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Tax and your property transactions

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Introduction

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

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

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

- make a gain or loss from property speculating or dealing
- move from property investment into property dealing when prices are rising
- are a property dealer and you hold and rent properties during a downturn
- are a first-time landlord and don't think about the tax implications of renting your property
- are a shareholder or an owner of an interest in a look-through company (LTC) or partnership that owns a rental property
- buy an investment apartment with a managed lease and later change the rental arrangements or sell it
- sell a rental property you've claimed depreciation on
- become a dealer because you've made a number of purchase and sale transactions
- apply for GST registration when you buy property for dealing or speculation
- purchase a property on or after 1 October 2015 through to 28 March 2018 inclusive and sell it within two years
- purchase a property on or after 29 March 2018 and sell it within five years.

Note

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

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

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

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

The information in this guide is based on current tax laws at the time of printing.

Contents

What kind of property buyer are you?

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

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

Four main factors can determine your status as a property buyer for tax purposes:

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

An investor – buys a property to generate ongoing rental income and not with any firm intention to resell it. The property is a capital asset and any profit or loss from selling the property is capital and not taxable (apart from clawing back any depreciation, which is now recoverable).

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

However, if you purchased the property and sell it within five years (two years for properties purchased on or after 1 October 2015 through to 28 March 2018 inclusive) the sale may be taxable under the bright-line test.

The bright-line test only applies to properties purchase on or after 1 October 2015.

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

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

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

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

Under the bright-line test, any purchase and sale of a property within five years (two years for properties purchased on or after 1 October 2015 through to 28 March 2018 inclusive) may be taxable, even if it's not taxable as part of your property business.

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

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

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

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

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

If you're not clear about your reasons for buying a property, and any possible tax issues involved, read our guide **Buying and selling residential property - IR313** or talk to a tax professional.

Bright-line test for residential land

If you buy a property on or after 1 October 2015 through to 28 March 2018 inclusive and sell it within two years, or you buy a property on or after 29 March 2018 and sell it within five years, you may have to pay tax on any profit, no matter what your reason was for buying the property. This is called the bright-line test for residential land.

If your property isn't taxable under any of the information in pages 7 to 22 of this guide, it may still be taxable under the bright-line test for residential property (see page 23).

Property speculation

If you're buying and selling property other than a private family home, we recommend you get advice from a tax professional.

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

Your family/private home

Buying and selling your family/private home usually has no tax consequences.

If you buy a family home intending to resell it, and do this regularly to earn income or you have a regular pattern of buying and selling your family home, this could be seen as property dealing or speculation for tax purposes.

Holding onto a property for capital gain

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

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

Number of properties to be considered taxable

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

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

Speculators claiming the deduction for the purchase of a property

Income tax

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

GST

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

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

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

There may be times when you can't claim GST on a property – see page 20.

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

If you think you should have paid income tax on the sale of a property but didn't, please read our guide **Buying and selling residential property - IR313** or get advice from a tax professional.

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

Claiming a loss from property dealing or speculation

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

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

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

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

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

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

When rental property investment becomes rental property dealing

Owning rental property doesn't automatically exclude you from paying tax when you sell it.

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

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

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

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

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

Different outcomes

An investor buys a rental property to generate rental income.

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

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

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

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

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

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

Still can't decide?

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

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

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

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

Special rules for dealers and builders

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

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

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

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

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

There are exceptions for some private residences and business premises.

Rental properties don't qualify as a business for this exclusion.

Depreciation

Changing from rental property investment to rental property speculation or dealing can also affect depreciation on your properties. Rental investors can claim annual depreciation on the cost price of their property buildings, fitout and furniture, but investors who hold property as trading stock can't claim annual depreciation – see page 21.

Note

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

Note

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

Switching back to property investment from speculation or dealing

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

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

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

Unplanned rental income

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

Income tax

You'll have to include rental income in your income tax return. You may claim costs or expenses associated with the rental. New residential property deduction rules apply to most residential rental properties from the start of the 2019-20 income year, which for most people ends on 31 March 2020. See our **Rental income - IR264** guide for more detail.

GST

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

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

For details about making adjustments, see page 18 of our **GST guide - IR375**.

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

Special tax rules for those in property-related activities

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

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

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

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

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

Example

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

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

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

Property transactions and associated person rules

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

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

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

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

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

Note

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

How individuals can be associated

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

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

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

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

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

Extended associations

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

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

Example

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

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

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

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

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

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

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

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

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

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

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

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

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

Penalties might apply

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

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

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

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

Living temporarily in a property owned by your LTC

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

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

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

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

Living with your tenants in a property owned by your LTC

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

Asset protection

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

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

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

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

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

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

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

GST on apartment purchases and sales

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

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

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

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

Zero rating

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

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

Unexpected GST to pay

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

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

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

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

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

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

GST claims on property purchases

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

- **Buying residential rental properties to rent**

  If you buy a residential rental property as an investor you can't claim a GST credit on the purchase because renting residential accommodation is a GST-exempt activity.

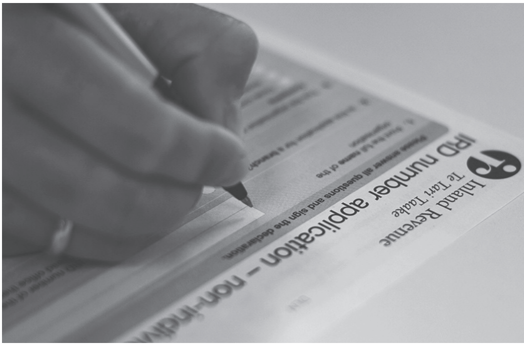
- **Buying residential rental properties to trade**

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

GST on property sales

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

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



Depreciation recovered on rental properties

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

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

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

Outcome 1

You sell the property for	$400,000	(excluding land value*)
Difference between sale price and book value	$ 20,000	
Depreciation recovered	$ 20,000	Include this amount as income in your tax return for the year the property was sold

Outcome 2

You sell the property for	$425,000	(excluding land value*)
Difference between sale price and book value	$ 45,000	
Depreciation recovered	$ 20,000	Include this amount as income in your tax return for the year the property was sold

* Land isn't a depreciable asset.

Outcome 3

You sell the property for	$390,000	(excluding land value*)
Difference between sale price and book value	$ 10,000	
Deprecation recovered	$ 10,000	Include this amount as income in your tax return for the year the property was sold

Outcome 4

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

* Land isn't a depreciable asset.

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

Note

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

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

Bright-line test for residential property

In addition to the usual intent rules, from 1 October 2015 residential property sales may be taxable if you buy then sell within a certain amount of time, even if you didn't intend to sell the property when you purchased it. This won't generally apply to your main home.

The bright-line test looks at whether the property:

- was purchased on or after 1 October 2015 through to 28 March 2018 inclusive, and sold within two years, or
- was purchased on or after 29 March 2018 and sold within 5 years.

You need to clearly identify when this period starts and finishes.

Note

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

This includes all residential property sales where the property was purchased on or after 1 October 2015, not just those that fall under the bright-line test.

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

Purchase and sale dates

For most people the purchase date for the bright-line test is the date property ownership was registered with Land information New Zealand (LINZ) until the date you sign a sale and purchase agreement to sell.

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

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

Example

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

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

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

Because the sale date is within five years of the purchase date the bright-line test applies and the sale of the property will be taxable.

When a sale is not taxable

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

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

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

You need to have lived in the property for more than 50% of the time you owned it.

You must actually live in the home. Having family members using the property as their main home is not sufficient.

What about the area of land usage?

More than 50% of the area of the land must have been actually used for the home, including such things as the yard, gardens and garages. The test is based on your actual use of the property and not your intended use of the property.

Example

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

Bill can't use the main home exclusion because the land (contained on the single title) was not used predominantly as his main home. The majority of the land was used as rental property.

What if I own more than one home?

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

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

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

What if my home is owned by a trust?

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

How many times can I use the main home exclusion?

The main home exclusion for the bright-line test can't be used if either:

- you've used the main home exclusion twice within the last two years, or
- you've engaged in a regular pattern of buying and selling of residential properties.

What if I make a loss on sale?

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

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

Example

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

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

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

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

If you're showing your income from property sales in your tax return, you may also need to complete a **Property sale information - IR833** form for each property sold. This form explains when to use it and what information is required.

Tax on property transactions

Income tax

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

You can submit your return online in myIR.

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

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

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

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

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

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

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

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

Provisional tax

Taxpayers with annual tax to pay of more than $5,000 ($2,500 in 2019/20 and earlier years) are required to pay provisional tax.

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

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

Residential land withholding tax (RLWT)

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

Property partnerships

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

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

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

Companies

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

GST

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

Putting your tax affairs right

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

You must:

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

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

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

Voluntary disclosure

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

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

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

You can make a voluntary disclosure at any time:

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

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

Useful information

0800 self-service numbers

Our 0800 self-service numbers are open 7 days a week - except between 5am and 6am each day. Make sure you have your IRD number ready when you call.

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

Order forms, guides and returns	0800 257 773
All other services	0800 257 777

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

Need to speak with us?

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

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

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

Our self-service lines are open 7 days a week - except between 5am and 6am each day. They offer a range of automated options, especially if you're enrolled with voice ID.

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

Privacy

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

We may also exchange information about you with:

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

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