

Habitual buying and selling of land

A tax policy consultation document

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Introduction

1. The rules that tax certain sales of land contain exclusions from tax for people who use that land as their main home, residence or business premises. However, the ability to use these exclusions is restricted where the taxpayer has a regular pattern of buying and selling land used as a main home, residence or business premises. This is because it is assumed that a person who has a regular pattern of buying and selling land primarily acquires that land for sale and should be taxed on any gain, whether or not they used the land as their residence or business premises while they owned it.
2. There are concerns that the current regular pattern restrictions are not working as intended. As currently drafted, taxpayers who habitually buy and sell can structure around the regular pattern restrictions. This can be done by using associated persons to carry out separate transactions, or by varying each transaction so that there is no “pattern”. This undermines the integrity of the tax system by allowing people to take advantage of the exclusions in circumstances where this was not intended.
3. This paper discusses the issues and proposes possible solutions. Officials seek your views on the issues and proposed solutions identified.

Background

4. The land sales rules contain various exclusions for land used as a main home, residence or business premises. If one of these exclusions applies, an amount that would otherwise be subject to tax under one of the land sales rules, will not be taxable (for example, an amount derived by a land dealer from selling land will not be taxable if the land dealer used the land as their residence while they owned it).
5. However, the main home exclusion in section CB 16A, the residential exclusion in section CB 16, and the business premises exclusion in section CB 19 do not apply where there has been a regular pattern of buying and selling property used for such purposes. The restriction assumes that a person who has a regular pattern of buying and selling land primarily acquires that land for sale and should be taxed on any gain, whether or not they used the land as their residence or business premises while they owned it.
6. For the purposes of the residential exclusion in section CB 16 and the business premises exclusion in section CB 19, the regular pattern restriction applies where a person has engaged in a regular pattern of acquiring and disposing of, or erecting and disposing of, dwellinghouses occupied mainly as a residence by the person or premises used for business.
7. For the purposes of the main home exclusion in section CB 16A, the regular pattern restriction applies in addition to the cap on how frequently the main home exclusion can be used in a two-year period. The main home exclusion cannot be used where:
 - the exclusion has been used by the person twice within the two years prior to the current sale; or
 - the person has engaged in a regular pattern of acquiring and disposing of residential land used as their main home.
8. There are concerns that these regular pattern restrictions are not working as intended.

The proposals

Group of persons or entities

9. As currently drafted, all of the regular pattern restrictions apply quite narrowly to the activities of a single person. This allows taxpayers to circumvent the application of the regular pattern restrictions by buying and selling land using different but associated persons or entities each time (for example, the first property is purchased by the person, the second is purchased by their partner, the third by their family trust etc).
10. To resolve this concern, it is suggested that an amendment be made to ensure that the regular pattern restrictions apply where a person, or a group of people or entities has a regular pattern of buying and selling land that has been:
 - occupied by the person or group of people as their main home, residence or business premises (as applicable); or
 - occupied as a main home, residence or business premises (as applicable) by the person or group of people that controls the entity or entities that own the land.
11. A group of people or entities will not have a regular pattern of buying and selling land merely because they are associated and together buy and sell a number of properties. It is necessary that the same person or group of people or entities all occupy each of the properties.

Example 1: Residential exclusion

Mr and Mrs A have a history of purchasing rundown residential properties to renovate and sell. They live in the properties while they renovate them, and each property is sold within two years. To date, Mr and Mrs A have repeated this pattern five times. The first property they purchased was held in Mr A's name. The second property was held in Mrs A's name. The third property was held in the name of the A Family Trust. The fourth property was held in Mr A's name. The fifth property was held in the name of the A Property Trust.

Under the current rules, the regular pattern restriction in both the residential exclusion in section CB 16 and the main home exclusion in section CB 16A would not apply. This is because **a person** has not engaged in a regular pattern of buying and selling land used as a residence or main home of that person.

The proposed amendment would ensure that the regular pattern restriction would apply to this scenario because **a group of people** has engaged in a regular pattern of buying and selling land that was all occupied as a residence or main home by Mr and Mrs A (who control the A Family Trust and the A Property Trust).

Example 2: Business premises exclusion

G purchases run-down buildings to renovate and sell. While he owns the buildings, he runs a piano tuning business out of them. Over the past eight years, he has purchased four run-down buildings, relocated his piano tuning business to the building, carried out repairs and maintenance, and then sold the building for a profit. Each building has been purchased by a separate company that is wholly owned by G.

Under the current rules, the regular pattern restriction in the business premises exclusion in section CB 19 would not apply. This is because **a person** has not engaged in a regular pattern of buying and selling land used as a business premises for that person.

The proposed amendment would ensure that the regular pattern restriction would apply to this scenario because **a group of people** has engaged in a regular pattern of buying and selling land that was all used as premises to carry on a piano tuning business by G (who controls all of the companies).

Example 3: No regular pattern

Q Corp is the holding company for a group of 20 retail stores selling electronics. Each store is owned by a separate subsidiary of Q Corp. None of the subsidiaries had any intention of selling their stores when they were initially purchased. However, over the space of 10 years, five of the subsidiaries sell their original stores and relocate to a new store in a better location.

The proposed amendment to the regular pattern restriction would not result in the restriction applying in this situation. While, overall, it could be said that the group has regularly bought and sold land over the 10-year period, none of those properties were purchased with an intention of resale. Instead, the sales were merely disposals of capital assets used to carry on the separate business of each sub.

Example 4: Regular pattern in a group of companies

B Corp is a holding company for a group of eight house building subsidiaries. Each of the subsidiaries has a spec home, which they use as an office (all management, administrative, and architectural work is undertaken from that location). All the subs carry on activities involving both buying land in new subdivisions and building to sell, as well as building on land owned by third parties. Over the course of 10 years, 5 of the subs relocate their office to a new spec home and sell their old one (all sales occur within 10 years of constructing the spec home).

Each of the subs separately are in the business of building. The subs acquired the land used for the spec houses in the course of their business (taxable under s CB 7).

Under the current rules, the regular pattern restriction in the business premises exclusion in section CB 19 would not apply. This is because **a person** has not engaged in a regular pattern of buying and selling land used as a business premises for that person.

The proposed amendment would ensure that the regular pattern restriction would apply to this scenario because **a group of people** has engaged in a regular pattern of buying and selling land that was acquired with an intention of resale.

12. The distinction between examples 2 and 4 and example 3 is that the subsidiaries in example 3 do not have an intention of resale. We are interested in views as to whether this raises any policy concerns.

Similar activities

13. Because of the language used in the residential exclusion in section CB 16 and the business premises exclusion in section CB 19, the regular pattern restrictions in those provisions have been interpreted very narrowly to apply only where there is a similarity or likeness between the transactions (for example, a pattern of buying land, building a home on the land and then selling). This means that the regular pattern restrictions will not apply where a person has a pattern of buying and selling land that they occupy as a residence or business premises, where they carry out different activities on the land while they hold it. For example, the first property is bought, lived in and sold, the second is renovated while it is lived in and sold, or the third is a bare section where a house is built and occupied then sold).
14. Officials consider that the regular pattern restrictions should apply more broadly to any pattern of buying and selling land used as a residence or business premises. It should not matter whether properties were simply bought and sold, or whether any building or renovation work occurred while the person owned the land. What should be relevant is that there are “regular” transactions (that is, the transactions occur at sufficiently uniform or consistent intervals).
15. Therefore, it is suggested that an amendment be made to broaden the scope of the regular pattern restrictions in the residential exclusion in section CB 16 and the business premises exclusion in section CB 19, to ensure they apply to all patterns of buying and selling land used as a residence or business premises.

Example 5: Different activities

Miss P is a property developer. She purchased a property that she used as her main home. She sold it three years later and purchased a run-down property which she occupied while it was renovated. Miss P sold that property three years later and purchased another property which she also renovated while she lived there. Three years later she sold that property and purchased a bare block of land. Miss P built a house on the land which she occupied as her dwelling until she sold it three years later.

Under the current rules, Miss P does not have a regular pattern because she has not carried out the same activities on the land for each property. Therefore, she can rely on the residential exclusion for each property sale.

The proposed amendment would ensure that the regular pattern restriction would apply to this type of scenario because, while the activities carried out on the land are different, the transactions occur at sufficiently uniform or consistent intervals such that she has a regular pattern of buying and selling land.

16. The regular pattern restriction to the main home exclusion in section CB 16A refers only to a regular pattern of acquiring and disposing of residential land that is used as a main home. Therefore, officials are of the view that this provision is already focused on the regularity of the sale and purchase transactions and does not require amendment. However, officials are interested in submitters’ views on this point.

Time-period restrictions

17. As noted, the main home exclusion in section CB 16A contains both a regular pattern restriction and a restriction where the exclusion has been used twice within the two years prior to the current sale.

18. Officials suggest that similar time-period restrictions could be useful in addition to the regular pattern restrictions to the residential exclusion in section CB 16 and the business premises exclusion in section CB 19. Officials are interested in submitters' views on this proposal.
19. Officials are also interested in submitters' views on the number of transactions and the relevant time periods that should be considered if such a time-period restriction is added to the residential exclusion in section CB 16 and the business premises exclusion in section CB 19. Officials suggest a time-period restriction of more than twice in three years might be appropriate.

Other considerations

20. While officials consider that the regular pattern restrictions require amendment to ensure that taxpayers cannot structure around them, it is not intended that such amendments should result in ordinary commercial or family transactions, where there is no purpose of sale, being taxed.
21. The regular pattern restrictions are not, for example, intended to apply where people move from time to time as a result of changes of circumstance (such as relocating for work or to get nearer to a good school). It is also not intended that the regular pattern restrictions should prevent small businesses from moving to larger premises over time as their business expands.
22. Officials are interested in submitters' views as to whether the proposed amendments to the regular pattern restrictions are likely to capture these types of transactions in circumstances that would not already be caught under the current rules.

Submissions

23. Officials seek submissions on the proposals set out in this policy consultation document.
24. Submissions should be made by **Friday 18 October 2019** and can be emailed to policy.webmaster@ird.govt.nz with "Habitual buying and selling" in the subject line.
25. Alternatively, submissions may be posted to:

Habitual buying and selling of land
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140

26. Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions, or parts thereof, on the grounds of privacy, or commercial sensitivity, or for any other reason, will be determined in accordance with that Act. Those making a submission who consider that there is any part of it that should properly be withheld under the Act should clearly indicate this.

Next steps

27. Ministers will make decisions on this issue in late 2019 after considering submissions received. It is expected that any changes will be included in a Bill in early 2020.