

# Revenue Ruling

Ruling Number	: PUB-DT-2016-5
Title	: Landholder Provisions - Treatment of Fixtures
Tax Line	: Duties
Legislative Reference	: <a href="#">Duties Act 2001</a>
Previous Ruling	: Nil
Date of Ruling	: 6 December 2016

## Preamble

The landholder provisions in Chapter 3 of the [Duties Act 2001](#) (the Act) charge duty on relevant acquisitions in landholders. A landholder is any company or unit trust scheme (whether private or public) that has land holdings in Tasmania with an unencumbered value of \$500 000 or more.

In determining the value of a company or unit trust scheme's land holdings (ie to determine if they constitute a landholder and the amount of duty payable on a relevant acquisition), Section 62 of the Act provides that, where the company or unit trust scheme has an entitlement to, or interest in, land, a thing that is fixed to that land is generally taken to be part of the land for the purposes of determining the land value. This is the case even if the thing fixed to land is (or purports to be) owned separately from the land and regardless of whether or not the thing would ordinarily be considered a fixture at common law taking into account the object and purpose of its affixation. However, to avoid unintended consequences, this general principle is able to be overturned by the Commissioner of State Revenue (the Commissioner) under Section 62(7) of the Act where the Commissioner is satisfied it would be just and reasonable to do so.

In addition, where a company or unit trust scheme has an entitlement to, or interest in, a thing fixed to land and the land is owned by some other person, the unit trust or company will be regarded as having an interest in land to the extent of its entitlement to, or interest in, the item affixed. There is no discretion available to the Commissioner to disregard such fixtures as interests in land in these circumstances.

### Example

Company A owns and operates a farm on which Company B has constructed four wind turbines. The wind turbines are owned entirely by Company B and not used in any way by Company A. Companies A and B are not associated.

In this example, although the wind turbines would be regarded as a thing fixed to the land (and liable to have their value included in the value of the land owned by Company A), the Commissioner may exercise the discretion to exclude the wind turbines from Company A's land holdings because the wind turbines are not owned or used by the company.

However, with respect to Company B, whilst it does not own the land, it does have an interest in the turbines which constitute a thing fixed to land. As a result, the value of the wind turbines would form part of Company B's land holdings and no discretion would be available for the Commissioner to exclude them.

The purpose of this Ruling is to explain what the Commissioner considers i) to be an item fixed to land for the purposes of the landholder provisions, ii) what is meant by an entitlement to an item affixed to land, and iii) to identify the factors the Commissioner will take into account in determining whether or not an item fixed to land (which land the unit trust scheme or company has an interest in) should be taken to be part of the land and its value.

## **Ruling**

To overcome the need to rely on the common law to determine whether or not a thing fixed to land constitutes a fixture (ie part of the land and its value) or a chattel, the landholder model defines land to include a thing fixed to the land, whether or not the thing:

- constitutes a fixture at law;
- is owned separately from the land; or
- is notionally severed or considered to be legally separate from the land as a result of the operation of any law.

Noting the statutory definition of a thing fixed to land, other than circumstances where an ordinarily immovable item is fixed to land only by virtue its own weight, the determination of whether or not an item is part of the land does not require a consideration of common law principles concerning the object and purpose of affixation of the thing in order to determine if it must be treated as an interest in land.

### **Treatment of things fixed to land owned by the company or unit trust scheme**

Where an item fixed to land owned by a company or unit trust scheme is not owned separately from the land, the item fixed to the land will, ordinarily, be deemed to be part of the land such that the value of the land will be taken to include the value of the thing fixed. However, in some instances, the Commissioner may exercise the discretion under Section 62(7) of the Act not to treat the thing fixed as part of the land where the thing would clearly not constitute a fixture at common law and the value of the thing is determinative of whether or not the entity is a landholder.

The Commissioner's discretion not to treat a thing fixed to land as part of the land will be more readily exercised in circumstances where a company or unit trust scheme has an interest in land upon which items owned by third parties are fixed (such as the wind turbines in the example above).

The factors the Commissioner will consider in determining whether or not to exclude the thing(s) fixed to the land from the value of the land in these circumstances would include, but are not limited, to:

- the nature of the thing;
- the extent of the company or unit trust scheme's (or an associated persons) interest in, or entitlement to, the thing;
- the nature of any third party interests in the thing;
- the extent to which ownership of the thing has been separate from the land;
- the extent to which the thing is used in conjunction, or in connection, with the land and the likelihood of it being so used in the future;
- the extent to which the thing is used by or benefits the company or unit trust scheme;
- the extent to which the thing enhances the value of the land (both objectively and subjectively taking into account the likely value to the person making the acquisition);
- the extent to which the thing was compulsorily affixed (eg under a statutory power); and/or
- the likelihood of the thing passing to the owner of the land at some future time.

Practically, it should be noted that, in cases where the Commissioner exercises the discretion not to treat a thing fixed to land as part of the land, the thing may still constitute 'goods' (unless excluded by section 63(1) of the Act) to the extent of the company or unit trust scheme's interest in the thing.

Accordingly, if a unit trust scheme or company remains a landholder after deducting the value of a thing fixed from the value of its land, duty would still be payable on the value of the thing fixed (in proportion to the interest in the entity acquired), on the basis that the thing constituted 'goods'.

As a result, unless the value of the land by virtue of the inclusion of the fixture is determinative of whether or not the company or unit trust is a landholder or the company or unit trust does not enjoy ownership of the thing fixed, there is limited benefit in excluding the value of the fixture from the value of the land for the purposes of calculating the duty payable on a relevant acquisition.

### **Treatment of things fixed to third party land**

Where a company or unit trust scheme has an entitlement to, or interest in, a thing that is fixed to land and that land is owned by a third party, the company or unit trust scheme will be taken, under section 62(8) of the Act, to have an interest in land to the extent of its interest in, or entitlement to, the thing fixed.

An example of the type of items typically fixed to third party land that would be captured as an interest in land attributable to the owner of the thing fixed would include such things as electricity transmission infrastructure, a pipeline or tenant's improvements. Accordingly, if a company owned a pipeline that extended from one point to another across land owned by third parties, the pipeline would form part of the company's land holdings.

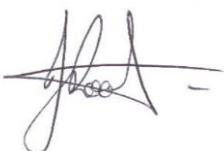
In addition, where a company or unit trust scheme merely has an entitlement to a thing fixed to third party land, section 62(8) operates to treat that entitlement as an interest in land to the extent of the company or unit trust scheme's entitlement. The concept of an entitlement in this context relates to a right to use or exploit the thing fixed that falls short of a proprietary right. For example, if a company or unit trust scheme had acquired a contractual right to pump gas through a pipeline owned by a third party that was situated on third party lands, the value of that entitlement would be required to be included as a land holding of the company or unit trust.

As stated, there is no discretion available to the Commissioner to exclude such fixtures as land holdings in these circumstances.

### **Explanation of Revenue Rulings**

All rulings must be read in conjunction with the 'Explanation and Status of Revenue Rulings' available on the SRO website, [www.sro.tas.gov.au/resources/rulings](http://www.sro.tas.gov.au/resources/rulings).

For questions about this ruling, please email [revenuereview@treasury.tas.gov.au](mailto:revenuereview@treasury.tas.gov.au) or phone (03) 6166 4400.



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