

# Rollover relief – bright-line test and interest limitation

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This special report provides early information on amendments included in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 to rollover relief for the bright-line test and interest limitation rules, ahead of an upcoming edition of the *Tax Information Bulletin*.

This special report is organised into two parts. Part One (pages 5 to 22) is best suited for readers already familiar with the rollover relief rules. It provides a brief overview and detailed analysis of the most recent amendments to help readers identify what has changed.

Part Two (pages 23 to 45) provides in-depth guidance on the consolidated amendments from the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 that first introduced the new rollover relief rules, and the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023, specifically in the context of rollover relief for the bright-line test. This provides a comprehensive view of the new rollover relief provisions as they apply for the purposes of the bright-line test at the date of this publication.

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## **PART ONE**

# **Changes enacted in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023**

## Rollover relief – bright-line test and interest limitation

*Sections CB 6A(1AB)(b), CB 6AB, CB 6AC, CZ 39(1B) and FC 9(4) of the Income Tax Act 2007*

Various remedial amendments have been made to the new rules providing rollover relief for the bright-line test and the interest limitation rules to ensure that the relief works as intended.

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

### Background

Rollover relief under the bright-line test ensures certain transfers of residential land are not taxed at the time of the transfer. Instead, the recipient takes on the original owner's acquisition cost and date. When the recipient disposes of the residential land, this cost and acquisition date determines whether the disposal is taxed under the bright-line test and the amount of the gain that is taxable.

In the context of interest limitation, interest deductions for residential property are being gradually phased out between 1 October 2021 and 31 March 2025 for loans drawn down for residential property before 27 March 2021. For residential property loans drawn down on or after 27 March 2021, interest deductions have generally been denied since 1 October 2021 except in simple refinancing scenarios. Rollover relief ensures certain restructures of the property's legal ownership and the accompanying loan do not exclude someone from this phasing-out period and instead place them into full interest denial before 31 March 2025 for loan amounts first drawn down before 27 March 2021.

### Bright-line test

The bright-line test, as introduced in 2015, included limited relief for certain transfers: relationship property, inherited land, and company amalgamations. The Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 introduced additional rollover relief rules for certain legal transfers of residential land when there is no underlying change in economic ownership. The changes extended coverage of rollover relief to the following legal structures from 1 April 2022, provided certain conditions are met:

- family trusts: standard trusts and Māori authority trusts
- look-through companies

- partnerships
- te Tiriti o Waitangi – the Treaty of Waitangi settlements
- transfers within wholly-owned groups of companies.

The extent of relief under the bright-line test for these new categories generally depends on the amount of consideration paid for the transfer:

- If the transfer occurs at or below the original owner's acquisition cost (that is, the person has not realised a gain), no tax consequences arise for the original owner if the transfer is made within the relevant bright-line period. The recipient then takes on the original owner's bright-line start date and cost base.
- If the transfer occurs for more than the original owner's cost (that is, they have realised a profit), then that gain is taxed if the transfer is made within the relevant bright-line period. A rule that deems bright-line disposals to be made at market value is switched off to ensure any "paper profit" is not taxed. The recipient then takes on the original owner's bright-line start date, but with an updated cost base of the amount for the transfer.

## Interest limitation

Rollover relief for interest limitation purposes is provided in the same situations as the bright-line test but with no requirement regarding consideration.

The new interest limitation rules in subpart DH of the Income Tax Act 2007 deny deductions for interest incurred on loans on or after 1 October 2021 where those loans are drawn down on or after 27 March 2021 for "disallowed residential property" (DRP).

Loans drawn down before 27 March 2021 are "grandparented transitional loans", meaning interest deductions are progressively denied over the period from 1 October 2021 to 31 March 2025 as "grandparented residential interest".

In limited circumstances, rollover relief is provided so loans drawn down on or after 27 March 2021 also qualify as grandparented transitional loans.

If certain conditions are met, section DH 5(5)(d) provides that New Zealand dollar denominated loan amounts (ignoring re-drawings or additional borrowings on or after 27 March 2021) are grandparented transitional loans to the extent the loans are for DRP for which a previous owner (the original owner) also had a loan. The loan amounts must be equal to or less than the amount of the original owner's loan at the time the original owner transferred the property.

## Key features

### Redrafting of rollover trust provisions

Several of the rollover relief provisions applying to transfers to or from family trusts have been substantially redrafted to clarify their application. As part of this redrafting, the following remedial changes have been made:

- Amendments to sections CB 6AB(2) and (3), and CB 6AC(2) and (3) ensure rollover relief applies to a transfer of residential land or DRP out of a family trust, either back to the principal settlor or the group of settlors that originally transferred the land to the trust (provided that, for a group, at least one of the settlors is a principal settlor), even if the settlor (or settlors) is not an “original settlor” (as was required by the originally enacted provisions).
- Rollover relief now applies to a transfer of residential land or DRP out of a family trust to a principal settlor, even if the settlor did not originally transfer the residential property in question to the trust.
- Amendments to sections CB 6AB(2), (3) and (4), and CB 6AC(2), (3) and (4) clarify the wording and intention of the rollover relief provisions for transfers involving multiple legal structures or between different legal capacities.
- New sections CB 6AB(1)(b) and CB 6AC(1)(b) provide that rollover relief applies when residential land or DRP held in a qualifying family trust is resettled onto another family trust, provided certain conditions are met.
- The definition of “close family beneficiary” in section CB 6AB(6) has been amended to include:
  - a trustee of another trust if at least one beneficiary of the other trust is a close family associate of a beneficiary of the relevant trust
  - a wider class of charitable or non-profit beneficiaries beyond registered charities, so that discretionary trusts that have in their trust deeds the standard clause defining a broad class of charitable/non-profit beneficiaries may qualify as “rollover” trusts
  - a company in which a 50 percent or more voting interest (or a 50 percent or more market value interest if a market value circumstance exists) is owned by a beneficiary that is a principal settlor of the trust, and the trustee of another



trust if at least one beneficiary of the other trust is a close family associate of a beneficiary of the first trust.

- An amendment to section CB 6AC(5) ensures rollover relief is available for certain transfers to or from qualifying family trusts that are Māori authorities, or eligible to be Māori authorities, regardless of *how* they are eligible to be Māori authorities.

## Other remedial changes

Amendments also clarify that when any of the rollover relief provisions applies to a transfer of residential land, the recipient of the land is subject to the same bright-line test settings as the transferor was. This includes having the same bright-line test length as the transferor had, being five or ten years, or not being subject to the bright-line test at all if the transferor first acquired the land before 29 March 2018 (see new sections CB 6A(1AB)(b) and CZ 39(1B)). Along similar lines, new section FC 9(4) provides that when inherited land is transferred to a “rollover person”, the transferor’s exemption for inherited land is rolled over to the person so that a subsequent disposal by them is also exempt from the bright-line test.

## Application date

The amendments came into force on 27 March 2021, except for the new section CB 6AB(2)(c) and (6)(c) which came into force on 1 April 2023.

## Detailed analysis

### Transfers to settlors (sections CB 6AB(2) and CB 6AC(2))

Rollover relief is available under either section CB 6AB(2) or CB 6AC(2) for a transfer of residential land or DRP from a qualifying family trust to the settlors of the trust, provided certain conditions are met. Rollover relief may apply if the property was originally transferred to the trust by those settlors or if the settlors had not transferred the property to the trust. Different conditions apply in these two cases to determine whether rollover relief applies.

Previously, a settlor receiving residential land or DRP from their family trust had to be an “original settlor”, meaning they made the original settlement of *property* on the trust (being *any* property, not necessarily land or even the specific land now being transferred from the trust to the settlor). Consequently, rollover relief was arguably not available if the land was transferred to a person who became a settlor of the trust *after* the trust was originally settled.

This was the case even if the settlor was in fact the original owner of the land and had become a principal settlor at, or by, the time they transferred the land to the trustee.

Sections CB 6AB(2) and (3) and CB 6AC(2) and (3) have been redrafted to clarify that rollover relief does apply in these situations.

Note former sections CB 6AB(1) and CB 6AC(1) have also been redrafted as new sections CB 6AB(1)(a) and CB 6AC(1)(a), respectively. This is not intended as a policy change, but rather a streamlining of the provisions in the style of new sections CB 6AB(2) and CB 6AC(2) which has also removed a number of minor inconsistencies that were in the provisions as originally enacted.<sup>1</sup>

### **Removal of “original settlor” requirement**

New section CB 6AB(2)(a) and (b) provides that the bright-line start date for land (referred to as the “bright-line acquisition date” in the legislation) when a person (the transferee) disposes of the land is the bright-line start date of the trustee (being the previous owner), provided the following conditions are met:

- the trustee transfers the land to the transferee(s) on or after 1 April 2022
- the transferee (along with all other transferees if there is more than one) is a settlor of the trust and had originally transferred the land to the trustee
- if there is more than one transferee, the transferees acquire proportionally the same amount of land they originally transferred to the trustee, and
- at the time the trustee transfers the land to the transferee(s):
  - all transferees are beneficiaries of the trust
  - at least one transferee is a principal settlor, and
  - the trust is a “rollover trust”.

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<sup>1</sup> The only substantive change to sections CB 6AB(1) and CB 6AC(1) is the addition of a new paragraph (b) to each of these sections, which provides rollover relief for resettlements of family trusts in certain circumstances. Previously, rollover relief for trust resettlements was not explicitly provided for in the legislation, although the intention was always that rollover relief should apply in such situations provided the usual conditions relating to the principal settlors and beneficiaries were met for both trusts. This is discussed in more detail below at ‘Resettlements of family trusts’.

The definition of “rollover trust” in section CB 6AB(5) has been amended so it no longer refers to the former “original settlor” requirement. The amended definition provides that “rollover trust” means, at the time of a relevant transfer to or from the trust:

- all principal settlors are beneficiaries of the trust
- all principal settlors are close family associates,<sup>2</sup> and
- all beneficiaries are close family beneficiaries.<sup>3</sup>

The amendments ensure rollover relief applies under section CB 6AB in the situation where a settlor receives land back from a qualifying family trust that the settlor previously sold the land to or settled the land on – including circumstances where the transferee is not the “original settlor” of the trust.

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<sup>2</sup> Two people are “close family associates” under section CB 6AB(7) if they are within four degrees of blood relationship, or are married, in a civil union or de facto relationship, or one person is within four degrees of blood relationship to the other person’s spouse, civil union partner or de facto partner.

<sup>3</sup> “Close family beneficiary” is defined in section CB 6AB(6) to mean, for the relevant trust, a beneficiary that is one or more of the following: a principal settlor; a trustee of another trust and at least one beneficiary of the other trust is a close family associate of a beneficiary of the relevant trust; a close family associate of another beneficiary who is also a principal settlor; a company in which a 50 percent or more voting interest, or a 50 percent or more market value interest if a market value circumstance exists, is owned by a beneficiary who is a principal settlor or a close family associate of another beneficiary who is a principal settlor; a charity registered under the Charities Act 2005; or any association, club, institution, society, organisation or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent or cultural purpose, whether in New Zealand or elsewhere – provided that if the family trust only has one principal settlor, there is at least one other natural person beneficiary who is a close family associate of the principal settlor.

**Example 1: Sale to family trust by non-original settlor**

In 2005, Martha settles a new family trust, with herself, her husband Bill and their children, Jack and Sean, as the beneficiaries of the trust.

In 2007, Jack makes substantial settlements on the trust such that he becomes the principal settlor.

In 2009, Jack acquires an investment property for \$250,000.

In May 2019, Jack sells the investment property to the trust for \$600,000.

In November 2022, the trust sells the property back to Jack for \$600,000, even though the market value of the property is now over \$1 million. At the time of the sale, Jack is still the principal settlor of the trust.

As the amount paid by Jack for the property is equal to the amount the trustee originally paid for the property, full rollover relief would apply to the transfer under the proposed amendments. This means the trust would not be subject to tax under the bright-line test on the transfer of the property to Jack in November 2022. This is because the trustee would be treated as disposing of the land at cost, meaning their net income arising under the bright-line test is zero.

Jack would be deemed to have a bright-line start date of May 2019 for the land (being the trustee's bright-line start date for the land) and a cost base of \$600,000.

New section CB 6AC(2) similarly provides that the bright-line start date for land when a person (the transferee) disposes of it is the bright-line start date of the Māori trustee (being the previous owner), provided certain conditions are met. Like the amendments to section CB 6AB, references to "original settlor" have been removed from section CB 6AC(2) and its surrounding subsections, including the definition of "Māori rollover trust" in subsection (4).

Rollover relief applies under section CB 6AC(2) if:

- the Māori trustee transfers the land to the transferee(s) on or after 1 April 2022
- the transferee (along with all other transferees if there is more than one) is a settlor of the trust and had originally transferred the land to the Māori trustee
- if there is more than one transferee, the transferees are all settlors of the trust and acquire proportionally the same amount of land they originally transferred to the Māori trustee, and

- at the time that the trustee transfers the land to the transferee(s):
  - all transferees are beneficiaries of the trust
  - the trust is a “Māori rollover trust”.

As mentioned above, the definition of “Māori rollover trust” in section CB 6AC(4) has been amended. “Māori rollover trust” now means, at the time of a relevant transfer:

- all beneficiaries of the trust are either members of the same iwi or hapū, or descendants of the same tīpuna (living or dead), and
- the land being transferred is subject to Te Ture Whenua Māori Act 1993.

Provided the above conditions are met, rollover relief applies if the trustee is a Māori authority or eligible to be one (see the definition of “Māori trustee” in section CB 6AC(5)).

### **Principal settlor not original owner of land**

New section CB 6AB(2)(c) provides another route for rollover relief to apply when residential land or DRP is transferred from a rollover trust to a settlor. Rollover relief applies under the section when the land is transferred to a settlor or group of settlors, provided all settlors receiving the land are principal settlors at both the time the land is acquired by the trustee and the time the trustee transfers the land to the settlor(s).

Rollover relief does not apply to transfers to settlors who are not principal settlors of the trust either at the time the land was acquired by the trustee or the time the trustee transfers the land. This timing requirement ensures a beneficiary of the trust cannot become a principal settlor immediately before the transfer to them just so they receive the land without bright-line test tax implications. It also ensures that rollover relief does not apply to a transfer to someone who is no longer a principal settlor of the trust.

Rollover relief also does not apply under this provision if the transferees had previously transferred the land to the trustee. This is because section CB 6AB(2)(a) and (b) already provides for transferees who had previously owned the land before transferring it to the trustee. Paragraph (c) is a relatively limited provision, as it only applies in the specific scenario where the transferee had not originally owned the land.

It should be noted the new section CB 6AB(2)(c) was inserted with effect on 1 April 2023, the day after the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 received the Royal assent. This means that, unlike the other amendments to sections CB 6AB and CB 6AC, it does not apply retrospectively to transfers occurring on or

after 1 April 2022. Instead, section CB 6AB(2)(c) only has effect for transfers occurring on or after 1 April 2023.

**Example 2: Transfer from family trust to principal settlor who made cash settlement on trust**

In August 2019, Melville decides to settle a family trust with himself, his father, Dean, and his sister, Rosie, as the beneficiaries of the trust. The only property settled on the trust at that time is \$900,000 in cash contributed by Melville, making Melville the principal settlor of the trust (being the settlor whose settlements for the trust are greatest or greatest equal). Shortly afterward, in September 2019, the trustee purchases a residential property for \$850,000.

Rosie makes a cash settlement on the trust of \$700,000 in December 2019.

In May 2023, the trustee transfers the property to Melville for its cost of \$850,000, even though at that time it is worth \$1.2 million. At the time of the transfer, Melville is still a principal settlor of the trust.

As the amount paid by Melville for the property is equal to the amount the trustee originally paid for the property, full rollover relief would apply to the transfer under the proposed amendments. This means the trust would not be subject to tax under the bright-line test on the transfer of the property to Melville in May 2023. This is because the trustee would be treated as disposing of the land at cost, meaning their net income arising under the bright-line test is zero.

Melville would be deemed to have a bright-line start date of September 2019 for the land (being the trustee's bright-line start date for the land) and a cost base of \$850,000.

If the property had instead been transferred by the trustee to Rosie, that transfer would not have qualified for rollover relief. This is because Rosie is not a principal settlor. Even if Rosie had become a principal settlor in December 2019 by making a larger settlement on the trust (equal or greater in value to Melville's), a transfer of the property to her would still not qualify for rollover relief as she was not a principal settlor at the time the land was acquired by the trustee.

**Transfers to self but in a different capacity and transfers involving multiple legal structures (sections CB 6AB(3) and (4), CB 6AC(3) and (4))**

Section CB 6AB provides rollover relief for transfers of residential land or DRP to trusts, partnerships and look-through companies (LTCs), as well as transfers out of these structures to the land's original owner. For example, rollover relief is provided for the transfer of land held on a rollover trust to a person who is both a principal settlor and beneficiary of the trust. Rollover relief is also provided under section CB 6AB(4) if that person then decides to

transfer the land to an LTC of which they are the sole shareholder. For efficiency, it makes sense to provide rollover relief where the same result is achieved in one transaction, rather than two (for example, where land is transferred directly from a rollover trust to an LTC owned by the principal settlor of the trust).

The former version of section CB 6AB(3) provided rollover relief for such composite transfers, as did former section CB 6AC(3) for composite transfers involving family trusts that were Māori authorities or were eligible to be Māori authorities. Rollover relief applied where the original owner received the land from the legal structure but in a different capacity to the one in which they became “original settlor”. The sections also contained the proportionality requirement<sup>4</sup> that applies when land is transferred from a rollover trust back to a settlor who had originally transferred the land to the trust (now contained in new sections CB 6AB(2)(b) and CB 6AC(2)(b)).

Former section CB 6AB(4) provided rollover relief if a person transferred residential land or DRP to themselves in a different capacity (such as from their “personal” capacity to their capacity as a shareholder in an LTC or a partner in a partnership, or vice versa) and there was “no intervening transfer to a third party”.

The following amendments have been made to clarify the effect and intention of these provisions:

- Sections CB 6AB(2) and (3) and CB 6AC(2) and (3) have been redrafted so the proportionality and capacity rules are now in separate subsections, rather than being combined into a single subsection as they were previously. As mentioned above, the proportionality rule is now in sections CB 6AB(2)(b) and CB 6AC(2)(b), while the capacity rule remains in sections CB 6AB(3) and CB 6AC(3), albeit in a revised form. The references to a person having a capacity “other than settlor or original settlor” have been removed with an added clarification that, for the purposes of applying subsections (1)(a) and (2), the transferors or transferees (as applicable) may have different capacities in relation to the different criteria in those subsections. For example, a transferee may be a settlor of the trust in their personal capacity and be a beneficiary as an LTC owner, or they may have transferred the land to the trust in their personal capacity and acquire it back from the trust as a partner in a partnership. The changes to subsection (3) mean that, in such situations, the relevant criteria in subsection (1)(a) or (2) (whichever applies) are satisfied – therefore, rollover

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<sup>4</sup> Basically, the rule is that when land is transferred from a family trust back to a group of settlors who originally transferred the land to the trust, the settlors should acquire proportionally the same amount of land they each held before it was transferred to the trust.

relief applies if all other relevant conditions set out in section CB 6AB or CB 6AC are also met.

- The requirement in section CB 6AB(4) that the transfer “must not be to or from a person in their capacity of settlor, beneficiary or trustee” has been removed. This wording was originally inserted with the aim of making it clear that either section CB 6AB(3) or CB 6AC(3) is the relevant provision that applies when land is transferred from a trustee of a family trust to the principal settlor’s (or principal settlors’) LTC or partnership (or to the LTC owners or partners in the instance when it was the LTC or the partnership that originally transferred the land to the family trust), but the chosen wording could have been clearer. The reference to there being “no intervening transfer to a third party” has also been removed as it appears it was redundant.

## **Resettlements of family trusts (sections CB 6AB(1)(b) and CB 6AC(1)(b))**

New sections CB 6AB(1)(b) and CB 6AC(1)(b) provide rollover relief when residential land or DRP held on a rollover trust is resettled onto another, related, rollover trust.

If certain conditions are met, new section CB 6AB(1)(b) provides that a person holding land as trustee of the resettled trust (trust A), where the land was transferred to them from another related rollover trust (trust B), has the same bright-line start date for the land that the trustee of trust B had. This treatment applies if:

- trust A and trust B are both rollover trusts, and
- for trust A:
  - all the beneficiaries are the same as for trust B, or
  - all the natural person beneficiaries are either the same as, or close family associates of a principal settlor of, trust B.

In other words, rollover relief is only available if both trusts meet all the usual requirements for rollover relief in section CB 6AB(5).

To qualify for rollover relief, each natural person beneficiary of trust A must be a close family beneficiary. In the case of multiple principal settlors, each principal settlor must be a close family associate of the other principal settlors. At a minimum, each natural person beneficiary of trust A must be either a principal settlor, or a close family associate of a principal settlor, of trust B.



Trust A may not necessarily have the same beneficiaries as trust B. However, provided the above conditions are met, this would not preclude the resettlement from qualifying for rollover relief. For example, if an additional generation were added to trust A's beneficiaries, rollover relief would still be available if the close family beneficiary requirements were satisfied.

Rollover relief also applies even if the principal settlor of trust B is deceased.

### **Example 3: Resettlement of family trust**

Wayne is the principal settlor and a beneficiary of his family trust, which meets the definition of a "rollover trust" in proposed new section CB 6AB(5).

In April 2021, the trustee of the trust resettles the trust property, which includes residential land on a new family trust.

The beneficiaries of the new family trust include Wayne's relatives within four degrees of blood relationship and their spouses, as well as a couple of registered charities. Aside from Wayne, the new trust has one other principal settlor, Wayne's wife, Karen, who is also a beneficiary of the trust.

All principal settlors of the new trust (including Wayne) are close family associates, and all beneficiaries are close family beneficiaries, meaning the new trust is a rollover trust. As the transfer to the new trust at nil consideration is for less than the cost of the land to the trustee of the first trust, rollover relief applies to the transfer of the residential land from the first trust to the new trust. This means the trustee of the first trust is treated as disposing of the land at cost so their net income arising under the bright-line test is zero. The trustees of the new trust are deemed to have the same bright-line start date and cost base for the land as the trustee of the first trust.

New section CB 6AC(1)(b) similarly provides rollover relief for resettlements of Māori rollover trusts.

The definition of "Māori rollover trust" in section CB 6AC(4) has been amended so that it means, at the time of a relevant transfer:

- all beneficiaries of the trust are either members of the same iwi or hapū, or descendants of the same tipuna (living or dead), and
- the land is subject to Te Ture Whenua Māori Act 1993.

Provided the first trust (trust B) and resettled trust (trust A) have the same beneficiaries and are both Māori rollover trusts, rollover relief applies under section CB 6AC(1)(b) if, for each of the trusts, the trustee is a Māori authority or is eligible to be one (see the definition of "Māori

trustee” in section CB 6AC(5)). As with the rule for general family trusts above, this includes the situation where one of the settlors of the first trust is deceased.

## **Definition of “close family beneficiary” (section CB 6AB(6))**

Amendments have been made to the definition of “close family beneficiary” in section CB 6AB(6) as follows:

- **A new paragraph (ab) has been added to include a trustee of another trust if at least one beneficiary of the other trust is a close family associate of a beneficiary of the relevant trust.** The words “or trustees of another trust and at least one beneficiary of the other trust is a close family beneficiary of the relevant trust” that were in paragraph (d) of the definition of “close family associate” in section CB 6AB(5) have been deleted.
- **A new paragraph (ac) has also been added so the definition of “close family beneficiary” includes any association, club, institution, society, organisation or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere.** This expands the scope of permissible beneficiaries to include charities beyond those registered under the Charities Act 2005, so that discretionary trusts that have in their trust deeds the standard clause defining a broad class of charitable/non-profit beneficiaries may qualify as rollover trusts. Equally, it also permits non-discretionary family trusts to include non-registered charities as beneficiaries and qualify as rollover trusts. However, there is an additional condition that applies if the trust (discretionary or otherwise) has just one principal settlor. In this case, a charitable or non-profit beneficiary of the type described in paragraph (ac) qualifies as a close family beneficiary only if the trust has at least one natural person beneficiary who is a close family associate of the principal settlor. This is intended to ensure the trust is a genuine family trust.
- **The scope of paragraph (c) has been expanded to include a company in which a 50 percent or more voting interest – or a 50 percent or more market value interest, if a market value circumstance exists – is owned by a beneficiary that is a principal settlor (see new subparagraph (i)).** Previously, only a company in which a 50 percent or more voting interest (or market value interest) was owned by a beneficiary that was a close family associate of a principal settlor (now contained in subparagraph (ii)) was included in the definition. It should be noted the amendment to paragraph (c) came into force on 1 April 2023 (this contrasts with the other two

amendments to the “close family beneficiary definition” described above, which both took effect on 27 March 2021).

## **Māori family trusts rollover relief (section CB 6AC(5))**

Rollover relief is provided for transfers of residential land or DRP subject to Te Ture Whenua Māori Act 1993 in certain situations. Rollover relief applies under section CB 6AC when land is transferred to or from a trust that is either a Māori authority or eligible to be a Māori authority, and where all beneficiaries are members of the same iwi or hapū or are descendants of the same tipuna (living or dead). This is intended to mirror the rollover relief rules for general family trusts while recognising that Māori family trusts may be structured differently.

The policy intent is that rollover relief should be available regardless of the reason why the trustee is a Māori authority or eligible to be one. However, the provision was previously restricted to just those situations where the trustee was (or was eligible to be) a Māori authority because it received and managed assets on behalf of claimants where those assets were transferred by the Crown as part of the settlement of a claim under te Tiriti o Waitangi – the Treaty of Waitangi. This was because the definition of “Māori trustee” in section CB 6AC(5) formerly referred to a trustee of a trust that is either a Māori authority, or eligible to elect to be a Māori authority, under section HF 2(3)(e)(i).<sup>5</sup> However, this restriction was not necessary because another section already provided rollover relief for Treaty of Waitangi settlements. The erroneous cross-reference to section HF 2(3)(e)(i) in section CB 6AC(5) has been deleted so the Māori trustee definition includes any trust that is eligible to elect to be a Māori authority.

## **Other bright-line remedial amendments**

### **Relevant bright-line period (sections CB 6A(1AB)(b) and CZ 39(1B))**

When a transfer of residential land is eligible for rollover relief, the intent is the bright-line period does not reset. This includes both the start date of the bright-line period (that is, when the “clock” runs from) and which bright-line test applies (for example, the five-year or ten-year test). The start date of the bright-line period is generally determined by the date the legal title was transferred (referred to as the “bright-line acquisition date” in the legislation),

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<sup>5</sup> Section HF 2(3) sets out the circumstances in which the trustees of a trust are eligible to make an election to become a Māori authority. Paragraph (e)(i) of that section applies to the trustees of a trust who, on behalf of Māori claimants, receive and manage assets that are transferred by the Crown as part of the settlement of a claim under te Tiriti o Waitangi.

whereas which bright-line test applies is determined by the date of acquisition (generally when a person enters into the agreement to purchase a property).

Previously, the legislation produced the unintended effect that, when rollover relief applied, the recipient only took on the original owner's bright-line start date and not the underlying acquisition date.<sup>6</sup> This meant that, while the start date did not reset, the recipient became subject to a ten-year bright-line period if the transfer was made on or after 27 March 2021. For example, a property acquired in 2016 would have been subject to the two-year test and could have been disposed of without tax under the bright-line test from 2018 onwards. However, if a transfer eligible for rollover relief occurred in 2022, in the absence of a remedial amendment the recipient would have become subject to the ten-year bright-line test (with a 2016 start date) and would need to retain the property until 2026 to be able to dispose of the property without it being taxed under the bright-line test.

This is not the policy intention, and so new sections CB 6A(1AB)(b) and CZ 39(1B) have been inserted to ensure a transferee in this situation also takes on the appropriate bright-line test length and other settings – including where no bright-line test applies because the land was originally acquired before 1 October 2015.

New section CB 6A(1AB)(b) provides that the ten-year bright-line test (section CB 6A) does not apply to a person's disposal of residential land if the land meets the requirements of one of sections CB 6AB, CB 6AC, CB 6AE or FB 3A and the transferor first acquired an estate or interest in the land before 27 March 2021. New section CZ 39(1B) similarly provides that the five-year bright-line test (preserved in section CZ 39 for land first acquired on or after 29 March 2018 and before 27 March 2021) does not apply to a person's disposal of residential land if the land meets the requirements of sections CB 6AB, CB 6AC, CB 6AE or FB 3A and the transferor first acquired an estate or interest in the land before 29 March 2018.

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<sup>6</sup> See sections CB 6AB(1), (2), (4), CB 6AC(1), (2), CB 6AE(1) and FB 3A(3).

**Example 4: Land purchased before 27 March 2021 and sold to owners' LTC after 27 March 2021**

Sanjay and his wife, Marie, purchase residential land in their own names for \$670,000 on 6 May 2018, each of them holding a 50 percent share of the land. On 17 July 2023, they sell the land to a look-through company, A Co, that they jointly own 50:50, for \$950,000. The market value of the land at that time is \$1.12 million.

Sanjay and Marie are subject to the five-year bright-line test for the land, but because they held the land for five years before selling it to A Co, there is no tax liability under the bright-line test.

Partial relief applies to the sale to A Co, meaning A Co takes on Sanjay and Marie's bright-line start date of 6 May 2018 but not their acquisition cost of \$670,000. A Co's cost base would instead be the amount of consideration it provided, being \$950,000. A Co would also be subject to the five-year bright-line test for the land, being the bright-line test period Sanjay and Marie were subject to.

**Inherited property transferred to rollover person (section FC 9(4))**

The rollover relief provisions previously did not work as intended when inherited residential land was transferred by the beneficiary of a deceased person's estate to a person qualifying for rollover relief (referred to here as a "rollover person"). Examples of such transfers include when a beneficiary of an estate transfers inherited land to a rollover trust they are a principal settlor and beneficiary of, or to an LTC they own.

An amendment has been made to ensure the exemption from the bright-line test that applies when a person disposes of land they inherited also applies to a receiving rollover person when they dispose of the land.

Pre-existing sections CB 6A(2B) and CZ 39(7) provide that a disposal of inherited land by the beneficiary of a deceased person's estate is not taxable under the bright-line test. Where the recipient of the disposal is a rollover person, rollover relief ensures that when the rollover person disposes of the land it has the same bright-line start date and cost base for the land as the beneficiary had (as given by section CB 6AB or CB 6AC, and section FC 9(3), respectively). The problem with how the law previously worked was that only the beneficiary's bright-line start date and cost base were "rolled over" – the actual exemption from the bright-line test in CB 6A(2B) (or in CZ 39(7) for the five-year test) was not rolled over to the recipient. This result was at odds with the intention of rollover relief, which is to ensure a rollover person holds residential land subject to all the same bright-line tax settings as the previous owner of the land – including that a disposal by the rollover person should not be subject to the bright-line test in cases where the previous owner inherited the land.

New section FC 9(4) provides that if residential land is transferred by a beneficiary of the deceased person on or after 1 April 2022 to a person who is a recipient as described in section FC 9B(a) to (e), and the person disposes of it, sections CB 6A and CZ 39 do not apply to the disposal. This ensures that when a beneficiary of an estate transfers inherited residential land to a rollover person, the beneficiary's exemption from the bright-line test for the inherited land is rolled over.

**Example 5: Transfer of inherited property to rollover trust**

Jerry inherits a house from his father, Tom, after Tom dies in July 2021.

In June 2023, Jerry transfers the property to his family trust, the Smith Family Trust, for nil consideration. The Smith Family Trust is a rollover trust and Jerry is both a beneficiary and principal settlor of the trust at the time of the transfer. As he inherited the property, Jerry will not pay tax under the bright-line test, as disposals of inherited property are exempt.

Because the transfer was made after 1 April 2022, rollover relief applies to the transfer from Jerry to the Smith Family Trust, meaning Jerry's exemption from the bright-line test is rolled over to the trustees of the Smith Family Trust. This means if the trustees dispose of the property, they will have the same bright-line tax treatment that Jerry had on disposal – that is, the disposal is exempt from the bright-line test.

## **PART TWO**

# **Full guidance on the consolidated bright-line rollover relief amendments enacted since 2022**

## Bright-line rollover relief – Consolidated amendments since 2022

*Sections CB 6A(1AB)(b), (7), (7B), (7C), (15), CB 6AB, CB 6AC, CB 6AE, CZ 39(1B), (6B), (6C), (6D), FC 9(4), FC 9B, FC 9C, FC 9D and FM 15(2B) of the Income Tax Act 2007*

Guidance in this Part replaces the coverage of bright-line test rollover relief in *Tax Information Bulletin Vol 34 No 5 (June 2022)* and in the *Special report on interest limitation and additional bright-line changes* (published 31 March 2022).

For a complete overview of rollover relief for interest limitation, Part One of this special report (where it describes the latest changes to sections CB 6AB and CB 6AC) should be read in conjunction with the guidance on transitional residential interest and rollover relief for interest limitation contained in *Tax Information Bulletin Vol 34 No 5 (June 2022)*.

This Part provides in depth guidance on the bright-line test rollover relief first introduced in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 and recently amended by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023. The following guidance chiefly concerns rollover relief as it applies to transfers to or from family trusts and certain Māori trusts, as well as transfers to or from look-through companies and partnerships. This guidance incorporates all amendments made to these provisions as at the date of publication.

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

### Note about interest limitation

Section DH 5(5)(d) provides rollover relief for the purposes of subpart DH of the Act (the interest limitation rules), including for transfers to or from family trusts or transfers between different capacities.

Section DH 5(5)(d) applies to every transfer of disallowed residential property (DRP) since the original owner acquired it that meets the requirements of any of paragraphs (a) to (e) in section FC 9B. Paragraphs (a) to (e) link to sections CB 6AB(1), (2) and (3), and CB 6AC(1) and (2), respectively, treating the relevant requirements of those sections as applying to a transfer of DRP on after 27 March 2021 (rather than a transfer of residential land on or after 1 April 2022). Because of the link to sections CB 6AB and CB 6AC, the changes to these sections introduced in the latest Act also have relevance for interest limitation rollover relief.



## Note about bright-line start date versus acquisition date

When a transfer of residential land is eligible for rollover relief, the intent is that the bright-line period does not reset. This includes both the start date of the bright-line period (that is, when the “clock” runs from) and which bright-line test applies (for example, the five-year or ten-year test). The start date of the bright-line period is generally determined by the date on which legal title was transferred (referred to as the “bright-line acquisition date” in the legislation), whereas which bright-line test applies is determined by the date of acquisition (generally when a person enters into the agreement to purchase a property).

From this point onwards, the term “bright-line start date” is used in this document when referring to the date the bright-line “clock” runs from for clarity purposes, in place of the term “bright-line acquisition date” used in the legislation.

## Family trusts

Prior to the introduction of rollover relief for certain residential land transactions involving family trusts, the bright-line test generally taxed these transfers when the transfer occurred within the applicable bright-line period.

Under the bright-line test, a transfer of residential land to a trust (whether by settlement or sale) constitutes a disposal by the transferor (the person transferring the land) and an acquisition by the transferee (the trustee(s) of the trust). Depending on the circumstances, this can create an income tax liability under the bright-line test or restart the bright-line clock even if the transferor originally acquired the land before 1 October 2015.<sup>7</sup> Section CB 6AB provides rollover relief when residential land is transferred to or from a family trust on or after 1 April 2022, provided certain conditions are met.

## Transfers to family trusts

Section CB 6AB(1)(a) provides that if a trustee holds residential land on a “rollover trust”, the bright-line start date for the land, when the trustee disposes of it, is the bright-line start date the transferor (or transferors) had for the land. This applies if:

- the transfer to the trustee (whether by settlement or sale) occurs on or after 1 April 2022, and

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<sup>7</sup> The original two-year bright-line test applied to residential land acquired on or after 1 October 2015.

- at the time the transferors transfer the land to the trustee:
  - each transferor is both a settlor and a beneficiary of the trust, and
  - at least one transferor is a principal settlor of the trust.

“Rollover trust” is defined in section CB 6AB(5) to mean, at the time of a relevant transfer:

- all principal settlors are beneficiaries of the trust
- all principal settlors are close family associates, and
- all beneficiaries are close family beneficiaries.

“Close family beneficiary” is defined in section CB 6AB(6) to mean, for the relevant trust, a beneficiary that is at least one of the following:

- A principal settlor.
- A close family associate of another beneficiary who is also a principal settlor.
- A trustee of another trust, if at least one beneficiary of the other trust is a close family associate of a beneficiary of the relevant trust.
- A company in which a 50 percent or more voting interest (or a market value interest of at least 50 percent, if a market value circumstance exists) is owned by a beneficiary that is a principal settlor or a close family associate of another beneficiary that is a principal settlor.
- A charity registered under the Charities Act 2005.
- Any association, club, institution, society, organisation, or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere, and, in the case of it having one principal settlor only, the trust has one or more beneficiaries who are close family associates of the principal settlor.

Under section CB 6AB(7), two persons are “close family associates” if one or more of the following applies:

- they are within four degrees of blood relationship (paragraph (a))
- they are married, in a civil union, or in a de facto relationship (paragraph (b)), or
- one person is within four degrees of blood relationship to the other person’s spouse, civil union partner, or de facto partner (paragraph (c)).

This definition includes relatives by adoption, as section 16(2) of the Adoption Act 1955 deems adopted children to be the natural children of their adoptive parent.

Section CB 6A(7)(c) (the third bullet point above) also extends coverage of the association test to include stepchildren and in-laws.

The rules mirror the existing associated person rules in section YB 4 but with an expansion from two degrees to four degrees of association. This is to account for the fact that many family trusts include a wider range of family members than simply those only two degrees removed.

A non-exhaustive list of some common examples of familial relations that meet the “close family associates” test is as follows (references are to paragraphs in the section CB 6A(7) definition):

- The principal settlor’s parents and children (one degree of blood relationship – paragraph (a)).
- The principal settlor’s grandchildren, grandparents and siblings (two degrees of blood relationship – paragraph (a)).
- The principal settlor’s aunts, uncles, nieces, nephews, great-grandchildren, and great-grandparents (three degrees of blood relationship – paragraph (a)).
- The principal settlor’s cousins, great-nieces, great-nephews, and great-great-grandchildren (four degrees of blood relationship – paragraph (a)).
- The principal settlor’s spouse or de facto partner (paragraph (b)).
- The principal settlor’s stepparents, stepchildren, step-siblings, parents-in-law, brothers-in-law, sisters-in-law, daughters-in-law or sons-in-law (within four degrees of blood relationship to the spouse or de facto partner – paragraph (c)).

Further information on how degrees of association are determined in family situations can be found in IR620.<sup>8</sup>

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<sup>8</sup> IR620 *A guide to associated persons definitions for income tax purposes*, available at [www.ird.govt.nz](http://www.ird.govt.nz)

### Example 6: Characteristics of a family trust qualifying as a rollover trust

Joan has no children of her own, but she wants to set up a family trust for the benefit of her nephew, George, and his family. The trust's assets include Joan's house in Auckland, a holiday home in Waihi and some other financial assets. The beneficiaries of the trust are Joan, George, George's de facto partner, Charlotte, their two children, Jack and May, along with George's son, Eli, from a previous relationship. Joan loves animals and has been a long-time volunteer for the SPCA, so she also lists the SPCA as a beneficiary of the trust.

The relationships of the beneficiaries are as follows:

George: three degrees of blood relationship from Joan.

George's partner, Charlotte.

George's children, Jack, May and Eli: four degrees of blood relationship from Joan.

SPCA: registered charity under the Charities Act 2005.

All the beneficiaries are close family beneficiaries and Joan's trust qualifies as a rollover trust.

## Transfers from family trusts

Section CB 6AB(2) provides for rollover relief in certain circumstances when residential land is transferred by the trustee of a rollover trust to a settlor or a group of settlors (referred to as "the transferees") on or after 1 April 2022. If rollover relief applies, the transferees' bright-line start date for the land when they dispose of it is the bright-line start date the trustee had.

Two separate tests determine whether rollover relief applies. The first test, contained in paragraphs (a) and (b), applies if the transferees had originally transferred the land to the trustee. Rollover relief applies under this test if the transferees acquire proportionally the same amount of land they had originally transferred to the trustee and, at the time the trustee transfers the land to the transferees:

- all transferees are beneficiaries of the trust
- at least one transferee is a principal settlor, and
- the trust is a rollover trust.

Where land is transferred to a rollover trust on or after 1 April 2022 and subsequently transferred back to the original transferors, the combination of sections CB 6AB(1) and (2)(a) and (b) mean that a person (being both a settlor and a beneficiary) who receives land back from the trust will have the same bright-line start date they had for the land before it was

transferred to the trust. This is because the trustee of the rollover trust will have the bright-line start date the person had before the land was transferred to the trust.

The second test, contained in paragraph (c), applies in the opposite situation where the transferees had **not** previously transferred the land to the trustee. In this instance, rollover relief applies if:

- all transferees are principal settlors at the time the trustee transfers the land to the transferees and also at the time the trustee acquired the land, and
- the trust is a rollover trust.

The timing requirement above is to ensure a beneficiary of the trust cannot become a principal settlor immediately before the transfer to them just so they receive the land without bright-line test tax implications. It also ensures rollover relief does not apply to a transfer to someone who is no longer a principal settlor of the trust.

It should be noted paragraph (c) was inserted with effect on 1 April 2023. This means that, unlike the other provisions of section CB 6AB, it does not apply to all relevant transfers occurring on or after 1 April 2022. Instead, the second test (in paragraph (c)) only has effect for relevant transfers occurring on or after 1 April 2023.

Rollover relief is not available under either test where residential land held on a family trust is subsequently transferred or distributed to a different beneficiary (for example, a child who is not a settlor and/or did not previously transfer the land to the trust, or in the case of the second test, is not a principal settlor). Such transfers or distributions of trust property remain subject to the bright-line test, as would be the case if a person transferred residential land directly to their child.

## **Resettlements of family trusts**

Section CB 6AB(1)(b) provides rollover relief for trust resettlements. Under the section, the bright-line start date of a trustee of a resettled trust is the bright-line start date the trustee of the first trust had, if the trustee of the first trust transfers residential land to the resettled trust on or after 1 April 2022. This applies if both trusts are rollover trusts and either:

- all the beneficiaries of the resettled trust are the same as for the first trust, or
- all the natural person beneficiaries of the resettled trust are either the same as for the first trust or are close family associates of a principal settlor of the first trust.

In other words, rollover relief is only available if both trusts meet all the usual requirements of a “rollover trust” in section CB 6AB(5) and are sufficiently closely related.

To qualify for rollover relief, each natural person beneficiary of the resettled trust must be a close family beneficiary. In the case of multiple principal settlors, each principal settlor must be a close family associate of the other principal settlors. At a minimum, each natural person beneficiary of the resettled trust must be either a principal settlor, or a close family associate of a principal settlor, of the first trust.

The resettled trust may not necessarily have the same beneficiaries as the first trust. However, provided the above conditions are met, this would not preclude the resettlement from qualifying for rollover relief. For example, if an additional generation were added to the resettled trust's beneficiaries, rollover relief would still be available if the close family beneficiary requirements were satisfied.

Rollover relief also applies even if the principal settlor of the first trust is deceased.

### **Transfers to or from different capacity (look-through companies, partnerships)**

Relief may also apply in certain cases under section CB 6AB when:

- residential land is transferred from a look-through company (LTC) or partnership to a family trust, or vice versa (where a person may be a settlor of the trust in a different capacity to the capacity in which they are a beneficiary), or
- a person receives land back from a trust they originally transferred it to, but in a different capacity to the capacity in which they previously held it.

Section CB 6AB(3) provides that, for the purposes of applying subsection (1)(a) (where a person transfers residential land to a trust) or subsection (2) (where a person receives residential land back from a trust), the transferors and transferees may have different capacities in relation to the different criteria in those provisions. For example, a transferee may be a settlor of the trust in their personal capacity and be a beneficiary as an LTC owner, or they may have transferred the land to the trust in their personal capacity and acquire it back from the trust as a partner in a partnership.

### **Transfers of shares in LTCs**

Section CB 6AB(8) provides that relief does not apply when shares in an LTC are transferred to a rollover trust, nor when these shares are transferred from a rollover trust to a settlor or group of settlors.

## Determining which bright-line test applies

Section CB 6A(1AB)(b) provides that the ten-year bright-line test (and the five-year bright-line test for new build land) in section CB 6A does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AB, and the transferor first acquired an estate or interest in the land before 27 March 2021. Section CZ 39(1B) similarly provides that the five-year bright-line test (preserved in section CZ 39 for land first acquired on or after 29 March 2018 and before 27 March 2021) does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AB, and the transferor first acquired an estate or interest in the land before 29 March 2018.

These provisions ensure that if rollover relief applies to a transfer under section CB 6AB, the receiving trustee (if the transfer is from a settlor to a rollover trust, or a rollover trust resettlement) or receiving settlor (if the transfer is from a rollover trust to a settlor) has the same bright-line test length as the transferor.<sup>9</sup> The relevant start date the bright-line "clock" runs from is the bright-line start date the transferor had, as per section CB 6AB(1) or (2) (whichever applies).

In other words, if the transferor first acquired the land:

- on or after 27 March 2021 – a disposal of the land by the transferee within **ten years** of their bright-line start date is taxable under section CB 6A, or within **five years** if it satisfies the definition of "new build land"
- on or after 29 March 2018 but before 27 March 2021 – a disposal of the land by the transferee within **five years** of their bright-line start date is taxable under section CZ 39
- before 29 March 2018 – a disposal of the land by the transferee is **not subject to any bright-line test**. This includes if the transferor first acquired the land on or after 1 October 2015, meaning the transferor's bright-line period was the original two-year bright-line test.

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<sup>9</sup> Unless the original two-year bright-line period applied to the transferor because they first acquired the land on or after 1 October 2015 but before 29 March 2018, in which case the transferee will not be subject to any bright-line test at all.

## **Determination of transferor's net income and transferee's cost base**

If the above requirements are met for either a transfer to or from a rollover trust, new sections FC 9B and FC 9C provide that the transfer is treated as being for the greater of:

- the total cost of the residential land to the transferor, or
- the amount of any consideration provided by the transferee.

This applies for calculating both the transferor's net income arising from the disposal under the bright-line test (see section FC 9B(a) and (b)) and the transferee's cost base and thus their net income arising under the bright-line test from a future disposal of the land (see section FC 9C).

This means if the amount of consideration for the transfer is less than or equal to the cost of the land to the transferor (in other words, the original owner has not realised a gain), the transfer is deemed to be for the transferor's cost – thus, full rollover relief applies.

If the amount of consideration exceeds the cost of the land to the transferor (in other words, the original owner has realised a gain even if it is not a full market value profit), then only partial relief applies. In this case, the transfer is treated as being for the amount of consideration provided. This overrides existing section GC 1 so that the transfer is not deemed to be for the market value of the land at the time of the transfer. In other words, the transferor is only taxed on the actual profit realised on the sale of the land, and the transferee's cost base is what they paid for the land.



**Example 7: Settlement on family trust – full rollover relief applies**

Married couple Sunita and Ronald purchase residential land in their own names for \$1 million on 9 November 2021. On 20 July 2023 Sunita and Ronald decide to settle the land on a trust with Sunita's sister and her sister's spouse as the trustees. Sunita, Ronald and their children are beneficiaries of the trust. The only property settled on the trust is the residential land and the trustees provide consideration of \$1 million (even though, in that intervening period, the market value of the property has increased to \$1.2 million). The trustees then sell the residential land for \$1.7 million on 31 January 2027.

Sunita and Ronald are both beneficiaries of the trust. Sunita and Ronald are also both principal settlors, given the trust has no other property and Sunita and Ronald have each made the greatest equal settlements. Sunita and Ronald are associated through marriage, and both non-settlor beneficiaries (their two children) are associated with a principal settlor (in this case, both Sunita and Ronald) within the required four degrees of blood relationship (being within one degree of blood relationship). This means they satisfy the requirements of new section CB 6AB.

Full rollover relief applies, as the consideration paid by the trustees to Ronald and Sunita is equal to the price they originally paid for the property. Sunita and Ronald are not subject to tax under the bright-line test on the disposal of their residential land to the trustees of their family trust on 20 July 2023. This is because they are treated as disposing of the land at cost, which means their net income arising under the bright-line test is zero.

The trustees are deemed to have a bright-line start date of 9 November 2021 for the residential land (being Sunita and Ronald's bright-line start date for the land) and a cost base of \$1 million. The trustees' bright-line period ends on 31 January 2027 when the land is sold for \$1.7 million. As this is within the 10-year period for the bright-line test (9 November 2021 to 8 November 2031), the sale is subject to income tax under the bright-line test. Ignoring other income tax deductions, the trustees have net bright-line income of \$700,000.

**Example 8: Sale from settlor to trust – partial relief applies**

Neo acquired residential land on 3 March 2017 for \$500,000. On 29 October 2022, Neo sells the residential land to his family trust. Neo is the principal settlor of the trust, and he and his son, Archie, are the beneficiaries. Neo's outstanding mortgage is \$400,000. The trustee provides consideration of \$600,000 which is less than the market value of the land, being around \$800,000 at that time.

Neo is subject to the two-year bright-line test for the land.<sup>10</sup> The sale to the trust is a disposal under the bright-line test, but there is no tax liability under the bright-line test because Neo held the land for more than two years.

Partial relief applies to ensure the bright-line clock is not restarted, meaning the trustee takes on Neo's bright-line start date of 3 March 2017 but not Neo's acquisition cost of \$500,000. The trustee's cost base is instead the amount of consideration it provided, being \$600,000.

**Example 9: Transfer from family trust to LTC – partial relief applies**

Melissa owns 100 percent of the shares in Mel Co, a look-through company. Melissa is also the principal settlor and a beneficiary of the Melissa Family Trust. All the other beneficiaries of the Melissa Family Trust, aside from her husband, Dan, are associated with Melissa within four degrees of blood relationship, being her parents and her and Dan's children.

Melissa purchased an investment property in 2012 for \$250,000 and sold it to Mel Co the following year on 6 April 2013 for \$275,000.

In October 2022, Mel Co sells the property to the Melissa Family Trust for \$700,000. Melissa does not pay tax under the bright-line test in her capacity as shareholder of Mel Co, as the land was acquired by the company before the introduction of the original two-year bright-line test.

Partial relief applies to the transfer of the property from Mel Co to the Melissa Family Trust. This means the transfer does not reset the start of the bright-line period for the Melissa Family Trust.

**Application of land-rich trust anti-avoidance rule**

After a transfer of residential land that qualifies for relief is made to a trust, if new beneficiaries are added with the purpose of defeating the bright-line test, the land-rich trust

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<sup>10</sup> The two-year bright-line test applied to residential land acquired between 1 October 2015 and 28 March 2018.

anti-avoidance rule in existing section GB 53 applies to reverse the relief by deeming the transferee to have disposed of the land at market value.

## Disposals from trusts to beneficiaries

The relief provided by new section CB 6AB does not cover disposals from trustees to beneficiaries that are not also settlors. Disposals of residential land from the trustee to a beneficiary within the relevant bright-line period for the trustee may still be subject to the bright-line test and may produce income for the trustee.

## Māori family trust rule

Rollover relief is provided for transfers of residential land on or after 1 April 2022 that is subject to Te Ture Whenua Māori Act 1993 in certain situations. This recognises that land subject to Te Ture Whenua Māori Act 1993 has alienation restrictions that lead to interests in land being passed from generation to generation. These interests are often fragmented and can result in a large number of owners all belonging to the same iwi or hapū or who are all descendants of the same tipuna.

## Transfers to Māori family trusts

Section CB 6AC(1)(a) provides that if a Māori trustee holds residential land subject to Te Ture Whenua Māori Act 1993 on a Māori rollover trust, the bright-line start date for the land, when the trustee disposes of it, is the bright-line start date the transferor (or transferors) had for the land. This applies if:

- the transferors are settlors of the trust, and
- at the time they transfer the land to the trustee, they are also beneficiaries of the trust.

“Māori rollover trust” is defined in section CB 6AC(4) to mean, at the time of a relevant transfer to or from a relevant trust:

- all beneficiaries of the trust are either members of the same iwi or hapū or descendants of the same tipuna (living or dead), and
- the land being transferred is subject to Te Ture Whenua Māori Act 1993.

Section CB 6AC(5) defines “Māori trustee” as a trustee of a trust that is either a Māori authority or eligible to elect to be a Māori authority.

## Transfers from Māori family trusts

Section CB 6AB(2) provides for rollover relief in certain circumstances when residential land is transferred by the Māori trustee of a Māori rollover trust back to the settlors who originally transferred the land to the trust (referred to as “the transferees”). If rollover relief applies, the transferees’ bright-line start date for the land when they dispose of it is the bright-line start date the Māori trustee had. Rollover relief applies if the Māori trustee transfers the land to the transferees on or after 1 April 2022 and:

- the transferees are settlors of the trust, and
- the transferees acquire proportionally the same amount of land they had transferred to the Māori trustee and, at the time the Māori trustee transfers the land to the transferees:
  - the transferees are beneficiaries of the trust
  - the trust is a Māori rollover trust, and
  - the transferees are settlors of the trust.

### **Example 10: Transfer from trustee of Māori family trust back to the settlors of the trust**

Before August 2010, John and several members of his extended whānau, who are all members of the same iwi, held interests in a parcel of residential land subject to Te Ture Whenua Māori Act 1993. In August 2010, John and members of his whānau sold their interests in the land to a trust that was settled by John and his sister, Mere, for \$5 million. John, Mere and the rest of the whānau that held interests in the land were at this time beneficiaries of the trust (and still are).

On 28 May 2022, the trustees of the trust sell the interests in the land back to members of the whānau for the \$5 million the trustees originally paid for the land. The market value of the land at this time is \$10 million.

In the absence of relief, John, Mere and the rest of the whānau who purchased their interests in the land back from the trust would have a bright-line start date of 28 May 2022. However, because the transfer was made at cost, rollover relief applies. This means the whānau who purchased their interests back have a deemed bright-line start date of August 2010, being the transferors’ bright-line start date (that is, when the land was transferred to the trustees of the trust), with a total cost base in the land of \$5 million (being the total cost of the interests in the land to the trustees). In other words, the bright-line clock is not reset for John and Mere and their fellow interest holders who repurchased their interests in May 2022. As their bright-line start date is August 2010, a future disposal by the interest holders will not be subject to the bright-line test.

## Transfers to or from different capacity (LTCs, partnerships)

Relief may also apply in certain cases under section CB 6AC when:

- residential land is transferred from an LTC or partnership to a Māori rollover trust or vice versa, where a person may be a settlor of the trust in a different capacity to the capacity in which they are a beneficiary, or
- a person receives land back from a Māori rollover trust they originally transferred the land to, but in a different capacity to the capacity in which they previously held it.

Section CB 6AC(3) provides that, for the purposes of applying subsection (1)(a) (where a person transfers residential land to a Māori rollover trust) or subsection (2) (where a person receives residential land back from a Māori rollover trust), the transferors and transferees may have different capacities in relation to the different criteria in those provisions. For example, a transferee may be a settlor of the trust in their personal capacity and be a beneficiary as an LTC owner, or they may have transferred the land to the trust in their personal capacity and acquire it back from the trust as a partner in a partnership.

## Resettlements of Māori family trusts

Section CB 6AC(1)(b) provides rollover relief when residential land that is subject to Te Ture Whenua Māori Act 1993 and which is held on a Māori rollover trust is resettled on another Māori rollover trust.

Under this section, the bright-line start date of the Māori trustee of the resettled trust is the bright-line start date the Māori trustee of the first trust had, if the Māori trustee of the first trust transfers residential land to the resettled trust on or after 1 April 2022. This applies if all the beneficiaries of the resettled trust are the same as for the first trust. As with the rule for general family trusts, this includes the situation where one of the settlors of the first trust is deceased.

## Disposals from trusts to beneficiaries

Similar to section CB 6AB for general family trusts, the relief provided by new section CB 6AC for transfers to or from certain Māori trusts does not cover disposals from trustees to beneficiaries that are not also settlors. Disposals of residential land from the trustee to a beneficiary within the relevant bright-line period for the trustee may still be subject to the bright-line test and may produce income to the trustee.

## Determining which bright-line test applies

Section CB 6A(1AB)(b) provides that the ten-year bright-line test (and the five-year bright-line test for new build land) in section CB 6A does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AC, and the transferor first acquired an estate or interest in the land before 27 March 2021. Section CZ 39(1B) similarly provides that the five-year bright-line test in section CZ 39 does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AC, and the transferor first acquired an estate or interest in the land before 29 March 2018.

These provisions ensure that if rollover relief applies to a transfer under section CB 6AC, the receiving Māori trustee (if the transfer is from a settlor to a Māori rollover trust, or a resettlement of a Māori rollover trust) or receiving settlor (if the transfer is from a Māori rollover trust to a settlor) has the same bright-line test length as the transferor.<sup>11</sup> The start date the bright-line "clock" runs from is the bright-line start date the transferor had, as per section CB 6AC(1) or (2) (whichever applies).

In other words, if the transferor first acquired the land:

- on or after 27 March 2021 – a disposal of the land by the transferee within **ten years** of their bright-line start date is taxable under section CB 6A, or within **five years** if it satisfies the definition of "new build land"
- on or after 29 March 2018 but before 27 March 2021 – a disposal of the land by the transferee within **five years** of their bright-line start date is taxable under section CZ 39
- before 29 March 2018 – a disposal of the land by the transferee is **not subject to any bright-line test**. This includes if the transferor first acquired the land on or after 1 October 2015, meaning the transferor's bright-line period was the original two-year bright-line test.

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<sup>11</sup> Unless the original two-year bright-line period applied to the transferor because they first acquired the land on or after 1 October 2015 but before 29 March 2018, in which case the transferee will not be subject to any bright-line test at all.

## Determination of transferor's net income and transferee's cost base

If the above requirements are met for either a transfer to or from a Māori rollover trust, new sections FC 9B and FC 9C provide that the transfer is treated as being for the greater of:

- the total cost of the residential land to the transferor, and
- the amount of any consideration provided by the transferee.

This applies for calculating both the transferor's net income arising from the disposal under the bright-line test (see section FC 9B(d) and (e)) and the transferee's cost base and thus their net income arising under the bright-line test from a future disposal of the land (see section FC 9C).

This means if the amount of consideration is less than or equal to what the transferor originally paid (in other words, the original owner has not realised a gain), the transfer is deemed to be for the transferor's cost – thus, full rollover relief applies.

If the amount of consideration exceeds the cost of the land to the transferor (that is, the transferor has realised a gain, even if it is not a full market value profit), then only partial relief applies. In this case, the transfer is treated as being for the amount of consideration provided. In other words, the transferor is only taxed on the actual profit realised on the sale of the land to the transferee, and the transferee's cost base is what they paid for the land.

## Transfers of residential land as part of a settlement under te Tiriti o Waitangi

Settlements of claims under te Tiriti o Waitangi – The Treaty of Waitangi (te Tiriti) can be a multi-stage process. The Crown will transfer Tiriti settlement property to a single governance entity (post-settlement governance entity or PSGE) that may act on behalf of several groups, for example, different hapū, or as a collective for a number of iwi groups. The PSGE will then transfer settlement assets to different members of the claimant group as required under the deed of settlement or settlement legislation.

This transfer from the PSGE to a member of the claimant group could be subject to income tax under the bright-line test for the PSGE. It could also start the bright-line clock for the member to whom the residential land has been transferred. The transfer of residential land from the PSGE to a claimant group member was less likely to trigger the bright-line test under the previous two-year and five-year tests. However, with the extension of the test to ten years, this could become an impediment for iwi to transact efficiently with settlement assets involving residential land.

Section CB 6AE applies when residential land that is subject to Te Ture Whenua Māori Act 1993 and is part of the settlement of a claim under te Tiriti is transferred to a trustee of a trust who:

- is a Māori authority, or is eligible to be a Māori authority, and
- on behalf of Māori claimants, receives and manages assets that are transferred by the Crown as part of the settlement of a claim under te Tiriti, in accordance with the requirements of existing section HF 2(3)(e)(i).

This is to provide rollover relief for the transfer of Tiriti settlement residential land from the PSGE to a member of the claimant group, for example, hapū.

New section CB 6AE(2) provides that the recipient trustee has the transferor's bright-line start date.

### Determining which bright-line test applies

Section CB 6A(1AB)(b) provides that the ten-year bright-line test in section CB 6A (and the five-year bright-line test for new build land) does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AE, and the transferor first acquired an estate or interest in the land before 27 March 2021. Section CZ 39(1B) similarly provides that the five-year bright-line test in section CZ 39 does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AE, and the transferor first acquired an estate or interest in the land before 29 March 2018.

These provisions ensure that if rollover relief applies to a transfer under section CB 6AE, the recipient trustee has the same bright-line test length as the PSGE.<sup>12</sup> As outlined above, the relevant start date the bright-line "clock" runs from is the bright-line start date the PSGE had, as per section CB 6AE(2).

In other words, if the PSGE first acquired the land:

- on or after 27 March 2021 – a disposal of the land by the trustee within **ten years** of their bright-line start date is taxable under section CB 6A, or within **five years** if it satisfies the definition of "new build land"
- on or after 29 March 2018 but before 27 March 2021 – a disposal of the land by the trustee within **five years** of their bright-line start date is taxable under section CZ 39

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<sup>12</sup> Unless the original two-year bright-line period applied to the transferor because they first acquired the land on or after 1 October 2015 but before 29 March 2018, in which case the transferee will not be subject to any bright-line test at all.



- before 29 March 2018 – a disposal of the land by the trustee is **not subject to any bright-line test**. This includes if the PSGE first acquired the land on or after 1 October 2015, meaning the PSGE’s bright-line period was the original two-year bright-line test.

## **Determination of transferor’s net income and transferee’s cost base**

If the above requirements are met for the transfer of Tiriti settlement residential land, new section FC 9D sets out that the recipient trustee is deemed for the purposes of the bright-line test to have acquired the land for its market value at the time the land was transferred by the Crown. It may not be feasible to determine the market value at the exact time of the settlement – a reasonable estimate shortly thereafter (for example, determined for insurance purposes) would be acceptable.

Section FC 9B(f) provides that the transferor (the PSGE) is treated as disposing of the land for the greater of its cost to the PSGE or the amount of consideration received (if any) from the member of the claimant group to whom they transfer the land.

## **Transfers by or to persons in their capacity as LTC owners or partners in a partnership**

Shareholders in LTCs are treated as directly holding the LTCs’ assets, deriving income, and incurring expenses in accordance with their shareholding percentage. In effect, LTCs are transparent for tax purposes, which means the income tax consequences for someone who holds residential land through an LTC are generally the same as for someone who holds residential land directly. Nonetheless, the process of transferring residential land from an individual shareholder into the LTC (or vice versa) currently constitutes a bright-line disposal and acquisition.

Partnerships are also transparent for tax purposes. Equally, the process of transferring residential land from an individual partner to the partnership (or vice versa) constitutes a bright-line disposal and acquisition.

Relief applies under new section CB 6AB(4) if a person, in one capacity (such as their personal individual capacity), transfers residential land to themselves in a different capacity (such as a shareholder in an LTC or a partner in a partnership). The section provides that the person’s bright-line start date for the land when they ultimately dispose of it to a third party is the bright-line start date they first had for the land.

This applies to the extent a person transferring the land to themselves in another capacity has the same ownership interest in the land before and after the transfer. It is also intended to apply when residential land is transferred from an LTC to another LTC with identical shareholding (meaning the two LTCs have the exact same owners who each hold the exact same proportion of shares in the second LTC as they hold in the first LTC).

## Determining which bright-line test applies

Section CB 6A(1AB)(b) provides that the ten-year bright-line test in section CB 6A (and the five-year bright-line test for new build land) does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AB, and the transferor first acquired an estate or interest in the land before 27 March 2021. Section CZ 39(1B) similarly provides that the five-year bright-line test in section CZ 39 does not apply to a person's disposal of residential land if the land meets the requirements of section CB 6AB, and the transferor first acquired an estate or interest in the land before 29 March 2018.

These provisions ensure that if rollover relief applies to a transfer under section CB 6AB(4), the transferee (being a person receiving a land transfer in one capacity that they made, in a different capacity, to themselves) has the same bright-line test length as the transferor.<sup>13</sup> The relevant start date the bright-line "clock" runs from is the bright-line start date the person first had for the land (in the capacity in which they originally held it) as per section CB 6AB(4).

In other words, if the person first acquired the land:

- on or after 27 March 2021 – a subsequent disposal of the land (that is, **after** the transfer of the land to themselves in a different capacity) within **ten years** of their bright-line start date is taxable under section CB 6A, or within **five years** if it satisfies the definition of "new build land"
- on or after 29 March 2018 but before 27 March 2021 – a subsequent disposal of the land (after the transfer of the land to themselves in a different capacity) within **five years** of their bright-line start date is taxable under section CZ 39
- before 29 March 2018 – a subsequent disposal of the land (after the transfer of the land to themselves in a different capacity) is **not subject to any bright-line test**. This includes if the person first acquired the land on or after 1 October 2015, meaning

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<sup>13</sup> Unless the original two-year bright-line period applied to the transferor because they first acquired the land on or after 1 October 2015 but before 29 March 2018, in which case the transferee will not be subject to any bright-line test at all.

their original bright-line period (before transferring the land to themselves in a different capacity) was the original two-year bright-line test.

## **Determination of transferor's net income and transferee's cost base**

If the above requirements are met for a person's transfer of residential land to themselves in a different capacity, new sections FC 9B and FC 9C provide that the transfer is treated as being for the greater of:

- the total cost of the residential land to the transferor, and
- the amount of any consideration provided by the transferee.

This applies for calculating both the transferor's net income arising from the disposal under the bright-line test (see section FC 9B(c)) and the transferee's cost base and thus their net income arising under the bright-line test from a future disposal of the land (see section FC 9C).

This means if the amount of consideration is less than or equal to the cost of the land to the transferor (or in other words, the original owner has not realised a gain), the transfer is deemed to be for the transferor's cost – thus, full rollover relief applies.

If the amount of consideration exceeds the cost of the land to the transferor (that is, a partial gain has been realised, even if it is not a full market value profit), then only partial relief applies. In this case, the transfer is treated as being for the amount of consideration provided. In other words, the transferor is only taxed on the actual profit realised on the sale of the land, and the transferee's cost base is what they paid for the land.

## **Inherited property transferred to rollover person**

A beneficiary of a deceased person's estate may transfer inherited residential land to a person qualifying for rollover relief (referred to here as a "rollover person"), such as an LTC owned by the beneficiary or a rollover trust. A special rule in section FC 9(4) applies in this circumstance to ensure the exemption from the bright-line test for inherited property applies to the rollover person if it disposes of the land.

Pre-existing rules (which in their earliest form date back to when the original two-year bright-line test was introduced in October 2015) provide that the disposal of inherited residential land is not taxable under the bright-line test. Under section FC 9, the transfer of such land on the death of a person to an executor or administrator of the deceased's estate, as well as the transfer of the land to a beneficiary of the estate, is exempt from the bright-

line test. Sections CB 6A(2B) and CZ 39(7) provide that a subsequent disposal of the property by the beneficiary is also not taxable under either the ten-year or five-year bright-line test.

Section FC 9(4) provides that if residential land is transferred by a beneficiary of the deceased person on or after 1 April 2022 to a person who is a recipient as described in section FC 9B(a) to (e), and the person disposes of it, sections CB 6A and CZ 39 do not apply to the disposal. This ensures when a beneficiary of an estate transfers inherited residential land to a rollover person (such as a rollover trust the estate beneficiary is a settlor and beneficiary of), the beneficiary's exemption from the bright-line test for the inherited land is "rolled over".

## **Transfers between companies within a wholly-owned tax consolidated group**

Rollover relief also applies to transfers of residential land within a wholly-owned group of companies that is a consolidated group under subpart FM. Section FM 15(2B) provides that the recipient company (company B) is treated as having the same bright-line start date for that transferred land as the transferor company (company A). This ensures the transfer to company B does not reset the bright-line clock.

The restriction of relief to tax-consolidated groups effectively limits the rollover relief to New Zealand resident companies, as non-residents cannot be part of a consolidated group. Similar to the pre-existing rollover rule for company amalgamations in section FO 17(3), this ensures relief is only available on the condition the property remains within the New Zealand tax base.

**Example 11: Transfer within consolidated group**

First Co and Second Co are companies that are both members of the same wholly-owned group of companies, of which all the members are New Zealand resident companies. The group is a consolidated group under subpart FM of the Income Tax Act 2007.

First Co acquired residential rental property in the form of an apartment complex in central Hamilton on 12 January 2019 for \$15 million. On 23 May 2022, First Co transfers the property to Second Co for \$20 million.

Under the consolidation rules, income does not arise to First Co under the bright-line test. However, in the absence of relief, the bright-line clock would reset on the transfer of the property to Second Co.

Relief applies to the transfer, meaning Second Co. is treated as having a bright-line start date for the property of 12 January 2019.

## About this document

Special reports are published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.