



# TAXATION OF LAND DISPOSALS

## ...The Full Story



Presented by

Scott Mason, Managing Principal – Tax Advisory

Crowe Horwath

And

Stephen Richards, Technical Director – Tax Advisory

Crowe Horwath

Continuing Professional Development - Receive up to 3 Continuing Professional Development hours for attending this course.



# CONTENTS

---

Introduction .....	13
Key Concepts.....	15
Introduction .....	15
What is land? .....	16
When does a disposal of land occur? .....	18
When is land acquired? .....	22
Main Points .....	28
Associated Persons .....	29
Introduction .....	29
Current Associated Persons Tests .....	30
Two Companies (s. YB 2).....	31
Company and a Person other than a Company (s. YB 3) .....	31
Relatives (s. YB 4) .....	32
Two Trusts with Common Settlor (s. YB 7).....	33
Trustee and Settlor (s. YB 8) .....	33
Trustee and Person with Power of Appointment or Removal (s. YB 11).....	34
Partnership and Partner (s. YB 12).....	34
Look-Through Company and Owners of Interests (s. YB 13).....	35
Tripartite Relationships (s. YB 14).....	36

Old Associated Person Tests .....	36
Companies.....	37
Relatives .....	37
Trusts.....	37
Partnerships.....	37
Bright-Line Test and Associated Person Tests .....	38
Companies.....	38
Relatives .....	39
Trusts.....	39
Partnerships and Look-Through Companies.....	39
Main Points .....	40
Land Acquired for Purpose or with Intention of Disposal .....	41
Introduction .....	41
When does this section apply?.....	41
What is a purpose or intention of disposal?.....	42
When must the intention or purpose exist? .....	43
Who must prove a person's intention or purpose? .....	44
How can Inland Revenue ascertain a taxpayer's intention or purpose?.....	45
What exclusions apply? .....	46
Main Points .....	47
Land Acquired for Purposes of a Business Relating to Land .....	48
Introduction .....	48

When does this provision apply? .....	48
What is a business of dealing in land? .....	49
What is a business of developing or dividing land into lots? .....	50
What is a business of erecting buildings on land?.....	51
When must the person be carrying on the business? .....	52
When is the associated person tests applied? .....	53
How important is the taxpayer's purpose or intention?.....	54
Is the taxpayer required to develop or divide the land into lots? .....	55
Is the taxpayer required to erect a building on the land?.....	55
Does it matter how long the person owns the land?.....	56
What exclusions apply? .....	56
Main points.....	57
Disposal within 10 years – Land Dealing Business .....	59
Introduction .....	59
When does this section apply? .....	59
When does a disposal occur?.....	59
When is land acquired? .....	60
What is a business of dealing in land? .....	60
How relevant is the person's purpose?.....	60
What exclusions apply? .....	61
Main Points .....	62
Disposal within 10 years – Land Development or Subdivision Business ..	63

Introduction .....	63
When does this section apply? .....	63
When does a disposal occur? .....	64
When is land acquired? .....	64
What is a business of developing or dividing land into lots? .....	64
How important is a taxpayer's purpose? .....	64
Is the taxpayer required to develop or divide the land into lots? .....	65
What exclusions apply? .....	65
Main Points .....	66
Disposal within 10 years of Improvement – Building Business .....	67
Introduction .....	67
When does this section apply? .....	67
When does a disposal occur? .....	67
Is the date of acquisition important? .....	68
What is a business of erecting buildings on land? .....	68
Does the person need to erect a building on the land? .....	68
When are improvements commenced? .....	69
When are improvements completed? .....	70
How important is the taxpayer's purpose? .....	70
What exclusions apply? .....	71
Main Points .....	72
Schemes for Development or Division Begun within 10 years .....	73

Introduction .....	73
When does this section apply? .....	73
What is an undertaking or scheme? .....	73
What is involved in the development of land or the division of land into lots?.....	74
Who must undertake the development or division work? .....	74
What is minor work? .....	75
When does an undertaking or scheme commence? .....	76
When is land acquired? .....	77
Is the person's intention or purpose relevant?.....	77
Is the land the taxpayer retains subject to tax when sold at a future date? .....	78
What exclusions apply? .....	79
Main Points .....	80
Bright-Line Test for Residential Land .....	81
Introduction .....	81
When does this section apply? .....	82
Can the bright-line test apply to subdivided land?.....	82
Can the bright-line rule apply to a lessee that acquires and sells the freehold title to land?.....	83
Can the bright-line test apply to inherited land? .....	84
Can the bright-line test apply to land received under a relationship property agreement?.....	84

Will the bright-line test apply if the disposal is involuntary? .....	85
What is residential land? .....	85
What is the “bright-line date”? .....	86
What is the “date of acquisition”? .....	87
Do any specific anti-avoidance provisions apply to the Bright-line test? .....	88
What exclusions apply? .....	91
Main Points .....	92
Land Affected by Change .....	93
Introduction .....	93
When does this section apply? .....	93
When is land acquired? .....	94
When must the factor exist? .....	95
What is required for a likelihood of one of these factors occurring to exist?.....	95
How do you determine whether 20% of the excess is attributable to the relevant factor? .....	96
What exclusions apply? .....	96
Main Points .....	97
Schemes for Development or Division Involving Significant Expenditure .	98
Introduction .....	98
When does this section apply?.....	98
Does it matter how long the taxpayer has owned the land?.....	99



What is an undertaking or scheme? .....	99
What is involved in the development of land or the division of land into lots?.....	99
Who must undertake the development or division work? .....	100
What is significant expenditure? .....	100
Is the person's intention or purpose relevant? .....	102
Is the land the taxpayer retains subject to tax when sold at a future date? .....	102
What exclusions apply? .....	102
Main Points .....	103
Transactions between Associated Persons.....	104
Introduction .....	104
When does this section apply? .....	104
What time limit applies? .....	104
Is the person's intention or purpose relevant? .....	106
What exclusions apply? .....	106
Main Points .....	107
Other Taxing Provisions.....	108
Introduction .....	108
Land used for Landfill.....	108
Mining Land .....	109
Income from a Business .....	110
Profit-Making Schemes.....	111

Income under Ordinary Concepts.....	111
Main Points .....	113
Exclusions from Sections CB 6 to CB 11 .....	114
Introduction .....	114
When does the residential exclusion apply? .....	114
To what does the residential exclusion apply? .....	114
When does the residential exclusion not apply? .....	115
When does the business premises exclusion apply? .....	115
What is required for there to be a substantial business conducted from the land? .....	115
To what does the business premises exclusion apply? .....	116
When will the business premises exclusion not apply?.....	116
Exclusions from ss CB 12 and CB 13.....	117
Introduction .....	117
When does the residential exclusion apply? .....	117
What if a trust owns the land? .....	118
When does the business premises exclusion apply? .....	118
When does the farmland exclusion apply?.....	118
What factors indicate the land was disposed of mainly for the purposes of it being farmed? .....	119
What is a farming or agricultural business?.....	120
What if a trust owns the land? .....	120
When does the investment exclusion apply? .....	120

What kinds of income are described in s CC 1?.....	121
Exclusions from Section CB 14 .....	122
Introduction .....	122
When does the residential exclusion apply?.....	122
What is a residential purpose? .....	122
How is the purchaser’s purpose determined? .....	123
What if a trust owns the land? .....	123
When does the farmland exclusion apply?.....	123
How is the purchaser’s purpose determined? .....	124
Exclusions from the Bright-Line Test.....	125
Introduction .....	125
When does the main home exclusion apply? .....	125
When does the main home exclusion not apply? .....	125
What is a “main home”?.....	126
What is a “principal settlor”? .....	126
Calculation of Net Income.....	128
Introduction .....	128
When is income from the disposal of land recognised for tax purposes? .....	128
What if the person disposes of the land for less than market value? ..	130
What deductions is the taxpayer allowed? .....	131
What is the cost of land subject to a major development or subdivision? .....	132

What is the cost of gifted or inherited land? .....	133
Is an adjustment to the cost of the land permitted for the effect of inflation? .....	133
What additional deductions is a taxpayer allowed when section CB 14 applies?.....	134
Is a deduction available for expenditure incurred in selling the land?.	135
When can a taxpayer claim these deductions? .....	136
What restrictions are imposed on deductions when the bright-line test applies?.....	137
Main Points .....	139
Disclaimer .....	140