



Landholder Duty

Under Chapter 3 of the *Duties Act 2008*

As at 5 August 2015

Introduction

Duty is payable under Chapter 3 of the *Duties Act 2008* ('Duties Act') on certain acquisitions of interests in companies and unit trusts that are landholders.

Landholder duty is complex and this Fact Sheet is designed to provide guidance only. It is not an exhaustive explanation of the provisions of the Duties Act and is not intended to provide advice. Reference should be made to the Duties Act for a fuller understanding of the provisions and how they operate.

Overview

A corporation or unit trust scheme is a landholder if it is entitled to land in Western Australia with a value of \$2 million or more.

An acquisition of an interest in a corporation or unit trust scheme that is a landholder will be subject to landholder duty where it is a relevant acquisition.

A relevant acquisition occurs where:

- (a) immediately before the acquisition the interest (if any) of the person (and of any related person) was not a **significant interest**; and
- (b) after the acquisition the interest of the person (and of any related person) is a significant interest.

Significant interest means:

- a 50% or greater interest in a landholder that is not on the official list of a prescribed financial market; or
- a 90% or greater interest in a landholder that is on the official list of a prescribed financial market (e.g. the ASX).

An acquisition of an interest in a landholder will also be a relevant acquisition if:

- (a) immediately before the acquisition the interest of a person (and of any related person) amounts to a significant interest; and
- (b) by the acquisition the person (and/or any related person) acquires a further interest.

Related Persons

The following are related persons for the purposes of landholder duty:

- spouses or de facto partners;
- parents and children;
- related corporations;
- trustees of trusts with common beneficiaries;

- an individual and a corporation if the individual is a majority shareholder, director or secretary of that corporation or a related corporation;
- a trustee of a trust and a beneficiary of that trust;
- a corporation and a trustee of a trust, if the corporation or majority shareholder, director or secretary of the corporation, or a related corporation, is a beneficiary of that trust;
- persons or entities making acquisitions that form substantially one transaction or one series of transactions; and
- persons or entities making acquisitions that arise from acting in concert with one another.

Linked Entities

The value of the land to which a corporation or unit trust scheme is entitled includes the proportionate value of the land of any linked entities. The following entities are linked entities to the landholder:

- (a) an unlisted corporation or unit trust scheme in which the landholder has a 50% or greater interest;
- (b) the trustee of a discretionary trust of which the landholder is a potential beneficiary;
- (c) a partnership in which the landholder is a partner and has contributed, or is required to contribute, 50% or more of the capital of that partnership, or is required to bear 50% or more of the losses of that partnership; and
- (d) a listed corporation or unit trust scheme in which the landholder has a 90% or greater interest.

Where a series of entities is successively linked in a chain of ownership through one entity holding an interest in another, the landholder's interest in a linked entity is determined by multiplying the percentage interest held in each successive entity in the chain.

Exempt Acquisitions

The following acquisitions in landholders are exempt from duty:

- Where transfer duty would not be chargeable if the acquisition had instead been a direct transfer of the land of the landholder or of a linked entity, e.g. the acquisition is for a charitable purpose.
- Where nominal duty would be chargeable if the acquisition had instead been a direct transfer of the land of the landholder or of a linked entity, e.g. the acquisition results from the change in trustee of a trust.
- Where the acquisition occurs due to a compromise or arrangement with creditors of the landholder under the *Corporations Act* Part 5.1 that has been approved by the court.
- Where a family member acquires an interest in a corporation which uses land in the business of primary production (refer to [Duties Fact Sheet 'Exempt Family Farm Transactions – Landholder Duty'](#) for further information).

An Acquisition Statement is still required to be lodged with the Commissioner where a relevant acquisition is an exempt acquisition.

Calculation of Duty

For the purposes of calculating duty, the value of a landholder is taken to be:

- the unencumbered value of land and chattels in Western Australia to which the landholder is entitled; plus
- the same percentage of the unencumbered value of land and chattels held by any linked entity as the percentage of the landholder's interest in that entity.

Duty is first determined based on the value of the interest of the acquirer in the landholder immediately after the relevant acquisition. This duty is then reduced by the duty calculated on the value of the excluded interest of the acquirer. The excluded interest is:

- (a) any interest held immediately before 1 July 2008, or three (3) years prior to the relevant acquisition, whichever is the later;¹
- (b) where a further interest is being acquired, any interest acquired by a relevant acquisition in respect of which duty was chargeable; or
- (c) any interest acquired prior to the landholder (or any linked entity) having an entitlement to land in Western Australia

Duty is calculated at the general rate of transfer duty set out in Division 1 of Schedule 2 to the Act.

Example: XYZ Ltd is an unlisted corporation which holds WA land and chattels valued at \$5 million. Person A makes the following acquisitions of the shares of XYZ Ltd:

1 January 2010: 20% - acquisition 1

1 July 2011: 20% - acquisition 2

1 January 2014: 20% - acquisition 3

1 January 2015: 40% - acquisition 4

The duty for each acquisition is as follows:

Acquisition 1 – no duty payable – total interest held is 20%, not a ‘significant interest’

Acquisition 2 – no duty payable – total interest held is 40%, not a ‘significant interest’

Acquisition 3 – duty payable as the acquisition has resulted in a significant interest (50% or more) being held. The duty payable will be equal to the duty calculated on acquisition of an interest valued at \$3 million (i.e., 60% of \$5 million), minus the duty calculated on acquisition of the excluded interest valued at \$1 million (i.e., the 20% interest held more than 3 years prior to the acquisition date)

Acquisition 4 – duty payable as a further interest has been acquired. The duty payable will be equal to the duty calculated on an acquisition of an interest valued at \$5 million (the total interest now held), minus the duty calculated on acquisition of an interest valued at \$3 million. The total excluded interest is 60%, being any interest held for more than 3 years and any interest on which duty has been paid. Note: the 20% interest acquired by acquisition 2 can only be excluded once.

Who is liable to pay landholder duty?

The following persons are jointly and severally liable for the payment of duty chargeable on a relevant acquisition:

- the acquirer;
- if the landholder is a corporation, the corporation;
- if the landholder is a unit trust scheme, the trustee of the scheme; and
- any person related to the acquirer who holds an interest (other than an excluded interest) that is taken into account for the purposes of determining whether there has been a relevant acquisition.

A person mentioned above may, within two (2) months of an acquisition occurring, apply to the Commissioner for a determination as to whether any liability for duty has arisen.

¹ Unless the later acquisition is as a result of an earlier arrangement.

When an acquisition occurs

An acquisition of an interest in a landholder occurs:

- (a) if there is an agreement for the acquisition, whether conditional or not, when the agreement is made; or
- (b) if the entity is not a landholder when the agreement is made, but is a landholder when the agreement is completed, then when the agreement is completed; or
- (c) in any other case, when the interest is acquired.

Where an interest is acquired pursuant to a simultaneous put and call option, the call option is taken to be the agreement.

Acquisition Statements

It is a requirement to lodge an Acquisition Statement with the Office of State Revenue no later than two (2) months after the day on which a relevant acquisition occurs.. The approved form can be found at www.osr.wa.gov.au.

A person who has made a relevant acquisition of a further interest in a landholder and who expects to make further such acquisitions may apply to the Commissioner for permission to lodge periodical Acquisition Statements. The approved application form can be found at www.osr.wa.gov.au.

Contact the Office of State Revenue

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| Office | 200 St Georges Terrace PERTH WA 6000 | Telephone | (08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge) |
| Postal | Office of State Revenue GPO Box T1600 PERTH WA 6845 | Web Enquiry Website | www.osr.wa.gov.au/DutiesEnquiry www.osr.wa.gov.au |

Note: The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.