

Guideline

Land-Rich Provisions

The Land-Rich provisions contained in Chapter 3 of the *Duties Act 2001* were replaced, effective 6 December 2016, by Landholder duty provisions. Land-Rich Provisions still apply to transactions prior to the 6 December 2016.

Acquisition of interests in landholders from 6 December 2016 may be liable for Landholder duty. Refer to the [Introduction to the Landholder provisions](#) guideline.

Preamble

The land-rich provisions in part 2, chapter 3 of the [Duties Act 2001](#) (the Act) provide for duty to be charged on relevant acquisitions of shares or units in land-rich private corporations.

The provisions aim to improve consistency in the duty treatment of land, fixtures and interests transferred either indirectly (by way of shares) or directly, and therefore minimise opportunities for tax avoidance.

Private corporations

The land-rich provisions apply to private corporations. They do not apply to the acquisitions of shares or units in public companies or public unit trust schemes.

A private corporation is either:

A private company

A company not limited by shares, or whose shares are not listed for quotation on the ASX or any Stock Exchange that is a member of the World Federation of Exchanges; or

A private unit trust scheme

A unit trust scheme that is not a public unit trust scheme (as defined in section 3 of the Act).

Irrespective of the definition of a private corporation, the Commissioner of State Revenue may disregard a company's listing on a recognised stock exchange. This would occur if the Commissioner is satisfied that its listing was part of an arrangement or scheme that has a purpose or subordinate purpose of reducing the duty otherwise payable for the relevant acquisition.

A land-rich private corporation

There are two tests to determine if a private corporation is land-rich for the purposes of the Act:

1. Land Threshold Test

The private corporation must have land holdings in Tasmania (including the value of land held by subsidiaries) with a value of \$500 000 or more; and

2. Land Ratio Test

From 2 May 2008¹, the private corporation must have land holdings, whether within or outside Australia, that comprise 60 per cent or more of the total unencumbered value of all its property

¹ Prior to 2 May 2008, the private corporation had to have land holdings (within or outside Australia) that comprised 80 per cent or more of the total unencumbered value of all of its property.

(other than certain excluded property).

A private corporation that does not meet **both** tests is not a land-rich private corporation and is **not** subject to the land-rich provisions.

When determining the total unencumbered value of a private corporation's property, certain property is to be disregarded including:

- a) cash;
- b) negotiable instruments;
- c) short-term loans; and
- d) land use entitlements.

See the list of excluded property in [section 60\(2\) of the Act](#).

When determining whether a private corporation's land holdings exceed either the Land Threshold Test or the Land Ratio Test, any arrangement that has the effect of reducing the value of its landholdings may be disregarded.

Property, as defined in the Act, means both real and personal property. In general, an item will be considered property if it is identifiable, capable of ownership and able to be transferred. Some items such as capitalised expenses that appear on a corporation's balance sheet do not meet these requirements, and **are not** included in the determination of the Land Ratio Test. However, some off-balance sheet items such as internally generated goodwill and intellectual property may be included.

Land holdings

A land holding is defined in the Act as *an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit a prendre*.

Section 61² also provides that an interest in a mineral tenement and an interest in a gas pipeline (within the meaning of the [Gas Pipelines Act 2000](#)) are interests in land for the purposes of the land-rich provisions.

If a private corporation has an interest in land, the value of any fixtures to the land is included in the corporation's landholdings, even if that fixture is subject to a right of severability. A corporation's entitlement to or interest in fixtures on land (where the land is not owned by the corporation) are also included in the corporation's land holdings. For example, the value of buildings or other fixtures owned by a corporation, which are sited on a mineral tenement or leased land, form part of the corporation's land holdings.

To be a land holding of a **private unit trust scheme**, the trustee of the scheme (in its capacity as trustee) must hold the interest in land on trust for the scheme.

To be a land holding of a **private company**, the interest held by the company must be a beneficial interest. Non-beneficial interests in land (for example, interests held by a private corporation on trust) are **not** included in a corporation's land holdings.

Section 61(4) of the Act sets out that both the vendor and purchaser under an uncompleted agreement for sale of land are taken to be separately entitled to the land subject of the agreement. This means that, if on the date of acquisition of shares or units in a private corporation, the private corporation was either the vendor or purchaser under an uncompleted agreement for the sale of land, that private corporation will be considered to hold the land subject of the uncompleted agreement.

However, this rule in section 61(4) is reversed in the following two circumstances:

² Section 61(1A) was included in the Act on 7 December 2011.

- a) If, on the date of acquisition of shares or units in a private corporation, the private corporation was the vendor under an uncompleted agreement which is subsequently completed, the land in question is **not** treated as a land holding of the corporation for the purpose of any assessment or reassessment (section 76(1)).
- b) If, on the date of acquisition of shares or units in a private corporation, the private corporation was the purchaser under an uncompleted agreement, and the agreement is subsequently rescinded or annulled, then the land in question is **not** treated as a land holding of the corporation for the purpose of any assessment or reassessment (section 76(2)).

Constructive ownership

In addition to any interest in land or other property that it may hold in its own right, a private corporation is taken to hold an interest in land and other property which is held by every direct or indirect subsidiary of the private corporation.

For the purposes of calculating constructive ownership, a company is a subsidiary of another company within the same meaning of the [Corporations Act 2001](#) (Cwth), which includes:

- a) the ownership of more than half of the company’s shares; or
- b) control of the company’s board; or
- c) control of a majority of the company’s voting rights.

A private unit trust scheme is the subsidiary of a private corporation if the corporation holds a majority of the units in the scheme.

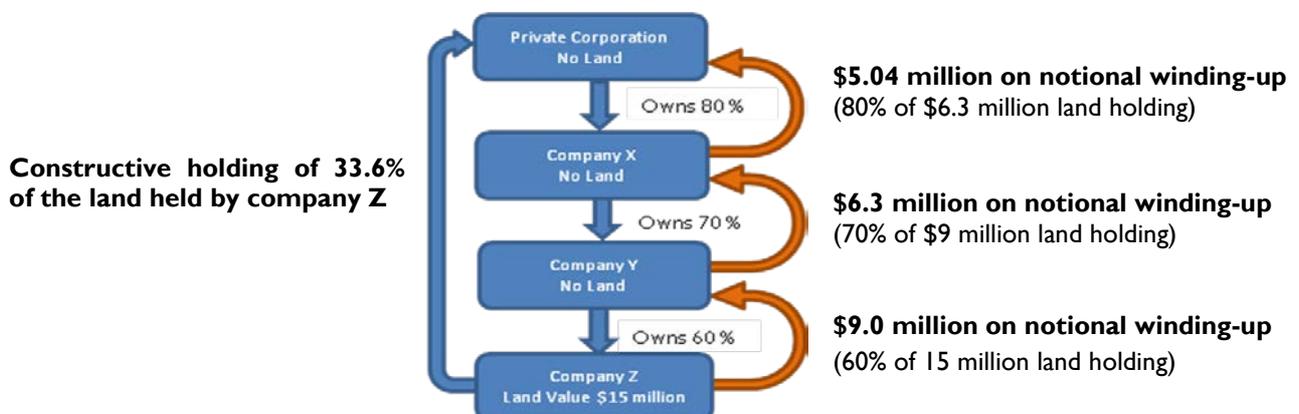
A private corporation’s interest in a subsidiary’s land and other property is calculated on the proportion of that land and property to which it would be entitled to on a notional winding up of:

- i) the subsidiary land holder; and
- ii) each of the subsidiaries that stand between the private corporation and the actual landholder in the ownership chain.

Example:

A private corporation (subject of a relevant acquisition) holds an 80 per cent majority interest in Company X. Company X in turn holds a 70 per cent majority interest in Company Y. Company Y holds a 60 per cent majority interest in Company Z, which owns land in Tasmania with a value of \$15 million.

For the purposes of the land-rich provisions, the private corporation has an indirect interest in Company Z and its landholdings by way of constructive ownership. On a notional winding up of company Z, Company Y and Company X, the private corporation would have an interest in land with a value of \$5.04 million.



Constructive ownership (discretionary trusts)

Beneficiaries of discretionary trusts have no present entitlement to any trust property. However, if a private corporation is a beneficiary to which the capital of a discretionary trust may be distributed, the constructive ownership provisions deem the private corporation to own, or be entitled to, all of the property that is the subject of the trust (except to the extent determined by the Commissioner of State Revenue).

Any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust if:

- a) the other trust is a capital beneficiary of the first trust; or
- b) the trustee (in its capacity as trustee) is a capital beneficiary of the discretionary trust.

Acquisitions liable for duty

A liability for duty arises when a person makes a relevant acquisition. This situation occurs in a land-rich private corporation if that person acquires an interest in the private corporation that:

- a) is itself a majority interest – meaning an interest of 50 per cent or more³ in a private unit trust scheme or a private company; or
- b) amounts to a majority interest when the person's interest is aggregated with interests acquired by associated persons (as defined under section 3 of the Act); or
- c) is a further interest – meaning a further interest acquired by a person once the person has already acquired a majority interest in the land-rich private corporation via (a) or (b) above.

An interest in a private corporation is not counted for the purposes of determining whether a relevant acquisition was made if:

- a) the interest was acquired before 1 January 1990; or
- b) the interest was acquired at a time when the private corporation did not hold land in Tasmania.

A person may acquire an interest in a private corporation by a variety of means, including:

- by way of issue, cancellation, or redemption of shares or units; or
- the alteration of rights attaching to a share or unit.

It is not necessary to have a transfer of shares or units for a person to acquire an interest in a private corporation. A person has an interest in a private corporation for the purposes of the Act if the interest confers on the holder a beneficial entitlement to participate in a distribution of property in the event of the winding up of the private corporation.

Exempt acquisitions

Section 72 of the Act contains a detailed list of exempt acquisitions. These include:

- if the means by which the person acquired the interest would have resulted in no ad valorem duty being payable under Chapter 2 of the Act had the subject of the acquisition been a transfer of the land of the private corporation to the person (for example, distribution from a deceased person's estate);
- if the interest was acquired in a representative capacity in connection with bankruptcy, liquidation of a company or a deceased estate;
- if the interest was acquired under a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* (subject to certain conditions);
- if the interest was acquired as part of a pro rata allocation to all unit holders or shareholders; or
- if the interest was acquired as a result of a marriage break-down or a break-down in a personal relationship.

Section 225(2) of the Act provides an exemption from duty for the transfer of shares in a farming company, where the shares are transferred to defined relatives. For more information please read the [Intergenerational Rural Transfer Exemption guideline](#) at www.sro.tas.gov.au.

³ Prior to 2 May 2008, a majority interest was an interest of more than 50 per cent in a private unit trust scheme or a private company.

Concessions

If a financier acquires an interest in a land-rich private corporation as a condition of providing financial accommodation, the acquisition statement is not chargeable with duty – provided the interest is re-transferred by the financier within five years (or longer period determined by the Commissioner of State Revenue).

Who is liable for payment of duty?

Duty chargeable under the Land-rich provisions is payable by the person who makes the relevant acquisition. If the relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

Paying duty on a relevant acquisition

A person who makes a relevant acquisition must submit a statement approved in accordance with section 68 of the Act. Please use the [Land-rich Acquisition Statutory Declaration](#) at www.sro.tas.gov.au.

When must duty be paid?

Duty must be paid within three months of a relevant acquisition.

More information from the State Revenue Office

Email

dutyhelp@treasury.tas.gov.au

Phone

(03) 6166 4400
(weekdays 9:00am to 5:00pm)

Website

www.sro.tas.gov.au

In writing

The Commissioner of State Revenue, GPO Box 1374, Hobart Tas 7001

In person

Ground floor
Salamanca Building Parliament Square
4 Salamanca Place HOBART TAS 7000
(weekdays 9:00am to 5:00pm)

Fax

(03) 6173 0217