



## **CIRCULAR 12**

## **DUTIES ACT 2008**

## **TAXATION LEGISLATION AMENDMENT ACT 2015**

Part 4 of the *Taxation Legislation Amendment Act 2015* ('the Act') contains amendments to the *Duties Act 2008* ('Duties Act') regarding the value of property and the landholder duty linked entity provisions. The Act also contains amendments to the Duties Act required as a consequence of the amendments to the land tax primary production exemption.

The Act was passed by the Parliament on 17 February 2015 and received the Royal Assent on 25 February 2015. The amendments came into effect on 26 February 2015.

The information contained in this circular is not an exhaustive explanation of the amendments, and reference should be made to the [Act and to the Explanatory Memorandum](#).

A general summary of the amendments to the Duties Act follows.

### **UNENCUMBERED VALUE OF PROPERTY**

Section 36 of the Duties Act sets out how the unencumbered value of property is to be determined for transfer duty or landholder duty purposes. The Act seeks to improve the operation of these provisions by clarifying that, when valuing dutiable property, information relating to the property is to be regarded as an attribute of the property and not a separate item of property to which an independent value can be ascribed.

Section 36(4) of the Duties Act has been amended to:

- insert section 36(4)(aa) to provide that the ordinary principles of valuation apply, except to the extent that they are modified due to the operation of another paragraph of subsection (4);
- replace section 36(4)(b) to provide that it is to be assumed that a hypothetical purchaser would, when negotiating the price of property, have knowledge of all existing information relating to the property; and
- insert section 36(4)(ca) to provide that information relating to property (including the right to and use of the information) will be regarded as an attribute of the property and will not be regarded as something to which an independent value can be ascribed.

### **LANDHOLDER DUTY AMENDMENTS**

Chapter 3 of the Duties Act imposes landholder duty on a relevant acquisition in a landholder. The value of the landholder's entitlement to land also includes land owned by certain entities that are deemed to be linked to the landholder.

For the purposes of determining the landholder or other entity's entitlement to land, the Duties Act deems that, at the time of the relevant acquisition, if the landholder or other entity:

- has entered into an uncompleted agreement to acquire an interest in land – the agreement is treated as having been completed; or
- has entered into an uncompleted agreement to dispose of an interest land – the agreement is disregarded.

The Duties Act then allows the landholder duty to be reassessed accordingly if the uncompleted agreement is terminated or completed, as applicable.

The Duties Act did not previously provide a similar outcome where, at the time of the relevant acquisition, the landholder or other entity had entered into an uncompleted agreement to acquire or dispose of an interest in another entity that was entitled to land. This resulted in an inequitable duty outcome upon the sale of a linked entity and a potential avoidance opportunity for the purchase of a linked entity.

The Duties Act has been amended to align the treatment of the two forms of agreements as follows:

- New subsection (8) has been inserted into section 156 of the Duties Act to provide that, in determining whether an entity is linked to another entity:
  - (a) an uncompleted agreement to acquire an interest in the other entity is to be regarded as having been completed; and
  - (b) an uncompleted agreement to dispose of an interest in the other entity is to be disregarded.
- Section 195 of the Duties Act has been amended to provide the Commissioner with the power to reassess landholder duty acquisitions where new section 156(8)(a) or 156(8)(b) has been applied to an uncompleted agreement.

The Act also inserts transitional provisions into the Duties Act to allow sections 195(2)(a) and 156(8)(b) to apply to relevant acquisitions that occurred on or after 1 July 2008. This will allow a reassessment of landholder duty to apply where an uncompleted agreement to dispose of an interest in another entity was disregarded for the purposes of determining a landholder's entitlement to land.

## **PRIMARY PRODUCTION AMENDMENTS**

The Act contains amendments to the primary production exemption in the *Land Tax Assessment Act 2002*. The following consequential amendments have been made to the Duties Act:

- The definition of *primary production* in section 3 of the Duties Act is amended to have the meaning given in section 101A.

- New section 101A(1) of the Duties Act defines *primary production* to be a reference to any of the following:
  - (a) the growing or rearing of plants for the purpose of selling them, parts of them or their produce;
  - (b) the breeding, rearing or maintenance of living creatures for any of the following purposes (*produce animals*) –
    - (i) selling them or their progeny for food;
    - (ii) the production or collection of their skins, shells or bodily produce;
    - (iii) selling parts of them or their skins, shells or bodily produce.
  - (c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny for stud purposes or to be used for a purpose set out in paragraph (b); or
  - (d) the breeding or rearing of horses for the purpose of selling them or their progeny.
- New section 101A(2) of the Duties Act provides that it is irrelevant if a thing is sold in a natural, processed or converted state, but the process of converting anything for the purpose of selling it is not primary production.

## **FURTHER INFORMATION**

For additional information on these changes, or other duties issues, please contact the Office of State Revenue by telephone on 9262 1100 or by making a duties web enquiry at [www.osr.wa.gov.au/DutiesEnquiry](http://www.osr.wa.gov.au/DutiesEnquiry).

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