

# Revenue Rulings

## Duty relief on the interposition of a unit trust between stapled security holders and the stapled entities

Revenue Ruling DA.047 (version 2)

| Ruling history  |                    |
|-----------------|--------------------|
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| To              | -                  |

### Preamble

The *Tax Laws Amendment (2007 Measures No. 5) Act 2007* (Cth) inserted Subdivision 124-Q into Part 3-3 of Chapter 3 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97). Subdivision 124-Q provides capital gains tax replacement asset roll-over relief on the reorganisation of stapled entities in certain circumstances. Specifically, roll-over relief is available for holders of ownership interests (such as shares, trust interests and options) in stapled entities (exchanging members) where, under a scheme for reorganising the stapled entities' affairs, they dispose of those interests in exchange for interests in an interposed unit trust. The relief applies to roll-overs that take place on or after 1 July 2006.

Division 1B was inserted into Part 2 of Chapter 11 of the *Duties Act 2000* (Duties Act) by the *State Taxation Acts Amendment Act 2008* (Vic). The Victorian Parliament enacted Division 1B to provide duty relief in specified circumstances when an exchanging member, or the trustee of the interposed trust, makes a relevant acquisition due to the reorganisation of stapled entities in accordance with Subdivision 124-Q. Division 1B applies to roll-overs that occur on or after 1 July 2008.

The landholder provisions in Part 2 of Chapter 3 of the Duties Act charge duty on the relevant acquisition in a landholder. A landholder is any company or unit trust scheme (whether private or public) that has land holdings in Victoria with an unencumbered value of \$1 million or more.

A person makes a relevant acquisition in a landholder if the person acquires an interest in the landholder –

- (a) that is of itself a significant interest (i.e. an interest of 20% or more in a private unit trust scheme, 50% or more in a private company or a wholesale unit trust scheme or 90% or more in a listed company or public unit trust scheme); or
- (b) that when aggregated with other interests acquired by the person, an associated person or any other

person in an associated transaction results in an aggregation that amounts to a significant interest in the landholder.

If a person makes a relevant acquisition in a landholder, a relevant acquisition also arises each time the person, associated person(s) or any other person(s) whose interest was aggregated in the circumstances referred to in paragraph (b) above acquires a further interest in the landholder (irrespective of the size or timing of the acquisition of the further interest).

With respect to a landholder that is a private company, private unit trust scheme or wholesale unit trust scheme, a relevant acquisition can also arise if a person acquires an economic entitlement in or control over the landholder.

Section 80(1) of the Duties Act provides that a person acquires an interest in a landholder if the person obtains an interest beneficially in the landholder regardless of how it is obtained or increased. Section 80(3) specifies that the trustee of a trust may obtain an interest for the purposes of the landholder provisions.

The purpose of this Revenue Ruling is to clarify the circumstances in which Division 1B will apply to exempt acquisitions which may otherwise attract duty under the landholder provisions.

### Ruling

#### Application for exemption under Division 1B

Section 124-1045 of the ITAA97 sets out the requirements for an exchange of stapled securities to be treated as a roll-over for the purposes of Subdivision 124-Q. There are two ways in which an exchange of securities can occur:

- (a) the new trust case – a new trust is interposed between the security holders of the stapled entities (that is, the exchanging members) and the stapled entities. In the new trust case, the exchanging members acquire ownership interests in the new

interposed trust, and cease to own their ownership interests in the stapled entities. The new trust will acquire all the exchanging members' ownership interests in the stapled entities.

- (b) the existing trust case – one of the trusts comprising the stapled entities is interposed between the exchanging members and the other stapled entities. In the existing trust case, the exchanging members retain their ownership interests in the interposed trust, but cease to own their ownership interests in the remaining stapled entities. The interposed trust acquires all of the ownership interests in the remaining stapled entities from the exchanging members.

In both cases, if the interposed trust or any of the previously stapled entities is a landholder, either the exchanging members, or the trustee of the interposed trust, may have a liability to duty under the landholder provisions. The specific duty consequences will depend on the way in which the exchange of securities occurs (including the de-stapling process and the timing of the transactions between the exchanging members and the trustee of the interposed trust). In the case of the interests acquired by exchanging members in an interposed trust, their individual acquisitions may not amount to a significant interest. However their interests in the interposed trust will be taken to have been acquired in an associated transaction. For further information on associated transactions, refer to Revenue Ruling DA.057. Accordingly the exchanging members will make a relevant acquisition of 100% in the interposed trust.

The purpose of Division 1B is to provide an exemption from duty for both the exchanging members and the trustee of the interposed trust if a relevant acquisition is made by either of them on the reorganisation of the stapled group in accordance with Subdivision 124-Q (provided certain conditions are met). Section 250DI(1) of the Duties Act will be interpreted in accordance with the underlying intention of Division 1B. On this basis, an exchanging member, or the trustee of the interposed trust, who makes a relevant acquisition in the course of, or as a result of, a roll-over may apply to the Commissioner of State Revenue (the Commissioner) pursuant to section 250DI(1) of the Duties Act for an exemption from duty under Division 1B. To reduce compliance costs, the Commissioner will accept an application by the trustee of the interposed trust made on behalf of the exchanging members for the purposes of section 250DI(1). Furthermore, for

the avoidance of doubt, the trustee of the interposed trust may apply to the Commissioner for an exemption under Division 1B even if the exchanging members do not make a relevant acquisition (and accordingly it is not necessary for them to apply for an exemption).

An application for the exemption can be made by way of written submission to the Commissioner, which will be treated as a private ruling and must include full details of parties to the transaction and copies of all relevant draft documents.

### **Grant of the exemption**

Under section 250DI(2) of the Duties Act, the Commissioner must grant an exemption if he is satisfied that the requirements in paragraphs (a) to (d) have been met. The purpose of Division 1B is to provide an exemption from duty on the restructure of stapled entities in accordance with Subdivision 124-Q. The condition contained in paragraph (a) reinforces this purpose. It requires that the relevant acquisition must be made in the course of, or as a result of, a roll-over that occurs on or after 1 July 2008 in the circumstances set out in section 124-1045 of ITAA97. The condition in paragraph (b) relates to the status of the stapled entities. The effect of paragraph (b) is that the exemption provided by Division 1B is available only for the reorganisation of listed stapled entities in accordance with Subdivision 124-Q. This is in contrast to Subdivision 124-Q which provides roll-over relief for stapled entities, whether listed or unlisted.

Specifically paragraph (b) provides that the Commissioner must be satisfied the shares or units in the stapled entities to which the roll-over relates:

- were listed at the time the relevant acquisition was made; or
- are intended to be listed within the period of 3 years commencing on the date on which the relevant acquisition was made.

As part of the restructure process the existing stapled entities will be delisted, and the interposed trust will be listed in its place. In some cases, depending on the practice adopted by the Australian Stock Exchange when delisting the stapled entities, it is possible that the stapled entities may not be listed when the trustee of the interposed trust acquires the interests in the stapled entities from the exchanging members. If this occurs, the Commissioner will treat the stapled entities as listed for the purpose of section 250DI(2)(b).

## Revocation of the exemption

Once the Commissioner has granted an exemption from duty under Division 1B, the exemption may be revoked if any of the following circumstances set out in section 250DK(1) occur:

- (a) the interposed trust does not retain all its ownership interests in the stapled entities for a period of at least 3 years commencing on the day on which the relevant acquisition was made; or
- (b) the relevant acquisition was not made in the course of, or as a result of, a roll-over; or
- (c) the exemption was granted based on false or misleading information in a material particular provided to the Commissioner by an exchanging member or the trustee of the interposed trust; or
- (d) the relevant acquisition arose from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of section 250D1.

Section 250DK(2) however provides that the exemption will not be revoked under section 250DK(1)(a) if the Commissioner is satisfied that the interposed trust does not retain its ownership interests in the stapled entities by virtue of:

- (a) a public float of any of the stapled entities that occurred within 12 months after the day on which the relevant acquisition was made; or
- (b) the shares or units of any of the stapled entities being unstapled to enable the winding up of that entity; or
- (c) the winding up of any of the stapled entities.

The purpose of section 250DK(2) is to provide a concession from the three-year post association test contained in section 250DK(1)(a) in the circumstances specified. Paragraph (b) is intended to provide such a concession if, under the scheme for reorganising the affairs of the stapled entities, those entities remained stapled after the exchange of securities, and are subsequently unstapled prior to the stapled entities being wound up. Paragraph (c) provides a corresponding concession if the trustee of the interposed trust ceases to hold its ownership interests in the stapled entities due to any of those entities being wound up.

If the Commissioner revokes the exemption granted to the trustee of the interposed trust, the trustee may be liable for payment of the duty originally payable on its relevant acquisition (including any applicable penalty or interest). Similarly, if the Commissioner revokes the exemption granted to the exchanging

members, they may be liable for payment of the duty originally payable on their relevant acquisition (including any applicable penalty or interest). In the case of exchanging members, section 250F(2) of the Duties Act provides that they are jointly and severally liable for payment of the duty, penalty or interest. As stated above, the exchanging members will be taken to make a relevant acquisition of 100% in the interposed trust, on the basis that their interests in the interposed trust are acquired in an associated transaction. Accordingly it is considered appropriate that all exchanging members are jointly and severally liable for payment of the duty (including any applicable penalty or interest) on revocation of the exemption.

**Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.**