Q&As – Bright-line Bill

Application date – all existing property is grandparented

Andrew buys a rental property in February 2015 and sells the property on 1 April 2016. This sale is not subject to the bright-line test because the property was purchased before 1 October 2015.

Rental property – 2-year period

Helen buys a rental property and gets registered title to the property on 15 November 2015. She rents the property out. She decides to accept a very good offer for the property and enters into an agreement to sell the property on 1 August 2016. Is Helen subject to the bright-line test?

Yes, the property has been bought and sold within the two-year period measured from 15 November 2015 to 1 August 2016, being the relevant dates. Helen must include the gain on the sale of the property in her income tax return for the 2016–17 tax year.

Additional rule for sales "off the plan"

Deepak enters into an agreement to buy a bare section in a planned subdivision on 1 December 2015. The purchase of the section is due to settle (with title passing) in December 2018. Deepak enters into an agreement to sell his interest in the property to a third party on 10 December 2016. Is Deepak subject to the bright-line test on the sale of his interest in the property?

Yes, Deepak has sold an interest in bare land that because of its area and nature is capable of having a dwelling erected on it. As Deepak has not had legal title to the land transferred to him at the time of sale, the additional rule for "off the plan" sales applies. The relevant 2-year period for "off the plan" sales is from the entering into of the contract to buy (1 December 2015) until the entering into of the contract to sell (10 December 2016). The bright-line test applies in this example because the period is less than 2 years.

Original acquisition date of land applies for subdivisions

Iosefa owns a large property in Wellington, which he bought in 2010. In December 2015, he decides to subdivide the property and sell off the back section. Is Iosefa liable for tax on the sale of the back section under the bright-line test?

No, the acquisition date for the subdivided section is the original acquisition date for the property (being 2010).

Farmland versus life-style block – capable of being farmed

James lives in a city apartment and decides to buy a small lifestyle block for his retirement in 10 years' time. He gets registered title to the property on 5 January 2016. The lifestyle block has a house and a paddock. He rents it out to a local family to live in and grazes a few sheep on the paddock to keep the grass down. James decides to sell the lifestyle block in late 2016. Is James taxable on the sale under the bright-line test?

Yes, the land is residential land because it has a dwelling on it and it is not farmland (because it is not capable of being farmed as an economic unit due to its small size).

Sale following change of job – main home exception

Manu buys a property on 1 November 2015 as his main home. Three months later, he is made redundant and needs to leave town to get a new job. He sells his property and moves to a new town for his new job. Is Manu taxable under the bright-line test on any gain on the sale of the property?

No, the main home exemption applies to the property because Manu has occupied the property mainly as his residence during his ownership.

Secondment – must actually live in the property for majority of time

Andrea buys a Christchurch property on 30 December 2015 intending to use the property as her main home. Six months later, she takes a secondment position in Sydney for two years. She rents out the property after she leaves. She decides to sell her Christchurch property 12 months into the secondment. Is Andrea taxable under the bright-line test on any gain from the sale of the property?

Yes, the main home exception does not apply because she has not occupied her Christchurch property as her main home for the majority of the time she has owned the property.

Apartment bought for family member – owners must live in the property

Jane is a student from England studying in New Zealand. Her English resident parents have purchased an apartment on 1 December 2015 in Auckland for her to live in while she is studying in New Zealand. After one year studying, Jane decides to return home and her parents sell the apartment on 30 January 2017. Are the parents subject to the bright-line test on the sale proceeds?

Yes, the apartment has been bought and sold within two years and the main home exception does not apply because the owners have not used the property as their main home during their period of ownership.

Mixed use property

Andrew and Bill buy a two-storey property with a dwelling on the top floor and a larger shop on the ground floor on 1 November 2015. They rent out the dwelling and operate a business from the ground floor. Their circumstances change and they sell the property on 1 July 2016. Are they taxable under the bright-line test?

No, the property has predominantly been used as business premises and is therefore not subject to the bright-line test.

Habitual buyer and seller – Only 2 main homes in 2 years

Josh has a practice of regularly buying residential properties, living in them while renovating them, and then selling them within six months of purchase. During a two year period, he buys and sells three properties. Is he liable for tax on any gains on the sale of the properties under the bright-line test?

Josh is not liable for tax under the bright-line test on the sale of the first two properties in the two-year period because of the main home exception. However, he may be liable for tax under the other land sale rules on the first two properties. Josh will be liable for tax under the bright-line test for the sale of the third property, because the habitual seller exception applies.

Inheritance – transfers and subsequent sales excluded

Jean buys an investment property on 1 November 2015. She dies on 1 March 2016. The property passes to the executor of Jean's will and subsequently to her daughter, Mary. Mary sells the property on 30 April 2016. Is Mary liable under the bright-line test for tax on any gains on the sale?

No, the exception for inherited property applies.

Relationship separation – transfer exempt but subsequent sale may be taxable

Jack and Jill get married in June 2015 and purchase a house and a rental property together on 15 December 2015. Six months into the marriage they decide to separate. Jill gets the house and the investment property under the relationship property agreement. Jill continues to live in the house as her main home. She decides to sell the house and the investment property in July 2016 (ie within two years of purchasing the properties). Is Jill taxable under the bright-line test?

Jill will not be taxable on the sale of the house because it has been her main home for the period she has owned the property (either jointly or subsequently on her own). The sale of the rental property will be subject to the bright-line test because it has been bought and sold within two years.

Ring-fenced losses for bright-line sales

Pierre bought an Auckland rental property in 2011 with the intention of selling it, so any gains from the sale of the property are subject to the current land sale rules. In January 2016, he buys a rental investment property in Dunedin that he intends to retain for the long-term. His plans change and he has to sell both properties at once in October 2016. The Dunedin rental property is subject to the bright-line test because it was bought and sold within two years. The Auckland apartment makes a $50,000 gain and the Dunedin rental property makes a $120,000 loss. What amount of income does Pierre have to return in his income tax return?

In the 2016–17 tax year, Pierre has made a $50,000 gain and a $120,000 bright-line loss. However, the amount of bright-line loss he can claim in the 2016–17 year is limited to the amount of the $50,000 gain. This has the effect of reducing his property income for the tax year to nil. He has to carry forward the remainder of the bright-line loss of $70,000 to a subsequent year to offset against other property income.