

Application date for the expanded bright-line rule

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The Government has recently extended the income tax bright-line rule (which imposes tax on the sale of certain residential properties) from 5 years to 10 years. This means that residential properties bought and sold within 10 years are now potentially subject to income tax.

This expansion of the bright-line rule was one of several changes that the Government introduced to assist first home buyers and was accompanied by a proposed denial of interest deductions for residential property investors. The substance of those two tax changes have received significant media commentary regarding whether they will deliver the benefits intended and whether this marks the beginning of a capital gains tax.

What has received less attention is when the expanded bright-line comes into effect. As this is an issue that property owners and advisors may not turn their minds to until a sale occurs at a later date (possibly a decade from now) it is an issue that should be noted as it is not as straight forward as it may seem.

Application date

The general position is that the new 10 year rule operates for residential land that was acquired on or after 27 March 2021. That is not to say that all residential land acquired after that date and sold within 10 years will automatically be taxed (eg the main home exemption may apply) but it does mean that the new expanded bright-line rule needs to be considered.

However a special concession applies where:

- Property was subject to a purchase offer made on or before 23 March 2021
- That purchase offer could not be revoked before 27 March 2021
- The property was acquired on or after 27 March 2021 as a result of that offer.

If that concession applies then the 10 year bright-line has no application, and instead the 5 year bright-line rule continues to apply. As that concession is buried within the amending legislation it is possible that it may be overlooked when property is being sold years from now and we have all become accustomed to the 10 year version of the bright-line. The fact that some properties acquired after 27 March 2021 may only be subject to the 5 year version of the bright-line is important for advisors to remember.

Other changes - main home exclusion

In addition to the period of the bright-line, significant changes have also been made to the way the 'main home' exclusion operates.

Generally, if property is bought and sold within ten years, but has been lived in as the vendor's main home for the whole of that period then no tax is payable under the 10 year bright-line. This is the same outcome as applied under the 5 year bright-line.

Under the 5 year bright-line rule it was arguable that the main home exemption would operate in the same manner even if the vendor had periods where s/he was not living in the property. By contrast the main home exemption that applies for the new 10 year bright-line is more nuanced and having periods of time living away from the property could result in the main home exemption only being partially applicable. This is a matter which we will address in more detail at a later update, but for now the key message is that advisors should not assume that only the time period of the bright-line test has been changed - other important changes to the operation of the bright-line test have also been made.

For more information, or to discuss how the new bright-line rules apply to you, please contact a member of our [tax team](#).

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