

Guideline

Land-rich provisions and completing acquisition statements

Effective 6 December 2016 the land-rich provisions were replaced by a landholder duty model. If you have made a relevant acquisition in a landholder on or after 6 December 2016 you should complete the either an [“Acquisition of an Interest in a Public Landholder”](#) or an [“Acquisition of an Interest in a Private Landholder”](#) statement. Transactions prior to 6 December 2016, Land-rich provisions still apply.

Preamble

The land-rich provisions in chapter 3, part 2 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 directly or indirectly (by way of shares), and therefore minimise opportunities for tax avoidance.

Am I required to complete an Acquisition Statement?

The acquisition of an interest in a land-rich private corporation (such as shares or units) may constitute a “relevant acquisition” under section 67 of the Act and attract a liability to pay duty.

You are required to complete and lodge an acquisition statement and pay duty if you have made a “relevant acquisition” in a land-rich private corporation under the Act.

Please note that a reference to “you” in this form refers to you in your capacity as an individual, a director of a private company or a trustee of a private unit trust scheme.

What is a relevant acquisition?

A relevant acquisition is made by acquiring:

- a majority interest in the land-rich corporation; or
- an interest that, when aggregated with other interests in the corporation held by you or an associated person, results in an aggregation that constitutes a majority interest in the land-rich corporation.

A relevant interest may also be acquired where:

- a further interest, or an aggregated interest, is acquired in a land-rich corporation where you hold an interest as described in the previous two points.

What is a majority interest?

A majority interest is an interest of 50 per cent or more.

What is an interest in a private corporation?

You have an interest in a private corporation if you are entitled to a distribution of property from the corporation on a winding up of the corporation or otherwise.

What is a land-rich private corporation?

Private companies or a private unit trust scheme are land-rich private corporations if:

- they have land holdings in Tasmania with an unencumbered value equal to or more than \$500 000; and
- their land holdings in all places, whether within or outside of Australia, form 60% or more of the unencumbered value of all of its property.

An interest in land or other property that is held by a subsidiary of the private corporation is taken to be an interest held by the private corporation.

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.

What is a private company?

A private company is a company that is not limited by shares or whose shares are not quoted on the Australian Stock Exchange or any other recognised stock exchange.

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.

What is a recognised stock exchange?

A recognised stock exchange is a stock exchange that is a member of the World Federation of Exchanges or a stock exchange declared by the Minister, by order published in the Gazette, to be a recognised stock exchange. An order has been gazetted declaring the following to be recognised stock exchanges:

- the National Stock Exchange of Australia Limited (ABN 11 000 902 603).

What is a private unit trust scheme?

A private unit trust scheme is a unit trust scheme whose units are not listed on the Australian Stock Exchange or another recognised stock exchange, or where none of the units in the scheme have been offered to the public.

What are land holdings?

A land holding is any interest in land other than the interest of a mortgagee, a chargee, an interest held by a secured creditor or a *profit a prendre*¹.

Section 61 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 **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:

- 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)).
- 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)).

Can a private corporation constructively own land?

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:

- the ownership of more than half of the company's shares; or
- control of the company's board; or
- control of a majority of the company's voting rights.

¹ A *profit a prendre* is a right, privilege or interest that allows one to use the soil or products of another's property. For example, an agreement where a person allows another to collect firewood from their property creates a *profit a prendre* in favour of the wood collector.

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

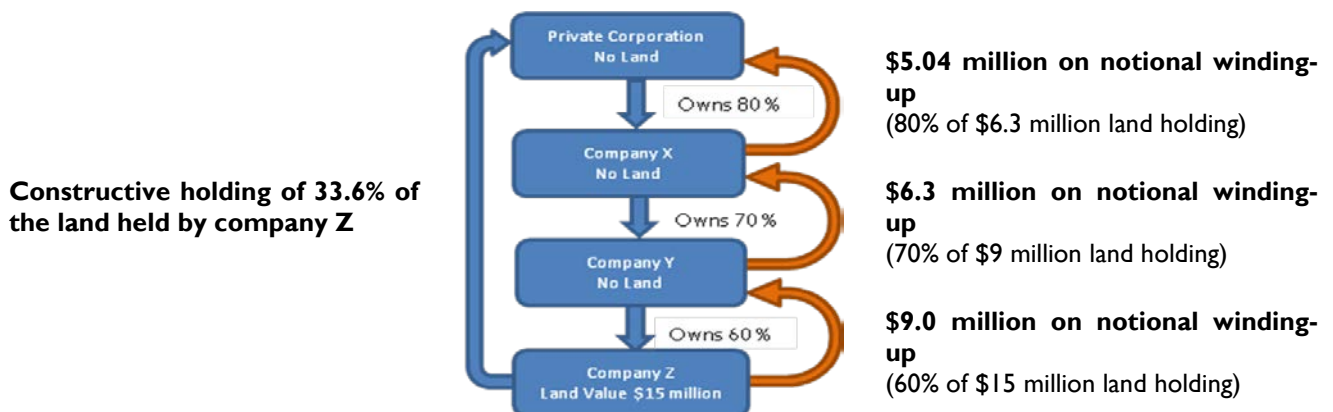
A private corporation's interest in a subsidiary's land and other property is calculated on the proportion of that land and property to which it would be entitled to on a notional winding up of:

- the subsidiary land holder; and
- 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.



Can there be constructive ownership with 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:

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

What is an interest in land?

For the purposes of a relevant acquisition, an interest in land is:

- a land holding of a private company where the interest of the private company in the land is a beneficial interest; and
- a land holding of a unit trust scheme that is held by the trustees in their capacity as trustees of the scheme.

What is the unencumbered value of the property?

For the purposes of assessing duty on a relevant acquisition, the accepted definition of “unencumbered value of property” is:

“The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”²

What property is included for the purposes of calculating the unencumbered value of property?

Generally, for an item to be considered property, it must be identifiable, capable of ownership and able to be transferred. Most items listed as assets in a taxpayer's financial statements will qualify as property for the purposes of calculating the unencumbered value of the property.

Property includes “real” property—land or an interest in land—and “non-real” property, which includes items such as fixtures, goods and chattels.

Property does not include:

- cash, whether in Australian or other currency;
- money on deposit with any other person, negotiable instruments or debt securities;
- loans that, according to their terms, are to be repaid on demand by the lender or within 12 months after the date of the loan;
- loans to persons who are associated persons of either a company, or a majority shareholder of a company, that is the private corporation concerned in a relevant acquisition;
- loans to persons who are associated persons of either a trustee or a beneficiary of a private unit trust scheme that is the private corporation concerned in a relevant acquisition;
- land use entitlements;
- shareholding of a private corporation that is a holding company in a subsidiary of the private corporation;
- property consisting of a share or an interest in a unit trust scheme that is a subsidiary or holds an interest as a beneficiary in a discretionary trust.

² International Assets Valuation Standards Committee 1993

What are associated persons?

A person is associated with another person if they are related or if they are partners in a partnership.

Private companies are associated persons if common shareholders have a majority interest in each private company.

Trustees of different private unit trust schemes are associated persons if any person is a beneficiary common to the trusts of which they are trustees.

A private company and a trustee are associated persons if a related body corporate of the company (for example, a subsidiary company) is a beneficiary of the trust of which the trustee is a trustee.

A public company and another person are associated persons if the person is a subsidiary of the public company.

Persons are associated persons if they are acting in concert.

What is acting in concert?

For persons to be considered “acting in concert” there must be an understanding between the persons as to a common purpose or interest in an acquisition.

How is an interest in a land-rich private corporation acquired?

An interest in a land-rich private corporation may be acquired by:

- the purchase, gift, allotment or transfer of any share or unit in a private corporation; or
- the variation, abrogation, or alteration of a right attaching to any such share or unit; or
- the redemption, surrender or cancellation of any such share or unit; or
- the variation or alteration of a right of a holder of any such share or unit, including on payment of a call on partially paid-up shares; or
- in the case of a company limited by guarantee, becoming a member of the company, removing a person from membership of the company or altering members’ rights; or
- by any combination of the means described in any of the previous points in this list.

How is the duty calculated?

Duty is calculated by multiplying the unencumbered value of all land holdings of the private corporation in Tasmania (calculated at the date of the acquisition of the interest acquired) by the proportion of that value represented by the interest acquired by the transaction. Duty is chargeable on this value at the rate specified under the Act for a transfer of dutiable property.

For example, if a shareholder acquires 60 per cent of shares in a private corporation that has land holdings valued at \$800 000, duty is calculated as follows:

$60/100 \times \$800\,000$ (\$480 000 = dutiable value) \times rate of duty set out in section 29 of the Act (\$6 550 plus \$4 per \$100 where the dutiable value exceeds \$225 000) = \$16 750.

If duty has been paid in respect of the relevant acquisition under the law of another Australian jurisdiction, the duty payable under the Act is reduced by the formula set out in section 71(4) of the Act.

If the unencumbered value of land holdings held by a private corporation in Tasmania exceeds \$500 000 but does not exceed \$750 000, the duty chargeable is to be calculated in accordance with the formula set out in section 75 of the Act.

When must duty be paid?

Duty must be paid within three months of making the relevant acquisition. Interest and penalty tax will accrue for late payment.

Who is liable to pay the duty?

Duty is payable by the person who makes the relevant acquisition. Where a relevant acquisition results from the aggregation of interests of a person or associated persons, both the person who made the relevant acquisition and any associated person are jointly liable.

Can I be exempt from paying duty?

In some instances, even though you may have made a relevant acquisition in a land-rich private corporation, you may be exempt from paying duty. Examples of exemptions include relevant acquisitions arising from a property distribution following a marriage breakdown and interests acquired in a third party capacity, such as the acquirer acting as a receiver or trustee in bankruptcy.

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 'Section 68 Duties Act 2001 Land-rich acquisition statement' at www.sro.tas.gov.au.

More information

Phone

(03) 6166 4400 (select option 4 then 3)
(weekdays, 9:00am to 5:00pm)

Email

dutyhelp@treasury.tas.gov.au

In person

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