

Guideline

Grouping of related companies

Land Tax Act 2000

Summary

The *Land Tax Act 2000* (the Act) specifies how land tax is imposed on companies that own land in Tasmania.

Under Section 24(2) of the Act, related companies are grouped and treated as a single entity for land tax purposes.

As a result, the value of the land owned by each group member is aggregated (that is, combined) to determine the amount of land tax payable by the group. This approach is consistent with the treatment of individuals who own multiple properties.

The circumstances that define the relating of companies are set out in Section 31 of the Act, and are explained in this guideline.

Why are companies grouped for land tax purposes?

Land tax is imposed on a progressive scale. The inclusion of company grouping provisions ensures that related companies pay an amount of land tax determined by the value of their **total** landholdings. The company grouping provisions apply irrespective of whether multiple properties are held directly or indirectly through shareholding in another company that owns land.

The grouping of companies in Tasmania for land tax purposes corresponds with the practice in other Australian jurisdictions.

When are companies related?

Two companies are related to each other for land tax purposes if:

- a) a person has, or the same people together have, a controlling interest in both companies;
- b) the companies are related bodies corporate for the purposes of the *Corporations Act 2001* (Cwth) (the Corporations Act);
- c) one of those companies is related to a company to which the other is related; or
- d) two companies have common shareholders.

What is a controlling interest in a company?

A controlling interest in a company arises if:

- a) a person or several people acting together can control the composition of the board of directors of a company (for example, that person or those persons can appoint or remove all, or a majority, of the directors);
- b) a person is, or several people acting together are, in a position to cast or control the casting of more than 50 per cent of the maximum number of votes that might be cast at a general meeting of a company; or
- c) a person holds, or several people acting together hold, more than 50 per cent of the issued share capital of a company.

Important: The term, issued share capital, does not include shares that do not carry the right to participate in the distribution of profits or capital beyond a specified amount.

Example

Shares in Company A are held by:

- Gerry – 25 Shares
- Judy – 27 Shares
- Austin – 48 Shares

Total = 100 Shares

Shares in Company B are held by:

- Gerry – 11 shares
- Judy – 40 Shares
- Luke – 49 Shares

Total = 100 Shares

Gerry and Judy have greater than 50 per cent controlling interest in both

- Company A (25 per cent plus 27 per cent = 52 per cent); and
- Company B (11 per cent plus 40 per cent = 51 per cent).

Gerry and Judy, therefore, have a controlling interest in both Company A and Company B.

Company A and Company B would be grouped for land tax purposes.

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When are companies related under the Corporations Act?

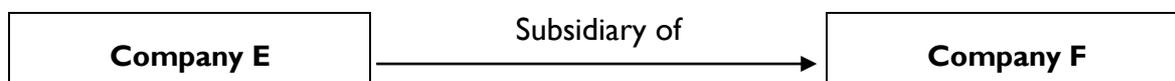
A company (the first company) is related to another company for the purposes of the Corporations Act if:

- (i) the first company is the holding company of the other company;



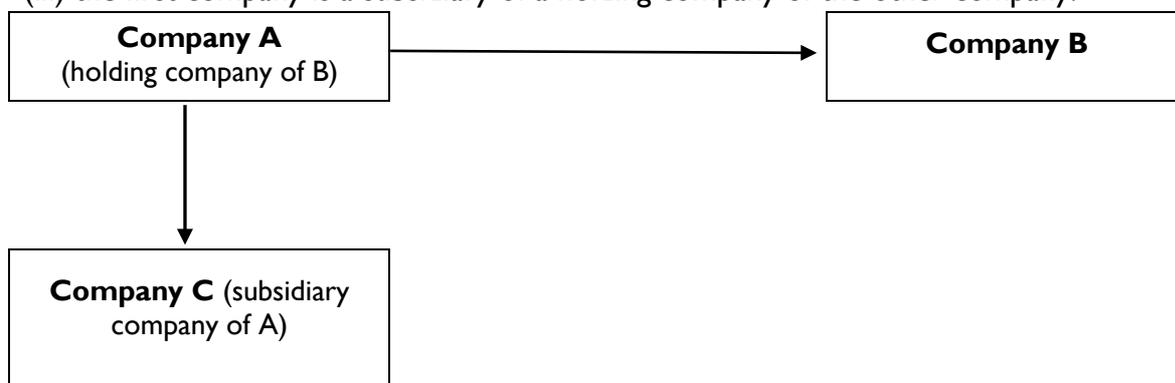
or

- (ii) the first company is a subsidiary of the other company;



or

- (iii) the first company is a subsidiary of a holding company of the other company.



A company is a subsidiary of another company if, and only if:

- (a) the other company:

- (i) controls the composition of the first company's board of directors;
- (ii) is in a position to cast, or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the first company; or
- (iii) holds more than one half of the issued share capital of the first company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

or

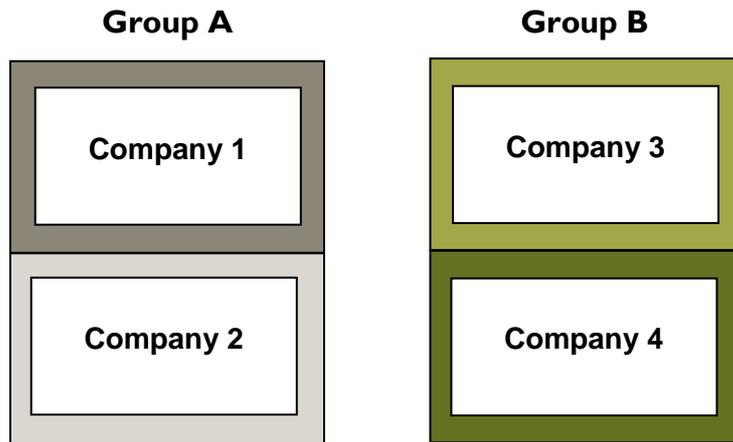
- (b) a company (the first company) is a holding company of another company (the second company) if the latter is a subsidiary of the first company.

What happens when a company in one group is related to a company in another group?

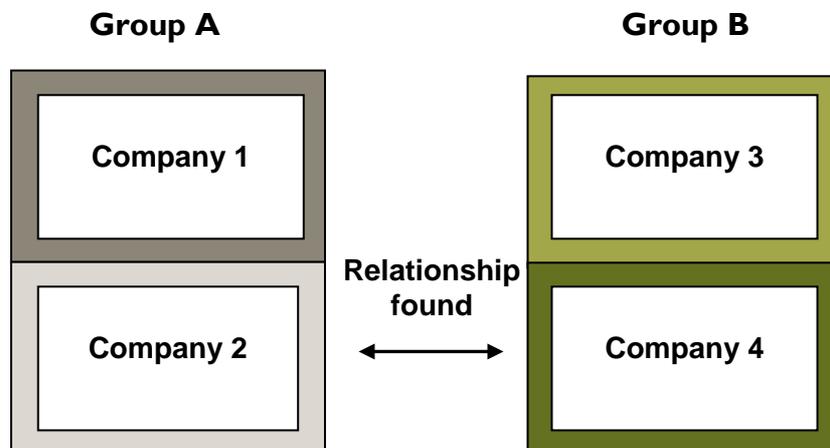
A company cannot be a member of two groups. Accordingly, if a company in one group is related to a company in another group, the companies together form a single, larger group.

Example

Two companies (1 and 2) are related to each other and are grouped for land tax purposes (Group A). Two other companies (3 and 4) are related to each other also and they are grouped for land tax purposes (Group B).

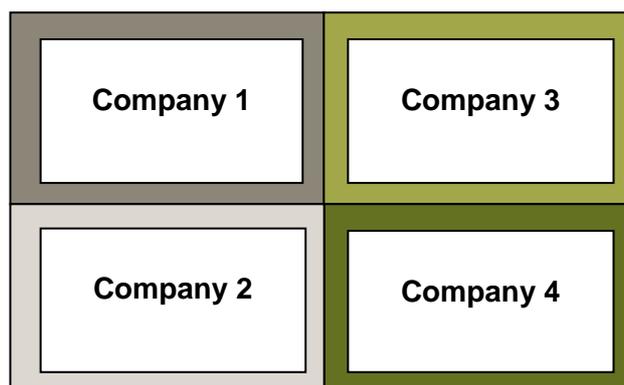


If a company in one group (company 2) is found to be also related with a company in another group (company 4), then all members of both groups would constitute a single group.



As a result all four companies are grouped together into a single group – Group AB.

Group AB



How does the common shareholder test work?

Two companies are related based on common shareholders when the following tests are satisfied:

- (a) more than 50 per cent of the issued share capital of one company is held by the other company, either by itself or with its own shareholders;

and

- (b) the shareholders of the second company hold more than the difference between 50 per cent and the proportion of the issued share capital of the first company held by the second company.

Example

Shares in ABC Pty Ltd are held by:

- Christine 26 Shares
- Andrew 25 Shares
- XYZ Pty Ltd 49 Shares

Total = 100 Shares

Shares in XYZ Pty Ltd are held by:

- Jackie 48 Shares
- Christine 5 Shares
- Fred 47 Shares

Total = 100 Shares

ABC Pty Ltd and XYZ Pty Ltd would be grouped under the common shareholders test because both parts of the test apply.

XYZ Pty Ltd and Christine together hold more than 50 per cent of the issued share capital of ABC Pty Ltd. Christine holds 5 per cent of the shares in XYZ Pty Ltd which is more than the difference between 50 per cent and the proportion of the issued share capital of ABC Pty Ltd held by XYZ Pty Ltd (49 per cent) (that is, the difference in this case is 1 per cent which is less than the 5 per cent held by Christine).

Does a company have to own land to be related?

No, a company does not have to own land to be related to another company. If, in the future, a related corporation acquires land, the land value will automatically be aggregated.

What happens when a company owns land jointly with a natural person, a trustee or another company?

If a company owns more than 50 per cent of a parcel of land, jointly with a natural person, a trustee or another company, the land is deemed to be owned by the company and the value of its land will be aggregated with the land owned by other group members.

How is non-trust land treated?

Trustees are liable for any land tax for land held in trust. However, any land held in a trustee capacity is assessed separately from land held by the trustee in its own right.

How is land held on trust by corporate trustees treated?

Land held in trust by corporate trustees which satisfies the **related corporation** criteria is required to be aggregated for land tax purposes (*Nekon Pty Ltd v Commissioner of State Revenue* [2010] TASSC 2). Grouping is based on the legal ownership of land and is not concerned with the identity of the beneficiaries of the trust.

How are related corporate trustees assessed for land tax?

Where related corporate trustees are grouped an assessment is made on the **aggregate value of all parcels of land held on trust** by those related corporate trustees.

What happens if related corporate trustees also hold parcels of non-trust land?

If related corporate trustees also hold parcels of non-trust land (that is, land held in their own right) a **separate assessment** is made on the aggregate value of all parcels of non-trust land.

In a group, which company is liable to pay the land tax assessment?

The members of the group may nominate which company will receive land tax assessments and correspondence on behalf of the group. However, all companies in the group are jointly and severally liable for full payment of the assessed land tax.

There is no provision in the Act that affects any right of contribution or indemnity between the companies. This means that the right of companies in a group to recover a proper portion of land tax from other entities in the group at common law is not affected.

If the group does not nominate a group member for land tax purposes, or the nominated company fails to pay the land tax assessment when required to do so, the Commissioner of State Revenue will nominate a member of the group.

How are shares or exercisable powers treated where they are held by a trustee or nominee for another person?

Shares held in trust for, or on behalf of a person, are treated as **also** being held by that person. This means that both the holder of shares and the beneficial owner of the shares are deemed to hold those shares for the purpose of determining whether companies should be grouped.

Similarly, a power exercisable by a person as trustee or nominee for, or on behalf of another, is treated as **also** being exercisable by the person for whom the power is held.

How are shares or exercisable powers treated where they are held by a trustee or nominee under a debenture or as security for the lending of money?

If shares are held or power is exercisable under the provisions of a debenture of another company, or a trust deed for securing a debenture, the shares or power are to be disregarded when deciding whether two companies should be grouped.

However, if those shares are, or an exercisable power is:

(a) held by a nominee whose ordinary business includes the lending of money;

or

(b) held as security for a transaction entered into in the ordinary course of business, relating to the lending of money (unless the transaction is entered into with a person associated with the other within the meaning of Corporations Law);

then the shares or exercisable power are treated as **not** being held or exercisable by the trustee or nominee but are considered to be exercisable by the beneficial owner(s) only.

Who should complete a Statement of Company Details form?

Any company that currently owns or purchases land in Tasmania should complete the Statement of Company Details available at www.sro.tas.gov.au.

If your company is a member of a group and a statement is being completed on behalf of the group by the nominated group member, it will be sufficient if your company details are included in the group declaration.

Important

The State Revenue Office conducts ongoing investigations into the potential grouping of related companies for land tax purposes. To avoid the imposition of interest and /or penalty tax on unpaid land tax, you should submit the Statement of Company Details as soon as you know that the land tax grouping provisions may apply.

For more information or enquiries

Website

www.sro.tas.gov.au

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