

**House of Representatives**

**Supplementary Order Paper**

**Tuesday, 20 February 2018**

**Taxation (Annual Rates for 2017-18, Employment and Investment  
Income, and Remedial Matters) Bill**

*Proposed amendments*

Hon Stuart Nash, in Committee, to move the following amendments:

*New clauses 5BA and 5BAB*

After *clause 5*, insert:

**5BA Section CB 6A amended (Disposal within 2 years: bright-line test for residential land)**

- (1) In section CB 6A,—
  - (a) in the heading, replace “2 years” with “5 years”:
  - (b) in the heading to subsection (1), replace “2 years” with “5 years”:
  - (c) in subsection (1), in the words before the paragraphs, replace “2 years” with “5 years”:
  - (d) in subsection (2), in the words before the paragraphs, replace “2 years” with “5 years”:
  - (e) in subsection (3), replace “2 years” with “5 years”:
  - (f) in subsection (4), replace “2 years” with “5 years”:
  - (g) in the heading to subsection (4B), replace “2-year” with “5-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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

**5BAB Section CB 16A amended (Main home exclusion for disposal within 2 years)**

- (1) In section CB 16A, in the heading, replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*New clauses 28D and 28E*

After *clause 28C*, insert:

**28D Section DB 18A amended (Ring-fenced allocations: disposal of residential land within 2 years)**

- (1) In section DB 18A,—
  - (a) in the heading, replace “2 years” with “5 years”:
  - (b) in subsection (1), replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

**28E Section DB 18AB amended (Deduction cap: disposal of residential land within 2 years to associated persons)**

- (1) In section DB 18AB,—
  - (a) in the heading, replace “2 years” with “5 years”:
  - (b) in subsection (1)(a), replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017**.

*New clause 62C*

After *clause 62B*, insert:

**62C Section FB 3A amended (Residential land)**

- (1) In section FB 3A(1), replace “2 years” with “5 years”.
- (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 resi-

dential land is on or after the date on which the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*New clause 63BA*

After *clause 63*, insert:

**63BA Section FC 9 amended (Residential land transferred to executor, administrator, or beneficiary on death of person)**

- (1) In section FC 9(2), replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*New clauses 69B and 69C*

After *clause 69*, insert:

**69B Section FO 10 amended (When property passes on resident’s restricted amalgamation)**

- (1) In section FO 10(6), replace “2-year” with “5-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 residential land is on or after the date on which the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

**69C Section FO 17 amended (Land)**

- (1) In section FO 17,—
  - (a) in subsection (2)(b), replace “2-year” with “5-year” in each place where it appears:
  - (b) in the heading to subsection (3), replace “2-year” with “5-year”:
  - (c) in subsection (3), replace “2-year” with “5-year” in each place where it appears.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*Clause 71 replaced*

Replace *clause 71* with:

**71 Section GB 52 amended (Arrangements involving residential land: companies' shares)**

- (1) In section GB 52(1)(a), replace “in sections CB 6A(1)(a) or (b) (Disposal within 2 years: bright-line test for residential land) is within 2 years” with “in section CB 6A(1)(a) or (b) (Disposal within 5 years: bright-line test for residential land) is within 5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*New clause 71B*

After *clause 71*, insert:

**71B Section GB 53 amended (Arrangements involving residential land: trusts)**

- (1) In section GB 53 (1)(c), replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*New clause 164C*

After *clause 164B*, insert:

**164C Section RL 1 amended (Residential land withholding tax)**

- (1) In section RL 1(2)(a), replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*Clause 172 amended*

After *clause 172(3)*, insert:

- (3B) In the definition of **bright-line date**, replace “2 years” with “5 years” in each place where it appears.

After *clause 172(7C)*, insert:

- (7D) In the definition of **date of acquisition**, replace “2 years” with “5 years” in each place where it appears.

Replace *clause 172(11)* with:

- (11) In the definition of **dwelling**,—
- (a) in paragraph (a), replace “place; but” with “place.”;
  - (b) in paragraph (b)(vi), replace “ground” with “ground.”;
  - (c) in paragraph (c), replace “2 years” with “5 years”.

After *clause 172(45)*, insert:

- (45B) In the definition of **principal settlor**, replace “2 years” with “5 years”.

After *clause 172(55B)*, insert:

- (55C) In the definition of **settlement**, paragraph (c), in the words before the subparagraphs, replace “2 years” with “5 years”.

After *clause 172(70)*, insert:

- (71) **Subsections (3B), (7D), (11), (45B), and (55C)** apply to a person’s disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

*New clause 242B*

After *clause 242*, insert:

**242B Section 54C amended (Information in relation to payment of RLWT)**

- (1) In section 54C(1), in the words before the paragraphs, replace “2 years” with “5 years”.
- (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 residential land is on or after the date on which the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act **2017** receives the Royal assent.

### **Explanatory note**

This Supplementary Order Paper proposes an amendment to extend the current “bright-line” test from 2 years to 5 years.

The current bright-line test requires 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 objective in extending the current bright-line test from 2 years to 5 years is to ensure that speculators pay tax on the gains from property speculation and also to improve housing affordability for owner-occupiers by reducing demand from speculators.

The proposed 5-year bright-line test has the same structure and design features as the 2-year bright-line test. These design features include:

- The 5-year period for the bright-line test runs from the date of settlement to the date a person enters into an agreement to sell the property. An additional rule applies for sales “off the plan”.
- The extended bright-line test only applies to properties for which an agreement to purchase the property was entered into from the date of enactment of the Bill.
- The bright-line test only applies to residential land. Residential land includes empty land planned to be used for residential purposes but excludes business premises and farmland.
- The bright-line test does not apply to a person’s main home. A person can only have 1 main home. The main home exception is available to properties held in trust.
- There are exceptions for relationship property and inherited property.
- Taxpayers are allowed deductions for property subject to the bright-line test according to ordinary tax rules.
- Losses arising from the bright-line test are ring-fenced so they may only be used to offset taxable gains from other land sales.

Extending the bright-line test from 2 years to 5 years has a consequential effect on the current residential land withholding tax rules. These rules generally require a conveyancer to withhold tax from the proceeds of the sale of residential land by an offshore person when the disposal would be subject to the bright-line test. Consequential amendments have been made to these rules to align them with the extended bright-line test.

### **Departmental disclosure statement**

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2018&no=13&>

### **Regulatory impact assessments**

The Treasury produced a regulatory impact assessment on 29 November 2017 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

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

- <http://www.treasury.govt.nz/publications/informationreleases/ria>