purchase of the land. It is not relevant that Jimmy Chews previously held another interest in the underlying physical land (ie, the leasehold interest). The potential taxing event was the disposal of the freehold estate, so the issue is when the freehold estate was acquired.

However, Jimmy Chews first got an interest in the freehold land when the offer was made to him (as this is when Jimmy Chews had the option to acquire the land).<sup>5</sup> That is therefore the relevant date for determining if the bright-line legislation potentially applies. If the offer was made to Jimmy Chews on or after 1 October 2015, the bright-line legislation **can apply to Jimmy Chews’ disposal of the land if none of ss CB 6 to CB 12** apply.

Because Jimmy Chews used the land predominantly as business premises, the 2-year bright-line test **would not apply to the sale, as the land would not be “residential land”** as defined in the Act.

<sup>5</sup> As discussed at [25], this is typically the case in a “first right option” situation. See further *Motor Works Ltd v Westminster Auto Services Ltd*.

### **Subdivided land**

77. If someone subdivides land, a new title might be issued. This does not reset the person's date of acquisition of the land. Their date of acquisition for the new land will be whatever date they acquired the original undivided piece of land. (See for example *Paul Stephens Construction Ltd v CIR* (1990) 12 NZTC 7,192 (HC).)

### **Acquisition of an option**

78. As noted at [19], an option to acquire land or an estate or interest in land also falls within the definition of "land" in the Act.
79. Because options to acquire land or estates or interests in land are "land", if someone disposes of an option to another party rather than exercising it, the amount they derive on disposing of the option may be income under one of the land provisions in subpart CB. Depending on which taxing provision is potentially relevant, the time at which the person acquired the option may be relevant.
80. Under s CB 15B, an option will be acquired when a binding agreement creating the option, or for the transfer of the option, is entered into. This is the time from which the holder or purchaser of the option has an interest in the option.
81. "Residential land", which the bright-line test may apply to, includes land with a dwelling on it (or for which the owner has an arrangement relating to erecting a dwelling). As already noted, "land" includes an option to acquire land or an estate or interest in land. These definitions mean that "residential land" will include an option to acquire land or an estate or interest in land that has a dwelling on it (or for which the owner has an arrangement relating to erecting a dwelling). Therefore, if an option to acquire residential land is disposed of within the bright-line period, s CB 6A may apply. Because there will be no registered instrument of transfer for an option, the date an option is acquired for bright-line purposes will also be the date that a binding agreement creating the option, or for the transfer of the option, is entered into.
82. The following example illustrates when an option to acquire land is acquired under s CB 15B, and when the 2-year period for the bright-line test starts for an option.

#### **Example 9 – Acquisition of an option to purchase land**

ABC Dealing Limited, which carries on a business of dealing in land, entered into an option contract under which it had the right to purchase some residential land within a specified period, for a specified price. ABC Dealing Limited decided to sell the option, and did so.

For the purposes of the land sale provisions in subpart CB, other than the 2-year bright-line test, ABC Dealing Limited acquired the land (the option) when the option contract was entered into. This is the time from which ABC Dealing Limited has an interest in the option. Because there was no registered transfer of land to ABC Dealing Limited, the 2-year period for the bright-line test also starts on the date the option contract was entered into.

### **Acquisition of land on behalf of a company to be formed**

83. Section CB 15B(2) provides that if a person on behalf of a company to be formed enters into an agreement under which the company will have land, the company is treated, for the purposes of subpart CB in relation to the land, as existing from when the person enters into the agreement.
84. Because the company is deemed to exist at the time the relevant agreement is entered into and the person entered into the agreement on behalf of the company, the date that the person entered into the agreement (that gave rise to

an interest in land) will be the date the company is treated as having acquired the land.

85. There are no bright-line test implications for a person who acquires land on behalf of a company yet to be formed where the company subsequently ratifies the contract for the acquisition of the land. This is because s 182 of the Companies Act 1993 allows for ratification of pre-incorporation contracts, and at common law an effective ratification constitutes the relationship of principal and agent retrospectively.<sup>6</sup> This means that the person who acquired the land on behalf of the company yet to be formed has not themselves acquired (and subsequently disposed of) a land interest.

***When there may be a different date of acquisition rule***

86. Note that the date of acquisition rules in s CB 15B are overridden, for a particular transaction, by any relevant provision in either subpart FB or subpart FC. Those subparts deal with transactions such as transfers on settlements of relationship property, distributions on death, distributions from a trust, transfers of value from a company, and gifts of property.
87. Also, for the purposes of certain provisions, a person may be treated as acquiring land at a different date than the date under s CB 15, if they acquire land on an amalgamation (s FO 17) or, as noted at [56], from an associated person (s CB 15(2)).

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<sup>6</sup> See further in this regard: *Laws of New Zealand* Agency (online ed, accessed 28 March 2017) from [42].

## References

### Related rulings/statements

"Taxation (Bright-line Test for Residential Land) Act 2015" *Tax Information Bulletin* Vol 28, No 1 (February 2016): 78

### Subject references

Acquisition of land

### Legislative references

Companies Act 1993, s 182

Contracts (Privity) Act 1982, ss 4 and 8

Income Tax Act 2007, ss CB 6A, CB 6, CB 7, CB 9, CB 10, CB 12, CB 14, CB 15, CB 15B, CB 16A, CB 19, FO 17, GC 1 and YB 21, subparts FB and FC, and the definitions of "estate" (in relation to land), "estate in land" "estate or interest in land", "interest" (in relation to land), "interest in land", "land", "offshore RLWT person" and "trading stock" in s YA 1

Land Transfer Act 1952

Taxation (Bright-line Test for Residential Land) Act 2015, s 4(2)

### Case references

*AAA Developments (Ormiston) Ltd v CIR* (2015) 27 NZTC 22,026 (HC)

*Alexander v Tse* [1988] 1 NZLR 318 (CA)

*Barrett v IBC International Ltd* [1995] 3 NZLR 170 (CA)

*Bevin v Smith* [1994] 3 NZLR 648 (CA)

*Case M4* (1990) 12 NZTC 2,021 (TRA)

*Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 (CA)

*Karangahape Road International Village Ltd v Holloway* [1989] 1 NZLR 83 (HC)

*Laidlaw v Parsonage* [2010] 1 NZLR 286 (CA)

*Motor Works Ltd v Westminster Auto Services Ltd* [1997] 1 NZLR 762 (HC)

*Paul Stephens Construction Ltd v CIR* (1990) 12 NZTC 7,192 (HC)

*Rattrays Wholesale Ltd v Meredyth-Young & A'Court* [1997] 2 NZLR 363 (HC)

*Rivette v Atrax Group New Zealand Ltd* (2010) 11 NZCPR 723 (HC)

*Stonne Ltd v Ronyx Holdings Ltd* (2005) 7 NZCPR 18 (HC)

*Willetts v Ryan* [1968] NZLR 863 (CA)

### Other references

*Laws of New Zealand* Agency (online ed, accessed 28 March 2017) from [42]

McMorland, DW, *Sale of Land* (3<sup>rd</sup> ed, Cathcart Trust, Auckland, 2011)

*Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill: Commentary on the Bill* (Inland Revenue, Wellington, November 2013)