

# Guideline

## Introduction to the Landholder provisions

### Background

The *Duties Amendment (Landholder and Corporate Reconstruction and Consolidation) Act 2016* replaced the land rich provisions in Chapter 3 of the [Duties Act 2001](#) (the Act) with a landholder regime.

The landholder provisions apply to acquisitions of significant interests in land holding entities and came into operation with effect from 6 December 2016. A summary of the more significant features of Tasmania's landholder provisions are described below.

### Landholder entities

Whilst land rich duty was only payable in connection with relevant acquisitions of interests of 50 per cent or more in private companies and private unit trusts (which treatment is preserved), the landholder provisions also charge duty on relevant acquisitions in public companies and public unit trusts where an interest of 90 per cent or more is acquired.

In addition, the land ratio test, which existed under the land rich provisions and required a comparison of the value of land assets and non-land assets to determine if an entity was land rich, has been removed. Under the landholder provisions, a landholder is any of the following that has land holdings in Tasmania with an unencumbered value of \$500 000 or more:

- a private unit trust scheme or private company (private landholders); or
- a public unit trust scheme or listed company (public landholders).

These terms are defined in either Sections 3 or 59 of the Act.

Where a significant acquisition in a landholder occurs, duty is payable on the relevant portion of the unencumbered value of the land holdings of the entity and also on the relevant portion of the unencumbered value of the goods of the landholder, except the goods excluded by Section 63 of the Act (which mirror the exclusions for goods in Chapter 2).

### What are land holdings?

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

The extent of a company or unit trust's land holdings is not limited to land it directly owns and extends to include land held indirectly by the entity in a number of different ways.

## **Tracing of property – linked entities and discretionary trusts**

In addition to property an entity owns in its own right, tracing provisions operate to look through land holding structures in order to identify land (and goods) that an entity is taken to be entitled to through other entities (linked entities) or via any entitlement to land (or goods) as a beneficiary of a discretionary trust.

In the case of linked entities, the land (and goods) an entity is taken to be entitled to through a linked entity will only be included in the value of the first mentioned entity's land holdings if:

- in the case of a private landholder:
  - (i) that entity is entitled to receive not less than 50 per cent of the unencumbered value of the property of another private unit trust scheme or private company in the event of a distribution of all the property of that other entity; and
  - (ii) there is not, in any of the links between those entities, a public unit trust scheme or public company.
- in the case of a public landholder, that entity is entitled to receive not less than 50 per cent of the unencumbered value of the property of another unit trust scheme or company (whether public or private) in the event of a distribution of all the property of that other entity.

A company or unit trust scheme may also constitute a linked entity to a principal entity if it constitutes a linked entity of another company or unit trust scheme that itself constitutes a linked entity to the principal entity (eg a chain of linked entities). There is no limit on 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.

The value of an interest in land and goods held by a landholder via a linked entity is that portion of the unencumbered value of the land and goods of the linked entity that the unit trust scheme or company would be entitled to receive in the event of a distribution of all the property of the linked entity without regard to any liabilities of the linked entity or any other person in the ownership chain. For more information on linked entities, refer to Revenue Ruling [PUB-DT-2016-3 Constructive Ownership of Land Holdings through Linked Entities](#).

Further, in circumstances where a unit trust or company is the beneficiary of a discretionary trust, the unit trust or company is taken to own or otherwise be entitled to all the property of the trust unless the Commissioner of State Revenue (the Commissioner) determines otherwise. For more information on the tracing of interests held by discretionary trusts, refer to Revenue Ruling [PUB-DT-2016-4 Tracing Interests through Discretionary Trusts](#).

## **Recently Transferred Property of a Landholder**

The land holdings and goods of a landholder (or a linked entity) that is a private unit trust scheme or private company also include any land or goods previously owned by the unit trust scheme or company that were transferred to the person making the acquisition (or an associated person) within 12 months before the acquisition is made. The concept of a transfer for the purposes of this provision extends to any dutiable transaction that effects a change in beneficial ownership of the land or goods (eg such as a declaration of trust over the relevant property).

However, the Commissioner has the discretion to ignore such interests if satisfied it would be just and reasonable to do so.

## **Agreements for Sale of land or goods**

Where, at the date of acquisition of an interest in a landholder, the landholder (or a linked entity) is a party to an agreement to sell or buy land or goods and that agreement is yet to be completed, both parties to that agreement will be taken to be entitled to the whole of those land or goods. Where those transactions subsequently complete and are not made in favour of the person acquiring an interest in the landholder (or an associated person), the Commissioner will reassess duty accordingly.

The Commissioner is also able to defer the payment of duty in whole or part where property that is the subject of an agreement for sale is included as part of the land holdings or goods of the landholder (eg defer the payment of duty until the agreement for sale completes and the extent of the entity's interest in the relevant property is known). This discretion may be exercised where the inclusion of property agreed to be sold by the landholder is determinative of whether or not the relevant entity is a landholder.

## **Fixtures**

To overcome the need to rely on the common law to determine whether or not an item attached to land is a fixture (ie part of the land) or a chattel, the landholder regime defines land to include anything fixed to the land, whether or not the item:

- 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.

Accordingly, if a unit trust or company owns land and anything is fixed to that land, the value of the land will include the value of the thing fixed, even if it is owned separately from the land, unless the Commissioner is satisfied that it would be just and reasonable to exclude the thing fixed in the circumstances.

In addition, where a unit trust or company has an interest in a thing fixed to land and the land is owned by some other person (eg a pipeline or tenant's improvement), 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 thing affixed. For more information on the treatment of fixtures and the Commissioner's discretion to exclude them, see Revenue Ruling [PUB-DT-2016-5 Treatment of Fixtures](#).

## **What constitutes an interest in a landholder?**

A person has an interest in a landholder if, in the event of a distribution of all the property of the landholder, the person would be entitled (otherwise than as a creditor or other person to whom the landholder is liable) to receive any of the property distributed. This entitlement to a distribution of property is determined without regard to any liabilities of the landholder.

## **Acquiring an interest**

A person acquires an interest in a landholder if they obtain an interest, or their interest in the landholder increases, regardless of how it is obtained or increased (for example by the purchase of shares or units; a cancellation, redemption or surrender of a unit or share; an abrogation or alteration of a right pertaining to a unit or share; or a payment of an amount owing for a unit or share).

A change in the capacity in which a person holds an interest in a landholder is also regarded as an acquisition of an interest in the landholder. For example, if a person who holds a share or unit in a landholder declares a trust in respect of the share or unit, an interest in the landholder will be taken to have been acquired by that person as trustee on behalf of the trust (subject to application of the bare trustee provisions – see next page).

## **Acquiring an interest as bare trustee**

With respect to trusts, if an interest in a landholder is acquired or held by a person as bare trustee for another person, the interest is taken to have been acquired by, or to be held by, the ultimate beneficial owner of the interest. In these circumstances, it is the ultimate beneficial owner that is liable to lodge an acquisition statement and pay duty accordingly.

The ultimate beneficial owner of an interest is a beneficial owner of an interest who does not hold the interest as bare trustee for another person. If there is a chain of bare trustees, the ultimate beneficial owner is the last beneficial owner in that chain. For more information on the bare trustee provisions, see Revenue Ruling [PUB-DT-2016-2 Bare Trustees](#).

## **When does a liability arise?**

A liability to duty arises when a person makes a relevant acquisition in a landholder.

The Act requires a person who has made a relevant acquisition to lodge a [Private landholder acquisition statement](#) or a [Public landholder acquisition statement](#) with Commissioner and pay the applicable duty within three (3) months of the date of the relevant acquisition. It constitutes an offence not to lodge an acquisition statement within this period and a failure to pay duty when required constitutes a tax default for the purposes of the [Taxation Administration Act 1997](#).

## **Relevant acquisition**

A person makes a relevant acquisition in a landholder if the person:

- acquires an interest in a landholder:
  - i. that is of itself a significant interest in the landholder;
  - ii. that, when aggregated with other interests in the landholder held by the person or an associated person, results in an aggregation that amounts to a significant interest in the landholder; or
- has a significant interest, or an interest described in paragraph (ii) above, in a landholder, and acquires a further interest in the landholder.

## **What is a significant interest in landholder?**

A significant interest in respect of a:

- private landholder is an interest to a distribution of 50 per cent or more of the property of the landholder (without regard to any liabilities of the landholder);
- public landholder is an interest to a distribution of 90 per cent or more of the property of the landholder (without regard to any liabilities of the landholder).

## **How is duty calculated?**

Landholder duty, in the case of private landholders, is charged at the transfer of land rate specified in Section 29 of the Act on the amount calculated by multiplying the unencumbered value of all land holdings and goods of the landholder in Tasmania (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

Where an acquisition statement discloses more than one acquisition during the three years preceding the relevant acquisition (including any interest acquired by associated persons during that period), duty is chargeable at the transfer of land rate on the aggregate of the amounts severally calculated using the method described above for each interest required to be disclosed in the acquisition statement. In cases where a person who already has a significant interest in a private

landholder acquires a further interest, the duty payable on the acquisition statement will be reduced by any duty paid previously in respect of any earlier acquisition.

In the case of public landholders, duty is calculated in the same manner as above but charged at a concessional rate of 10 per cent of the duty that would be charged at the transfer of land rate specified in Section 29 on a transfer of all the landholdings and goods of the landholder (even if only a 90 per cent interest is obtained). No additional duty is payable if a person who acquires a significant interest in a public landholder subsequently acquires a greater interest.

### **Who is responsible for paying duty?**

Duty is payable by a person who makes a relevant acquisition in a landholder. However, where interests in a landholder are acquired by a person as bare trustee for another person, it is the ultimate beneficial owner, and not the bare trustee, who is deemed to hold the relevant interest and who is liable to pay the duty.

If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person(s) are jointly and severally liable for lodging an acquisition statement and payment of the duty (although compliance by one person is taken to be sufficient compliance). The term 'associated person' is defined in Section 3 of the Duties Act.

### **What evidence of value is required?**

Section 81 of the Act provides that the provisions of the Act for ascertaining the value of transfers of dutiable property chargeable with *ad valorem* duty apply in the context of determining the unencumbered value of land for the purposes of the landholder provisions. For information on how unencumbered value is generally determined and what constitutes acceptable evidence of value, refer to Revenue Ruling [PUB-DT-2014-7 - Evidence of Value](#).

Where a person is required to lodge an acquisition statement by virtue of having made a relevant acquisition in a landholder, they should also lodge a formal valuation identifying the unencumbered value of each of the landholder's land holdings and goods owned as at each acquisition date disclosed in an Acquisition Statement. Acquisition statements can be found in the forms section on our website [www.sro.tas.gov.au](http://www.sro.tas.gov.au) or by following these links [Private landholder acquisition statement](#) or a [Public landholder acquisition statement](#).

In the absence of a valuation being provided, the value of land will be ascertained in accordance with the procedures in the Act for determining the unencumbered value of land. With respect to the value of goods, the Commissioner will typically accept the written-down book value of goods in the landholder's financial statements. However, in all valuation cases, the Commissioner reserves the right to obtain a valuation and recover the costs of doing so from the taxpayer.

### **What acquisitions are exempt or eligible for concessional duty?**

Acquisitions of interests in landholders are exempt from duty, or eligible to receive a concessional rate of duty, in a number of circumstances. Where an exemption or concession under Chapter 2 of the Act would have been available if the acquisition of shares or units had been a direct transfer of land, Sections 83 and 84A extend that exemption or concessional rate of duty to the acquisition. In so providing, the shares or units transferred are taken to be the dutiable property; the person whose interest in the landholder increases is taken to be the transferee and the person whose interest in the landholder decreases is taken to be the transferor.

An example of the above in practice would be a transfer of an interest in a landholder between the parties to a marriage or significant relationship that had broken down. As exemptions exist under Sections 56, 56A and 57 of the Act where specified transfers of property are made between such

parties, the exemption would be mirrored under the landholder provisions where shares or units are transferred between them as a consequence of a relationship breakdown.

In addition, exemptions from duty exist under Part 1A of Chapter 10 of the Duties Act if the relevant acquisition results from a corporate reconstruction or corporate consolidation transaction. For a summary of those exemptions, refer to the [Corporate Reconstruction and Consolidation Transaction Exemption Provisions Guideline](#).

### **Transitional provisions**

To ensure an appropriate transition from the land rich duty regime to the landholder regime, transitional provisions provide for, amongst other things:

- acquisitions of interests in private landholders before the commencement day to be counted for the purposes of determining whether the person has made a relevant acquisition;
- where a relevant acquisition includes interests acquired before and after commencement of the landholder regime, the value of goods to be excluded in respect of the pre-commencement acquisition(s) for the purposes of calculating duty;
- any duty paid under the land rich model to be taken to have been paid under the landholder model;
- acquisitions of interests in public landholders before the commencement day to be counted for the purposes of determining whether the person has made a relevant acquisition under the landholder regime, save those earlier acquisitions are taken to be exempt acquisitions for the purposes of determining the duty chargeable; and
- relevant acquisitions of interests in public landholders to be exempt in circumstances where the person's intention to make the relevant acquisition was announced, before commencement of the landholder provisions, to the Australian Stock Exchange (or any other recognised stock exchange on which the landholder is listed).

## **More information from the State Revenue Office**

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