

Taxation (Bright-line Test for Residential Land) Bill

Government Bill

Explanatory note

General policy statement

This Bill introduces amendments to the *Income Tax Act 2007* and the *Tax Administration Act 1994*.

The policy of the Bill is to improve compliance with the current land sale rules in the *Income Tax Act 2007* by supplementing the current intention test in *section CB 6*, which makes gains from the sale of land purchased with a purpose or intention of disposal taxable.

The reason for the policy is that the current land sale rules can be difficult to enforce. Specifically, there can be difficulties determining a taxpayer's purpose or intention in relation to land. The difficulties have meant that some land speculators are not paying their fair share of tax on gains from property sales.

This Bill proposes a new objective "bright-line" land sale test, to improve compliance. The bright-line test will require income tax to be paid on any gains from the disposal of residential property that is acquired and disposed of within 2 years, subject to some exceptions.

The 2-year period for the bright-line test runs from the date of acquisition of the land to the date of disposal. The date of acquisition is the latest date on which the person acquires an estate or interest in the land. Generally, this will be the date the instrument to transfer the land to the person is registered for the purchase of the property. The date of disposal is generally the date that a person enters into an agreement for sale and purchase for the sale of the property. When the disposal is other than by sale (for example, by gift), the date of disposal will be determined by the current tax rules. If disposal occurs before registration (sales of the right to buy), the bright-line period runs from the date that a person enters into an agreement to purchase the right to the date that a person enters into an agreement to sell the right.

The bright-line test applies only to the disposal of “residential land”. It does not apply to land used predominately as business premises or farmland. “Residential land” is defined as land that has a dwelling on it, land for which the owner has an arrangement to erect a dwelling, or bare land that because of its area and nature is capable of having a dwelling erected on it.

There are 3 specific exceptions to the bright-line test for:

- A disposal of property that is the main home of the transferor (in certain circumstances);
- A disposal of inherited property;
- A transfer under a relationship property agreement.

A disposal of property that is the main home of the transferor will be excluded from the bright-line test when the property has been used predominately, for most of the time that the person has owned the property, as their main home. A property will be the main home of the owner when it has been mainly used as their residence. Where a person has two or more homes, their “main home” is the property with which the person has the greatest connection. If the property is owned by a trust, the main home exception applies when the dwelling is the main home of a beneficiary of the trust (subject to limitations). If the principal settlor of the trust has a main home that is not owned by that trust, then the main home exception cannot apply to any property owned by the trust. A person cannot use the main home exception if they have already used the exception twice in the previous 2 years.

Taxpayers are allowed deductions for property subject to the bright-line test according to ordinary rules.

Losses arising only as a result of the bright-line test are ring-fenced so they can only be used to offset taxable gains arising under the land sale rules. A person cannot recognise a loss under the bright-line test arising from a transfer of property to an associated person.

Anti-avoidance rules will prevent land-rich companies or trusts being used to circumvent the bright-line test.

The rollover relief provisions for land transferred as a result of an amalgamation are extended to apply to the bright-line test.

Certain complying trusts will not have to file a return of income for tax years in which the trustee derives no income.

Departmental disclosure statement

Inland Revenue is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=59>.

Regulatory impact statement

The Inland Revenue has produced a regulatory impact statement on 7 August 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 gives appropriate commencement dates for the provisions of the Bill.

Part 1

Amendments to Income Tax Act 2007

Clause 3 sets out the clauses that affect the *Income Tax Act 2007*.

Clause 4 inserts a new *section CB 6A*, to tax an amount that a person derives from disposing of residential land within 2 years of the registration of their acquisition of the land or within 2 years of their entry into the agreement for their acquisition. A special rule in relation to the disposal of subdivided land is provided. Also, an exception for disposals subsequent to the death of a person is provided. An exception for a disposal of a person's *main home* is provided in *clause 6*.

Clause 5 amends *section CB 15B*, consequential to providing a bright-line test of income from a person's disposal of residential land.

Clause 6 inserts a new *section CB 16A*, to provide an exception to the bright-line test for a disposal of a person's *main home* in certain circumstances.

Clause 7 amends *section CB 23B*, to update a cross-reference consequential to providing the bright-line test of income from a person's disposal of residential land.

Clause 8 inserts new *sections DB 18A and DB 18AB*. *Section DB 18A* ring-fences deductions for the costs of residential land subject solely to the bright-line test. Those deductions may only be used against income arising under *sections CB 6A to CB 15* (which relate to income from land), and are not carried forward in a net loss. *Section DB 18AB* puts a cap on the amount of deductions available in relation to residential land subject to the bright-line test in the case of a disposal of the land to an associated person.

Clause 9 amends *section DB 29*, to update a cross-reference consequential to providing the bright-line test of income from a person's disposal of residential land.

Clause 10 inserts a new *section FB 3A*, to provide roll-over relief from the bright-line test for relationship property transfers.

Clause 11 inserts a new *section FC 9*, to exempt transfers upon the death of a person from the bright-line test.

Clause 12 amends *section FO 10*, to update a cross-reference consequential to the bright-line test, ensuring that the company amalgamation rules work for the test.

Clause 13 amends *section FO 17*, to update a cross-reference consequential to the bright-line test, ensuring that the company amalgamation rules work for the test. Also, as a remedial matter, certain revenue account land transfers upon amalgamation are treated as made at market, rather than at cost.

Clause 14 inserts a new heading and new *sections GB 52 and GB 53*. *Section GB 52* provides an anti-avoidance rule to prevent the circumvention of the bright-line test by means of the sale of shares in land-rich companies in certain circumstances. *Section GB 53* provides an anti-avoidance rule to prevent the circumvention of the bright-line test by means of changes to land-rich trusts in certain circumstances.

Clause 15 amends *section YA 1*. *Subsection (2)* inserts a new definition of *date of acquisition* for the purposes of the bright-line test. *Subsection (3)* inserts a new definition of *date of disposal* for the purposes of the bright-line test. *Subsection (4)* amends a cross-reference in the definition of *dispose*, consequentially. *Subsection (5)* amends the definition of *dwelling*, to include serviced apartments but exclude rest homes or retirement villages, for the purposes of the bright-line test. *Subsection (6)* replaces the definition of *estate*, as a drafting matter. *Subsection (7)* inserts a new definition of *farmland* for the purposes of the bright-line test. *Subsection (8)* amends the definition of *interest*, as a drafting matter. *Subsection (9)* inserts a new definition of *main home* for the purposes of the main home exception from the bright-line test. *Subsection (10)* inserts a new definition of *principal settlor* for the purposes of the main home exception to the bright-line test. *Subsection (11)* inserts a new definition of *residential land* for the purposes of the bright-line test. *Subsection (12)* amends a cross-reference in the definition of *trading stock*, consequentially.

Part 2

Amendment to Tax Administration Act 1994

Clause 16 amends the *Tax Administration Act 1994* by inserting a new *section 43B*, to provide that certain complying trusts will not have to file a return of income for tax years in which the trustee derives no income.

Hon Todd McClay

Taxation (Bright-line Test for Residential Land) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Bright-line Test for Residential Land) Act **2015**.

2 Commencement

This Act comes into force on the day on which this Act receives Royal assent, except **Part 1** comes into force on 1 October 2015. 5

Part 1

Amendments to Income Tax 2007

3 Income Tax Act 2007

This Part amends the Income Tax Act 2007. 10

4 New section CB 6A inserted (Disposal within 2 years: bright-line test for residential land)

(1) Before section CB 6, insert:

CB 6A Disposal within 2 years: bright-line test for residential land

Disposal within 2 years 15

(1) An amount that a person derives from disposing of residential land is income of the person, if the date of disposal for the residential land is within 2 years of—

- (a) the date on which the instrument to transfer the land to the person was registered—
- (i) under the Land Transfer Act 1952; or
 - (ii) under foreign laws of a similar nature to the Land Transfer Act 1952, if the land is outside New Zealand; or
- (b) their date of acquisition of the land, if the land is not registered as described in **paragraph (a)** at the date of disposal. 5
- Subdivision*
- (2) Despite **subsection (1)**, an amount that a person derives from disposing of residential land that results from the person subdividing other land (the **undivided land**) is income of the person, if the date of disposal for the residential land is within 2 years of— 10
- (a) the date on which the instrument to transfer the undivided land to the person was registered—
- (i) under the Land Transfer Act 1952; or
 - (ii) under foreign laws of a similar nature to the Land Transfer Act 1952, if the land is outside New Zealand; or
- (b) their date of acquisition of the undivided land, if the land is not registered as described in **paragraph (a)** at the date of disposal. 15
- Exception: disposal of land by executor, administrator, or beneficiary* 20
- (3) This section does not apply to an amount that an executor or administrator described in section FC 1(1)(a), or a beneficiary described in section FC 1(1)(b), derives from disposing of residential land that was transferred to them on the death of a person. 25
- Some definitions*
- (4) In this section and **section CB 16A**,—
- date of acquisition** means the latest date on which the person acquires an estate or interest in the residential land
- date of disposal** means, for a disposal of residential land,—
- (a) the earliest of— 30
- (i) the date that the person enters into an agreement for the disposal:
 - (ii) the date on which the person makes a gift of the residential land:
 - (iii) the date on which the person’s residential land is compulsorily acquired under any Act by the Crown, a local authority, or a public authority: 35
 - (iv) if there is a mortgage secured on the residential land, the date on which the land is disposed of by or for the mortgagee as a result of the mortgagor’s defaulting; or

- (b) if none of **paragraph (a)(i) to (iv)** apply, the date on which property in the residential land is disposed of.

Defined in this Act: amount, date of acquisition, date of disposal, dispose, estate, income, mortgage, person, residential land, year

- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015. 5

5 Section CB 15B amended (When land acquired)

- (1) In section CB 15B(1), replace “For the purposes of this subpart” with “For the purposes of this subpart except **section CB 6A**”. 10
- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.

6 New section CB 16A inserted (Main home exclusion for disposal within 2 years) 15

- (1) Before section CB 16, insert:

CB 16A Main home exclusion for disposal within 2 years

Main home exclusion

- (1) **Section CB 6A** does not apply to a person who disposes of residential land, if the land has been used predominantly, for most of the time the person owns the land, for a dwelling that was the main home for— 20
- (a) the person; or
- (b) a beneficiary of a trust, and—
- (i) the person is a trustee of the trust; and
- (ii) the principal settlor of the trust does not own a main home; and 25
- (iii) if the principal settlor of the trust is a beneficiary of a trust that owns the principal settlor's main home, it is that main home which the person is disposing of.

When this section does not apply

- (2) The exclusion from **section CB 6A** in **subsection (1)** does not apply to a person who disposes of residential land, if that exclusion has been used by the person 2 or more times within the 2 years immediately preceding the date of disposal of the residential land. 30

A definition

- (3) In this section, **principal settlor** means, for a trust, the 1 settlor that has settled the most property, by value, on the trust. 35

Defined in this Act: beneficiary, date of disposal, dispose, dwelling, main home, own, person, principal settlor, residential land, settlor, trustee, year

- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.

7 Section CB 23B amended (Land partially sold or sold with other land)

- (1) In section CB 23B, replace "CB 6" with "**CB 6A**". 5
- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.

8 New sections DB 18A and DB 18AB inserted

- (1) Before section DB 18, insert: 10

DB 18A Ring-fenced allocations: disposal of residential land within 2 years

When this section applies

- (1) This section applies to an amount of a person's deductions (**bright-line deductions**) under section DB 23, for an income year, that relate to residential land for which the person derives income solely under **section CB 6A** (Disposal within 2 years: bright-line test for residential land). 15

Basis for allocation of deductions: formula

- (2) The amount of bright-line deductions allocated to an income year, including an amount that has been carried forward and allocated under **subsection (3)**, is no more than the amount calculated by the formula: 20

$$\text{bright-line income} + \text{land net income.}$$

Definition of items in formula

- (3) In the formula,—
- (a) **bright-line income** is income derived solely under **section CB 6A**;
- (b) **land net income** is the amount of net income for the year that the person would have if the only income they derived was from the disposal of land under sections CB 6 to CB 15 (which relate to income from land). 25

Excess allocations: carried forward and re-instated next year

- (4) Any excess deductions not allocated to the income year because of **subsection (2)** are carried forward and treated as— 30
- (a) deductions under section DB 23 that relate to residential land for which the person derives income solely under **section CB 6A**; and
- (b) allocated to the next income year.

Restriction on re-instating excess allocations: continuity for companies

- (5) Despite **subsection (3)**, the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year for the excess, if sections IA 5 and IP 3 (which relate to the carrying forward of tax losses for 35

companies) would not have allowed the excess to be carried forward to that next income year in a loss balance, treating the excess as a tax loss component arising on the last day of the income year.

Defined in this Act: deduction, dispose, income, income year, land, loss balance, net income, residential land, tax loss component

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DB 18AB Deduction cap: disposal of residential land within 2 years to associated persons

When this section applies

- (1) This section applies to a person (**person A**) if, for an income year,—
- (a) person A derives income under **section CB 6A** (Disposal within 2 years: bright-line test for residential land) from disposing of residential land to an associated person; and
- (b) person A has deductions for expenditure or loss in relation to the disposal of the land (**residential land deductions**).

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Deduction cap

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- (2) The total residential land deductions that person A is allowed is no more than the amount of income they derive under **section CB 6A** from the disposal of the land. Deductions not allowed under this subsection are not allowed or allocated to any income year.

Defined in this Act: associated person, deduction, dispose, income, income year, person, residential land

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- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is after 1 October 2015.

9 Section DB 29 amended (Apportionment when land acquired with other property)

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- (1) In section DB 29, replace “CB 6” with “**CB 6A**”.
- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.

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10 New section FB 3A inserted (Residential land)

- (1) Before section FB 3, insert:

FB 3A Residential land

When this section applies

- (1) This section applies for the purposes of **section CB 6A** (Disposal within 2 years: bright-line test for residential land) and Part D (Deductions) when residential land is transferred on a settlement of relationship property.

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	<i>Transfer at cost</i>	
(2)	The transfer is treated as a disposal and acquisition for an amount that equals the total cost of the residential land to the transferor at the date of transfer.	
	<i>Date of acquisition</i>	
(3)	The transferee is treated as having acquired property in the residential land on the date of acquisition for the transferor described in section CB 6A .	5
	Defined in this Act: date of acquisition, date of transfer, dispose, residential land, settlement of relationship property	
(2)	Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.	10
11	New section FC 9 inserted (Land transferred to executor, administrator, or beneficiary on death of person)	
(1)	After section FC 8, insert:	
FC 9	Land transferred to executor, administrator, or beneficiary on death of person	15
	<i>What this section applies to</i>	
(1)	This section applies in the circumstances described in section FC 1(1)(a) or (b) when residential land is transferred on a person's death and section FC 5 does not apply.	20
	<i>Residential land</i>	
(2)	Section CB 6A (Disposal within 2 years: bright-line test for residential land) does not apply to the transfer of the residential land, including any intervening transfer to an executor or administrator.	
	<i>Cost of residential land</i>	25
(3)	If the residential land is transferred to a person who disposes of it, and the person derives income, the cost of the land to the person is—	
	(a) the cost of the land incurred by the deceased person; and	
	(b) all other expenditure incurred by the person, the deceased person, or the administrator or executor of the deceased person, as applicable, for which no deduction has been allowed.	30
	Defined in this Act: deduction, dispose, income, land, person, residential land	
(2)	Subsection (1) applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.	35

12 Section FO 10 amended (When property passes on resident's restricted amalgamation)

- (1) In section FO 10(6), replace “the 10–year rule in sections CB 9 to CB 11 and CB 14” with “the 2–year bright-line test or the 10–year rule in any of sections **CB 6A**, CB 9 to CB 11, and CB 14”.
- (2) **Subsection (1)** applies to a person's disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.

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13 Section FO 17 amended (Land)

Replace section FO 17(2) and (3) with:

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Disposal at market value

- (2) The amalgamating company is treated as having disposed of the land to the amalgamating company at the market value of the land at the date of the amalgamation if—

(a) the land is not revenue account property of the amalgamating company, and the disposal of the land would give rise to income for the amalgamated company under any of sections **CB 6A** to CB 14 (which relate to the disposal of land):

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(b) the land is revenue account property of the amalgamating company but not merely because of the the 2–year bright-line test or the 10–year rule in any of sections **CB 6A**, CB 9 to CB 11, and CB 14, and the land is, or may be, revenue account property of the amalgamating company because of the 2–year bright-line test or the 10–year rule in any of sections **CB 6A**, CB 9 to CB 11, and CB 14.

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Disposal of land within 2–year bright-line test or 10–year rule

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- (3) If the land is, or may be, revenue account property of the amalgamating company because of the 2–year bright-line test or the 10–year rule in any of sections **CB 6A**, CB 9 to CB 11, and CB 14, and the amalgamated company disposes of the land within the relevant 2–year or 10–year period after the amalgamating company acquired it, an amount derived from the disposal is income of the amalgamated company under whichever is applicable of sections **CB 6A** to CB 14.

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14 New heading and new sections GB 52 and GB 53 inserted

- (1) After section GB 51, insert:

Arrangements involving residential land

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GB 52 Arrangements involving residential land: companies' shares*When this section applies*

- (1) This section applies when—

<p>(a) a company owns residential land directly or indirectly (company residential land); and</p> <p>(b) company residential land makes up 50% or more, by value, of the assets of the company; and</p> <p>(c) 50% or more of the shares in the company, by value, are disposed of within a 12 month period, with a purpose or effect of defeating the intent and application of section CB 6A (Disposal within 2 years: bright-line test for residential land).</p> <p><i>Market value disposal</i></p> <p>(2) A shareholder is treated as disposing of the company residential land for an amount of consideration equal to the proportion of the market value of the land that the market value of their shares bear to the total value of the shares in the company.</p> <p>Defined in this Act: company, dispose, residential land, share, shareholder</p>	<p>5</p> <p>10</p> <p>15</p>
<p>GB 53 Arrangements involving residential land: trusts</p>	
<p><i>When this section applies</i></p>	
<p>(1) This section applies when—</p> <p>(a) the trustees of a trust own residential land directly or indirectly (trust residential land); and</p> <p>(b) trust residential land makes up 50% or more, by value, of the assets of the trust; and</p> <p>(c) the trust’s trust deed changes, a decision-maker under the trust deed changes, or an arrangement under the trust changes, with a purpose or effect of defeating the intent and application of section CB 6A (Disposal within 2 years: bright-line test for residential land).</p> <p><i>Market value disposal</i></p> <p>(2) The trustees are treated as disposing of the trust residential land affected by a change described in subsection (1)(c) for an amount of consideration equal to the market value of the land at the time of the change.</p> <p>Defined in this Act: amount, arrangement, dispose, residential land, trustee</p>	<p>20</p> <p>25</p> <p>30</p>
<p>(2) Subsection (1) applies to a person’s disposal of residential land if the date that the person first acquires an estate or interest in the land is on or after 1 October 2015.</p>	<p>30</p>
<p>15 Section YA 1 amended (Definitions)</p>	
<p>(1) This section amends section YA 1.</p> <p>(2) Insert, in appropriate alphabetical order:</p> <p>date of acquisition is defined in section CB 6A (Disposal within 2 years: bright-line test for residential land) for the purposes of that section and section CB 16A (Main home exclusion for disposal within 2 years)</p>	<p>35</p>

- (3) Insert, in appropriate alphabetical order:
date of disposal is defined in **section CB 6A** (Disposal within 2 years: bright-line test for residential land) for the purposes of that section and **section CB 16A** (Main home exclusion for disposal within 2 years)
- (4) In the definition of **dispose**, in paragraph (a), replace “CB 6” with “**CB 6A**”. 5
- (5) In the definition of **dwelling**,—
- (a) in paragraph (b), replace “any of the following” with “any of the following, in whole or part”:
- (b) after paragraph (b), insert:
- (c) despite paragraph (b)(iii) and (v), for the purposes of **section CB 16A** (Main home exclusion for disposal within 2 years) and the definition of **residential land**— 10
- (i) includes a serviced apartment described in paragraph (b)(iii):
- (ii) does not include, in whole or part, a rest home or retirement village 15
- (6) Replace the definition of **estate** with:
estate in relation to land, **interest** in relation to land, **estate or interest in land**, **estate in land**, **interest in land**, and similar terms—
- (a) mean an estate or interest in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder; and 20
- (b) include a right, whether direct or through a trustee or otherwise, to—
- (i) the possession of the land (*for example*: a licence to occupy, as that term is defined in section 121A(1) of the Land Transfer Act 1952):
- (ii) the receipt of the rents or profits from the land: 25
- (iii) the proceeds of the disposal of the land; and
- (c) do not include a mortgage
- (7) Insert, in appropriate alphabetical order:
farmland means land that because of its area and nature is capable of being worked as an economic unit as a farming or agricultural business 30
- (8) In the definition of **interest**, replace paragraph (d) with:
(d) in relation to land, **interest in land**, **estate or interest in land**, and similar terms are defined under the definition of **estate**
- (9) Insert, in appropriate alphabetical order:
main home means, for a person, the 1 dwelling— 35
- (a) that is mainly used as a residence by the person (a **home**); and
- (b) with which the person has the greatest connection, if they have more than 1 home

- (10) Insert, in appropriate alphabetical order:
principal settlor is defined in **section CB 16A** (Main home exclusion for disposal within 2 years) for the purposes of that section
- (11) Insert, in appropriate alphabetical order:
residential land,— 5
 (a) means—
 (i) land that has a dwelling on it;
 (ii) land for which the owner has an arrangement that relates to erecting a dwelling;
 (iii) bare land that because of its area and nature is capable of having a dwelling erected on it; but 10
 (b) does not include land that is used predominantly as business premises or as farmland
- (12) In the definition of **trading stock**, in paragraph (b)(v), replace “CB 6” with “**CB 6A**”. 15

Part 2

Amendment to Tax Administration Act 1994

16 New section 43B of the Tax Administration Act 1994 inserted (Non-active trusts may be excused from filing returns)

After section 43A of the Tax Administration Act 1994, insert: 20

43B Non-active trusts may be excused from filing returns

- (1) A trustee of a trust is not required to furnish a return of income for the trust for a tax year if—
- (a) throughout that tax year; the trust is— 25
 (i) a non-active trust; and
 (ii) a complying trust as described in section HC 10 of the Income Tax Act 2007; and
- (b) a trustee of the trust has made and furnished to the Commissioner, in a form approved by the Commissioner,— 30
 (i) a declaration that the trust is a non-active trust, and that it will notify the Commissioner if it stops being a non-active trust; and
 (ii) a statement of such other matters as the Commissioner may require; and
- (c) the trust has not since the making of the declaration stopped being a non-active trust. 35

- (2) For the purposes of this section, a trust is a non-active trust for a tax year if, throughout that tax year, the trustee of the trust—
- (a) has not derived or been deemed to have derived any income; and
 - (b) has no deductions; and
 - (c) has not disposed of or been deemed to have disposed of any assets of the trust; and 5
 - (d) has not been a party to or perpetuated or continued with any transactions with assets of the trust which, during the tax year,—
 - (i) give rise to income in any person's hands; or
 - (ii) give rise to fringe benefits to any employee or to any former employee. 10
- (3) In determining whether a trust complies with the requirements of **subsection (2)**, no account shall be taken of any—
- (a) reasonable fees paid to professional trustees to administer the trust; or
 - (b) bank charges or other minimal administration costs totalling not more than \$50 in the tax year; or 15
 - (c) interest earned on trust assets in any bank account during the tax year, to the extent to which the total interest does not exceed the total of any charges or costs incurred by the trust to which **paragraph (b)** applies.
- (4) Where at any time any paragraph of **subsection (2)** ceases to apply to a trust for which a declaration under this section has been made, a trustee of the trust must notify the Commissioner that the trust has ceased to be a non-active trust. 20
- (5) Despite **subsection (1)**, trustees of a non-active trust shall furnish a return of income if required by the Commissioner to do so.