

# Revenue Ruling

Ruling Number	: PUB-DT-2019-2
Title	: Landholder provisions Constructive Ownership of Land Holdings through Linked Entities
Tax Line	: Duties
Legislative Reference	: <a href="#">Duties Act 2001</a>
Previous Ruling	: PUB-DT-2016-3
Date of Ruling	: 12 June 2019

## 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 extent of a company or unit trust scheme's land holdings and goods, the company or unit trust scheme's property is not limited to land and goods directly held by the company or by the trustee on behalf of the unit trust scheme. In certain circumstances, the land holdings and goods of a company or unit trust scheme may include property held by linked entities and discretionary trusts. This Ruling deals with the constructive ownership of land and goods held by linked entities.

## Ruling

### What Are Linked Entities?

Section 76 of the Act provides for the constructive ownership of land and goods held through linked entities of a company or unit trust scheme to be treated as an interest in land and goods attributable to the constructive owner.

A linked entity of a private company or private unit trust scheme (the principal entity) means an entity (being a company or unit trust scheme):

- which is part of a chain of entities:
  - which includes the principal entity;
  - which is comprised of one or more links;
  - in which a link exists if an entity would be entitled to receive not less than 50 per cent of the unencumbered value of the property of another entity in the event of a distribution of all the property of the entity (on a notional winding-up); and
  - which does not include, in any of the links between the entity and the principal entity, a public unit trust scheme or a listed company; and
- which is not a public unit trust scheme or a listed company.

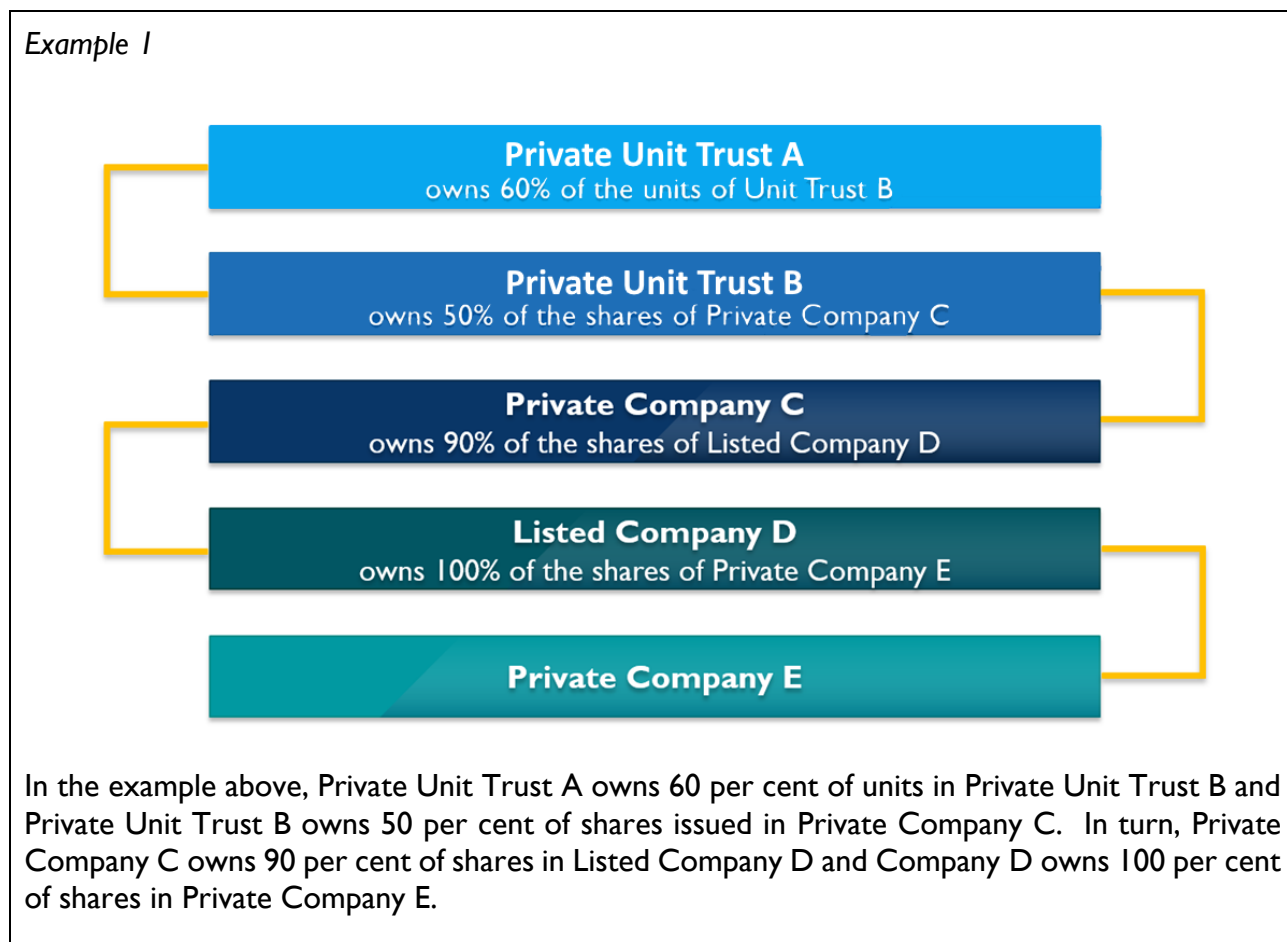
A linked entity of a listed company or public unit trust scheme, means an entity which is part of a chain of entities:

- which includes the principal entity;
- which is comprised of one or more links; and
- in which a link exists if an entity would be entitled to receive not less than 50 per cent of the unencumbered value of the property of another entity in the event of a distribution of all the property of the entity.

Accordingly, a unit trust scheme or company constitutes a linked entity of another unit trust scheme or company where, in the event of a distribution of all the property of a unit trust scheme or company, the other unit trust scheme or company would be entitled to receive not less than 50 per cent of the unencumbered value of the property of that other unit trust scheme or company.

An entity can be linked to a company or unit trust scheme (including to another landholder) whether or not the company or unit trust scheme holds a direct interest in the entity. For example, a company or unit trust scheme may constitute a linked entity of a principal entity if it constitutes a linked entity to another company or unit trust scheme that itself constitutes a linked entity of the principal entity. There is no limit to how many interposed entities may exist between a principal entity and a linked entity provided each interposed entity is itself a linked entity of another linked entity in the chain.

An additional requirement for linked entities in the case of a private unit trust schemes and private companies is that a link ceases to exist between entities where a public unit trust scheme or listed company is interposed between two private unit trust schemes or private companies that would otherwise be linked (note this severance does not apply to acquisitions in public landholders). See example 1 below:



Under the linked entity provisions:

- Private Unit Trust B is a linked entity of Private Unit Trust A as Unit Trust A would be taken to be entitled to 60 per cent of Unit Trust B's property in the event of a distribution of all Unit Trust B's property; and
- Private Company C is a linked entity of Private Unit Trust B (and, in turn, a linked entity of Private Unit Trust A) as Unit Trust B would be entitled to 50 per cent of Company C's property in the event of a distribution of its property; and
- Whilst Private Company C owns 90 per cent of shares in Listed Company D, as Company D is a listed company, the tracing provisions do not apply to it; and
- Whilst Listed Company D owns 100 per cent of shares in Private Company E with the consequence that those entities constitute linked entities (such that the acquisition of a significant interest in Company D would require Company E's landholdings and goods to be taken into account), because Company D constitutes a listed company interposed between Company C and Company E, the tracing provisions do not apply to attribute any of Company E's land holdings to Private Unit Trusts A or B or to Private Company C.

### **How is an Entitlement to the Property of a Linked Entity Determined?**

A particular company or unit trust scheme's (the principal entity's) entitlement to receive a distribution of property of another unit trust scheme or company is determined on the basis of a distribution of all the property of the entity. Whatever that interest amounts to determines the extent of the interest in land and goods to which the company or unit trust scheme is taken to be entitled through the linked entity.

Consequently, a particular company or unit trust scheme's entitlement to receive a distribution of property held via linked entities is not a reference to what it would actually receive in monetary terms (if anything) but to what it would be entitled to receive as a proportional interest in the value of the property of any linked entities if such property was to be distributed to the parties ultimately entitled to receive it on a distribution of the property of all linked entities. The fact that such a distribution of property may be unlikely to occur is not relevant for the purposes of Section 76 of the Act.

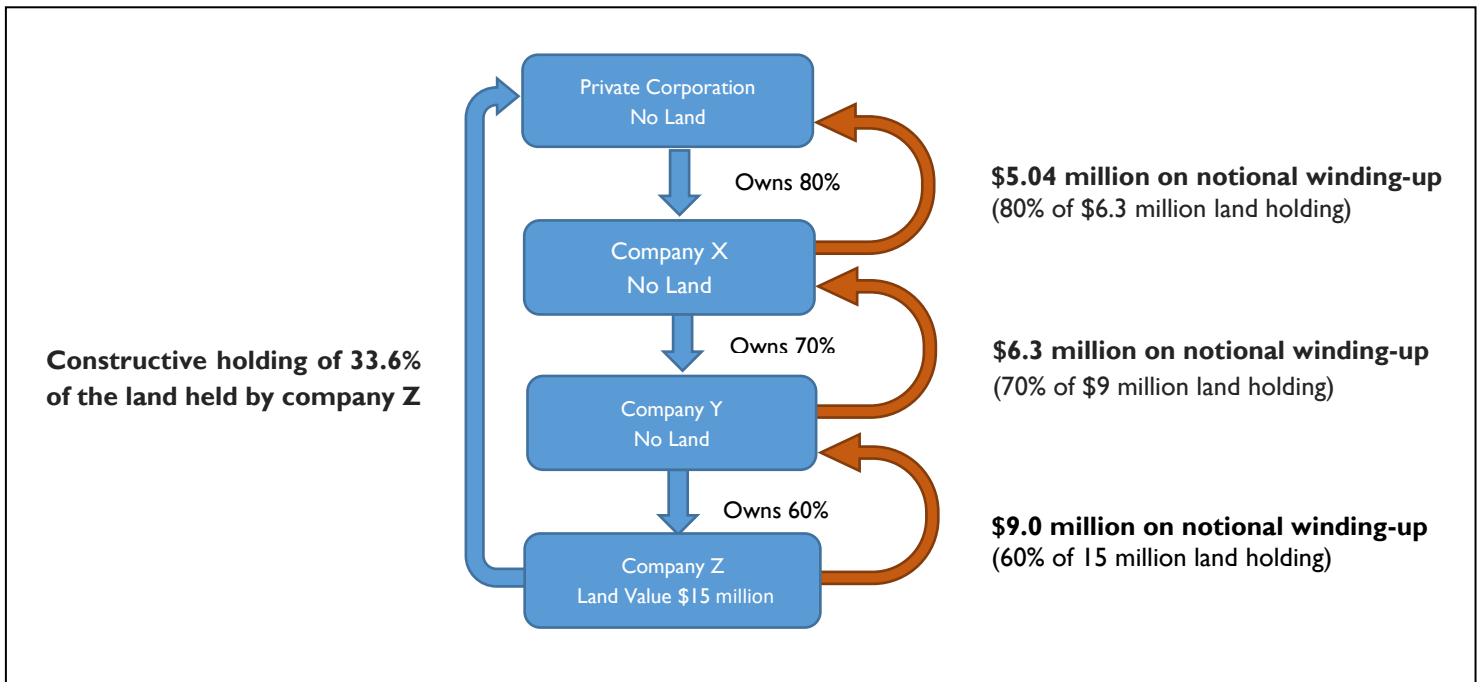
### **How is Duty Charged on Property Held by a Linked Entity?**

Where a company or unit trust scheme constitutes a linked entity of another company or unit trust scheme by virtue of its entitlement to 50 per cent or more of the property of the other entity, the value of the land and goods that the principal entity is considered to hold through linked entities is that portion of the unencumbered value of the land and goods of the linked entity that is equivalent to the portion of the unencumbered value of the land and goods that the principal entity would ultimately be entitled (without regard to any liabilities of the linked entities) on a distribution of all the property of all the relevant linked entities.

#### **Example:**

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

For the purposes of the landholder provisions, the private corporation has an indirect interest in Company Z and its land holdings by way of constructive ownership (due to all the entities constituting a chain of linked entities). On a notional winding up of company Z, Company Y and Company X, the private corporation would be taken to have an interest in land with a value of \$5.04 million. See *diagram, next page*



## 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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Commissioner of State Revenue  
6 December 2016