Inland Revenue
Te Tari Taake

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Buying and selling residential property

What you need to know about your tax obligations

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Introduction

This guide is to help you understand if you should pay tax when you sell a property. We explain your responsibilities and help you decide what other information you might need and when to get professional advice.

The information in this guide is primarily aimed at individuals. Builders, developers, dealers, etc should talk to their tax professional as different rules may apply.

Also included is information on the bright-line test for residential property purchased on or after 1 October 2015.

Note

Property means land (including a bare section), buildings and rights or options, eg, for "off the plan" properties.

Note

The ownership structure of the property doesn't matter. Whether it's owned by an individual, by a trust, by a qualifying company or by a look-though company – the rules are still the same.

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.

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

Do I have to pay tax on property I sell?

Two main property situations are covered by this guide:

- The intention test focuses on what your intention was at the time you purchased the property. If you intended to sell the property this makes it taxable.
- The bright-line test for residential property applies to properties purchased on or after 1 October 2015 and sold within two years. Even if you didn't intend to sell the property the bright-line test may make it taxable.

Intention test

This will depend on your reason or intention at the time you buy the property.

If you buy a property with the firm intention of selling it when prices rise – to make a gain from the increase in the property's value – the profit is likely to be taxable.

If you buy the property to provide a home for your family, any profit from the eventual resale is most likely not taxable, unless you have a history of regularly buying and selling properties.

A good test is to ask yourself "what are my reasons for buying this property?"

You should also remember to consider the bright-line test.

Case study 1

Chris knows Tom is looking for a property in Avondale. Chris has a friend in real estate with a property Chris knows Tom will like. Chris buys the property with the hope of selling it to Tom at a profit.

Chris bought the property with the intention of reselling it and making a gain and must pay tax on any profit he makes.

Case study 2

Bob knows there's a shortage of houses for sale in Green Bay. Bob buys a property in the area. His immediate goal is to build a granny flat on the property and rent both properties to pay off some of the building costs. He later plans to sell both properties at a profit.

Bob bought the property with the intention of improving it and then selling it. His rental income is taxable and he must pay tax on any profit he makes from the sale of the property.

Case study 3

Lance is a university student. He decides to buy one of the properties he's heard advertised on the radio for "…only a $1,000 deposit down". He borrows the $1,000 as he thinks he can sell the property at a bit of a profit before the title is issued, and before he needs to pay the balance.

Any profit Lance makes is taxable as his only intention was to make a profit.

Why is my reason for buying a property important?

If one of your reasons for buying a property is to resell it any profit is taxable.

It's a fact that nearly everyone buying a property will sell it at some stage in the future and most people hope their property will gain in value. However, this alone isn't enough to make any profits taxable.

It's only when one of your specific reasons for buying a property is to resell it that any profit you make from the sale is taxable.

We need to work out your intentions when you buy property so we can decide whether any profits you make on its sale will be taxable.

Normally, living in a house means that any profits on its eventual sale are likely to be non-taxable, unless you have a history of regularly buying and selling properties.

We make all our decisions on a case-by-case basis.

The following case studies illustrate the intention test. Even if the result isn't taxable under the intention test, the bright-line test may still apply. This is discussed in more detail on page 14.

Case study 4

Moana buys a property with the intention of providing a home for herself and her children. When she eventually sells it she hopes to make a gain and leave her children a legacy.

In a year's time she gets a new job and decides to sell the property to move closer to her new job. Property prices have risen, so Moana gains from the sale and can buy a bigger home.

The profit from the sale of Moana's property isn't taxable as her intention was always to provide a home for her family.

Case study 5

Sue buys a property with the intention of selling it for a higher price when the time is right. She and her family will live in it in the meantime. Sue has a regular pattern of buying and selling properties while living in them.

Six years later, house prices in Sue's area have risen to a level where she could make a good profit on the sale of her property.

The sale of Sue's property is taxable because her intention was always to sell it, and she has a history of regularly buying and selling properties.

In these examples we've assumed that Moana and Sue's stated intentions are genuine and didn't change over time.

What if I had more than one reason for buying a property?

You can have more than one reason for buying a property and for selling one.

In principle, we take into account all your reasons for buying a property.

For the purposes of these case studies assume the property was owned for longer than two years under the bright-line test.

Case study 6

Joe and Gail buy a second property as a rental. They also hope, in the long-term, the property could be sold for a profit.

Joe and Gail's reason for buying the property is for rental income – the hope of a higher resale value wasn't a reason for the purchase. In this case, the rental income and recovery of any depreciation they've claimed against the property is taxable. Any profit from the eventual sale of the property is unlikely to be taxable.

Case study 7

Frances and Bruce buy a second property hoping it will quickly gain in value. They decide to rent it out in the meantime.

One of their reasons for buying the property is to make a gain from any increase in its value when they sell it, so they must show the profit in their tax returns.

Case study 8

Bill and Dean buy rundown properties that need minor work to get them into a saleable condition. They aim to make a profit on their sales. They also live in the houses while they work on them and don't own another home.

Although Bill and Dean use each of the houses as a home, their main reason for buying the properties is to resell them at a higher price. They must pay tax on the profits because they have a history of regularly buying and selling properties.

Case study 9

Mark and Jan buy a property as a family home. They are keen on DIY and do a lot of work on the house to make it more comfortable and hope this will increase its eventual resale value. Then Mark gets a job in another city and they sell their home at a substantial gain.

Although Mark and Jan worked on the property they had no real intention of reselling it when they bought it. As a family home, the profit made on the house isn't taxable.

Note

The buyers' intentions in these examples seem quite clear but there may be other factors in each case which we need to consider. If Mark and Jan had bought and sold houses regularly and this one just happened to coincide with a job change, the situation might be different.

What if I change my mind after I buy a property?

This can happen. But, generally it's your intention when buying the property that matters. And we do accept that your intentions might change over time.

For example, you might buy a property with the intention of selling it later at a higher price, but then you decide you like the area and want to stay there. However, any profit you make when you eventually sell the property would most likely be taxable as your original intention was to make a profit from the sale.

On the other hand, you might buy a family home and then your circumstances change. In this situation it's unlikely that you'll be taxed on any profit you make under the intention test. You'll need to consider if the bright-line test applies to the sale.

As long as you aren't in the business of trading in or developing property, or constructing buildings, it's your intention at the time you buy the property that counts.

However, under the bright-line test if you buy the property on or after 1 October 2015 and sell it within two years, you may have to pay tax on the sale, no matter what your reason was for buying the property.

If your reasons for buying a property have changed over time, we strongly recommend you talk to a tax professional so you can work out your tax obligations.

How do you work out my intention or reason for buying a property?

We work out your intentions by listening to what you tell us and looking at your actions. We might look at your history in buying and selling properties. For example, have you bought and sold a number of properties over a period of time, or bought and sold properties at regular intervals? We might look at statements you made to a bank manager or advisor when you bought the property, and at any plans made or discussed at the time.

For example:

- What did you arrange and discuss with your bank?
- What did you discuss with your real estate agent/s?
- If you rent out the property, how long have you rented it out for?
- Did you draw up any plans for the property?
- What notes were made on council documents?
- What telephone, power and other utility arrangements did you make?
- What was your actual or planned involvement in the community, eg, attendance at schools, membership of clubs etc?
- What were the terms of the financial arrangements?
- Is the property providing you with a living?

The actions you take before and after the purchase can also help us to determine your intent.

In some cases, a buyer's intention will be fairly black and white, and in others there will be grey areas. If you're not sure if you should pay tax on a property you've sold, please talk to us or your tax professional.

What about my family home?

Whether we consider a property to be your home or not depends on how you use the property. It doesn't depend on what type of property you own.

Note

The bright-line test main home exclusion differs from the family home under the other property sale rules.

Case study 10

Mary lives in property A. She bought it intending to provide a home for her family. She is enrolled at the local gym, is a member of the local video store and her children attend preschool nearby. She knows her property is worth far more than when she bought it, but is happy in the area and has never put the property up for sale.

Mary also owns property B and property C which she bought for resale. These are in different areas from her family home, and between tenancies, she stays in them for security reasons.

Noisy neighbours move in next door to Mary at property A. She calls noise control a number of times but the noise gets worse and Mary eventually decides to sell her home.

As property A was clearly bought by Mary as her family home any profit she makes won't be taxable. Mary should pay tax on any profit she makes from selling properties B and C. Under the bright-line test, the sale of the property may be taxable if it was her third main home sale within two years.

Case study 11

Ross lives in property A, which he bought with the intention of reselling when it increased in value. Ross has a history of regularly buying and selling properties. He has taken out a six-month membership at the local gym, is a member of the local video store, and his children attend preschool in another suburb. He knows his property is worth far more than when he bought it. He likes living in the area but intends to put the property up for sale as soon as the market is right.

Ross also owns two other houses (property B and property C), which he bought for resale. These are in different areas and, between tenancies, he stays in them for security reasons.

The market picks up and Ross decides to sell his home.

Even though Ross lived in property A as his family home, he bought it intending to resell it, and has a history of regularly doing so. He should pay tax on any profit from the resale.

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 two years, 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 sold within two years of the purchase. You need to clearly identify when this period starts and finishes.

Purchase and sale dates

The bright-line test looks at whether you sold the property within two years of purchasing it.

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.

Case study 12

Marie signs an agreement to buy an investment property on 5 November 2015. The transfer to Marie is registered on the title with LINZ on 17 December 2015.

She decides to sell the property and signs a Sale and purchase agreement on 25 February 2017. The transfer is registered on the title on 3 March 2017.

The start date for the bright-line test is 17 December 2015 (the day the transfer is registered) and the sale date is 25 February 2017 (the day the Sale and purchase agreement is entered into).

Because the sale date is within two 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 over)
- 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.

Case study 13

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.

Case study 14

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 the "other income" of 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.

Does it matter how long I own a property for?

A common myth is that if you own a property for long enough the profit made isn't taxable. This isn't true – there's no time limit, it's your intention or reason for buying the property that counts.

If the property is owned for less than two years you'll need to consider if the bright-line test applies to the sale.

If a property owner or an associate is involved in the business of dealing in land, building and construction work, or in a business or undertaking involving developing or subdividing land, the time the property has been owned before its sale becomes an important consideration for tax purposes.

If sold within 10 years, a property may be taxable even though it wasn't bought with the intention of resale.

If any of these circumstances relate to you, we strongly recommend you talk to a tax professional so you can work out your tax obligations.

Does this mean I can't shift house when I need to?

No. Lots of factors influence decisions about buying and selling properties.

Changing your job, children changing schools or changes in the neighbourhood are all good reasons for selling a property.

However, if you buy and later sell a number of properties at a profit, giving little or no consideration to the personal inconvenience of shifting, and if there are no outside factors influencing your shift, we may question your reasons for the initial purchases.

You can only use the main home exclusion twice in two years under the bright-line test. This means third and subsequent main home sales within two years are likely to be taxable.

What type of tax will I have to pay?

Income tax

An individual buying and selling property, a partner in a partnership or an owner in a look-through company, needs to send us a completed *Individual tax return (IR3)* each year, or an *Individual tax return – non-resident (IR3NR)* if you live overseas.

You'll need to include enough information in this return to show how you worked out the amount of property income you've calculated after deducting expenses.

If you're showing this income in the "other income" box on 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.

The profit is added to any other income you've earned to calculate your total taxable income.

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. Any tax to pay is due by 7 February the following year (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 one using our online service at **www.ird.govt.nz** (search keyword: ir3). Or you can call us on 0800 227 774 and we'll send you a tax return at the end of the year. If you're overseas, please call us on 64 4 978 0779.

Provisional tax

As a buyer and seller of properties it's likely your tax to pay will be more than $2,500, so you'll have to pay provisional tax.

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

For more detailed information read our guide *Provisional tax (IR289)*.

If more than one person is involved in buying and selling property

If you're in a partnership with two or more people, you'll need to get an IRD number by completing an *IRD number application – resident non-individual (IR596)* form. If the partnership is a non-resident or meets the definition of an offshore person you'll need to get an IRD number by completing an *IRD number application – non-resident/offshore non-individual (IR744)* form. The partnership only needs to keep one set of accounts to record its income and expenses and file an IR7 tax return each year.

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

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

GST (goods and services tax)

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 taxable supplies made for all your taxable activities, excluding GST.

Case study 15

Tony regularly buys rundown houses with the intention of renovating them in his spare time and selling at a profit. He also owns his own family home.

Tony is clearly involved in a taxable activity with taxable supplies exceeding $60,000, so he must register for GST and account for GST inputs and outputs.

If your property dealings fall within the guidelines for GST registration you must register. For more information go to **www.ird.govt.nz** (search keyword: gst) or read our *GST – do you need to register? (IR365)*, *GST guide: Working with GST (IR375)* and *GST plus – Working out specific GST issues (IR546)*.

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 we require in a timely and useful way
- cooperate with us as required by the Inland Revenue Acts
- correctly respond to a personal tax summary, if you receive one
- tell us if you should have received a personal tax summary but didn't
- comply with other specific tax obligations.

An example of not meeting your obligations is entering false information in a tax return or knowingly not showing all your income.

If you tell us about your tax situation, any penalties will be much lighter than if you wait for us to find out.

If you've made a mistake or filed an incorrect tax return, it's best to tell us about it before we find out some other way.

Voluntary disclosures

A voluntary disclosure is when you tell us what's wrong with your tax return/s before we find out some other way.

If you think you should have paid tax on the sale of a property but didn't, you should consider making a voluntary disclosure. Penalties are much lighter if you come forward before we contact you. This applies to all disclosures, not just property ones.

Anyone can make a voluntary disclosure at any time:

- by completing a *Voluntary disclosure (IR281)* form
- by calling us
- by letter, fax or email
- by visiting one of our offices
- during an interview.

For more information about voluntary disclosures please read *Putting your tax returns right (IR280)*.

Useful information

0800 self-service numbers

This service is available to callers seven days a week except between 5 am and 6 am each day. Just 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. Registering for voice ID is easy and only takes a few minutes. Call 0800 257 843 to enrol.

Order publications and taxpacks	0800 257 773
Request a summary of earnings	0800 257 778
Request a personal tax summary	0800 257 444
Confirm a personal tax summary	0800 257 771
All other services	0800 257 777

When you call, just 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

Our contact centre hours are 8 am to 8 pm Monday to Friday, and Saturday between 9 am and 1 pm. We record all calls. Our self-service lines are open at all times and offer a range of automated options, especially if you're enrolled with voice ID.

For more information go to **www.ird.govt.nz/contact-us**

Privacy

Meeting your tax obligations means giving us accurate information so we can assess your liabilities or your entitlements under the Acts we administer. We may charge penalties if you don't.

We may also exchange information about you with:

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

If you ask to see the personal information we hold about you, we'll show you and correct any errors, unless we have a lawful reason not to. Call us on 0800 377 774 for more information. For full details of our privacy policy go to **www.ird.govt.nz** (search keyword: privacy).