

Revenue Rulings

Landholder Provisions – Obligations on Making a Relevant Acquisition and Calculation of Duty

Revenue Ruling DA.055

Ruling history	
Ruling no.	DA.055
Status	Current
Issued date	July 2012
Dates of effect	
From	1 July 2012
To	-

Preamble

The landholder provisions in Part 2 of Chapter 3 of the *Duties Act 2000* (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 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 a 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 has made 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).

For information on the meaning of the term 'interest' and details on how and when an interest may be acquired, please see Revenue Ruling DA.056.

With respect to 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.

When a person makes a relevant acquisition, duty must be paid, and an Acquisition Statement (SRO Duties Form 58) completed and lodged with the

Commissioner of State Revenue (the Commissioner), within 30 days after the date of the relevant acquisition.

The purpose of this Revenue Ruling is to identify the concessions and assistance available to taxpayers in meeting their obligations under Part 2 of Chapter 3 of the Act. The ruling sets out various lodgement concessions and examples on the calculation of duty on the application of Part 2 of Chapter 3 of the Act. It also identifies certain duty concessions that may apply, including where a landholder's land holdings include leasehold estates and/or primary production land. This Ruling does not deal with the calculation of duty or the duty concessions that may apply in relation to the acquisition of economic entitlements under section 81 of the Act or control under section 82 of the Act.

Ruling

Requirement to lodge Acquisition Statement and pay duty

Section 83 of the Act provides that if a relevant acquisition is made, either or both the person who made the relevant acquisition, and the landholder in which the acquisition was made, must prepare and lodge an Acquisition Statement with the Commissioner within 30 days after the date of the relevant acquisition. Duty must also be paid within 30 days of the date of the relevant acquisition otherwise a tax default will occur for the purposes of the *Taxation Administration Act 1997* (TAA). In cases involving a relevant acquisition of an interest by a trustee, both the trustee and the person(s) on whose behalf the interest was acquired (the beneficiary or beneficiaries) may each be considered to be the person who acquired the interest and liable for the payment of duty.

To reduce compliance costs and to prevent double duty issues arising, the Commissioner will not require a landholder to separately lodge an Acquisition Statement and pay duty if the person who made the relevant acquisition lodges a statement and pays the duty within the required timeframe. Where more than one person may be considered to have acquired the interest (such as an acquisition by a trustee on behalf of a trust), the obligation will be satisfied if either the trustee or the beneficiary lodges the Acquisition Statement and pays the duty within the required time.

If the landholder becomes aware that the person who made the relevant acquisition does not intend to lodge an Acquisition Statement, the Commissioner will require the landholder to either complete and lodge a statement itself, or cause the person who made the relevant acquisition to complete and lodge a statement. If neither lodges a statement in accordance with section 83 of the Act, penalties may be imposed.

In cases involving the conversion of a private unit trust scheme to a public unit trust scheme or a private company to a listed company, it is the trustee of the public unit trust scheme or the listed company that is required to lodge the Acquisition Statement and pay the duty, rather than the persons who made the relevant acquisition.

Assistance to determine liability to duty

The duty on a relevant acquisition must be paid within 30 days of the date of the relevant acquisition otherwise a tax default occurs for the purposes of the TAA.

If a taxpayer (that is, the person who made the relevant acquisition or the landholder in which the acquisition was made) requires assistance in determining its liability under the landholder provisions, the taxpayer may request the Commissioner to issue a private ruling and/or an assessment. The Commissioner will determine the taxpayer's liability and make an assessment of duty based on the information provided by the taxpayer, and/or obtained by the Commissioner.

Where a taxpayer requests the Commissioner to issue a private ruling and/or an assessment, the taxpayer should estimate the duty payable on the relevant acquisition and pay that amount before the end of the 30 day period. Depending on the circumstances of the matter, any underpayment of duty may attract penalty tax and interest. In determining the penalty tax and interest payable (if any), the Commissioner

will also take into account any delays in the provision of information by the taxpayer that prevented the Commissioner from promptly determining the taxpayer's full liability to duty. A taxpayer will not be penalised for any delays in the determination of its liability to duty by the Commissioner that are not due to the taxpayer.

If a taxpayer fails to lodge an Acquisition Statement and pay the required duty within the statutory 30 day period, the Commissioner may impose penalty tax and interest in accordance with Part 5 of the TAA and the current ruling setting out the Commissioner's policy on the imposition of penalty tax and interest under the TAA.

Duty calculation – Private landholders

A relevant acquisition in a private landholder (i.e. a private company, private unit trust scheme or wholesale unit trust scheme) is charged with duty at the same rates that apply to land transfers under Chapter 2 of the Act. However, a different method of calculation applies depending on whether the relevant acquisition in the private landholder is the result of the acquisition of a single interest, aggregated interests or a further interest. A concession also applies when the value of the landholder's Victorian land holdings is between \$1 million and \$2 million. In such circumstances, the duty chargeable in respect of a relevant acquisition (whether the result of the acquisition of a single interest, aggregated interests or a further interest) is calculated in accordance with the phasing-in of duty formula set out in section 89 of the Act.

When a relevant acquisition in a private landholder results from an acquisition that is of itself a significant interest, or the acquisition of interests on the same day that aggregate to a significant interest, section 86(1) of the Act provides that duty is charged on the amount calculated by multiplying the unencumbered value of all land holdings of the landholder in Victoria at the date of acquisition by the percentage interest acquired as a result of the relevant acquisition.

Example 1: Single acquisition of a significant interest

The duty payable on a relevant acquisition made when a person acquires a 70% interest in a private landholder which has \$10 million in Victorian land holdings is calculated as follows:

Value of Landholder's Vic Land Holdings	\$10,000,000
Interest Acquired	70%
Dutiable Value (\$10m x 70%)	\$7,000,000
Relevant Rate of Duty	5.5%
Duty Payable on Relevant Acquisition (\$7m x 5.5%)	\$385,000

When a relevant acquisition arises from the aggregation of an interest acquired by a person in a private landholder with other interests acquired in the landholder by the person, an associated person or any other person in an associated transaction over time, section 86(3) of the Act provides that duty is charged at the rates set out in Chapter 2 on the aggregate of the amounts separately calculated in respect of the interest acquired by the person and each of the other interests that comprise the relevant acquisition that were acquired in the 3 years preceding the acquisition of the interest by the person.

Example 2: Aggregated acquisitions amounting to a significant interest

The duty payable on a relevant acquisition of a 24% interest in a landholder that is a private unit trust scheme comprising the aggregation of four 6% interests acquired over a four year period when the Victorian land holdings of the landholder in the first two years were valued at \$8 million and in the latter two years were valued at \$10 million is calculated as follows:

Value of Landholder's Vic Land Holdings in 4th year	\$10,000,000
Interest Acquired in 4th year	6%
Dutiable Value of Interest (\$10m x 6%)	\$600,000
Value of Landholder's Vic Land Holdings in 3rd year	\$10,000,000
Interest Acquired in 3rd year	6%
Dutiable Value of Interest (\$10m x 6%)	\$600,000
Value of Landholder's Vic Land Holdings in 2nd year	\$8,000,000
Interest Acquired in 2nd year	6%
Dutiable Value of Interest (\$8m x 6%)	\$480,000
Value of Landholder's Vic Land Holdings in 1st year	\$8,000,000
Interest Acquired in 1st year	6%
Dutiable Value of Interest (\$8m x 6%)	\$480,000
Dutiable Value of Relevant Acquisition (value of 4th, 3rd & 2nd year interests)	\$1,680,000
Relevant Rate of Duty	5.5%
Duty Payable on Relevant Acquisition (\$1,680,000 x 5.5%)	\$92,400

When a relevant acquisition has previously occurred in a landholder, and a further interest is acquired in the landholder, duty on the further interest is calculated under section 86(4) of the Act by determining the duty that would be chargeable on the prior interests acquired plus the further interest and subtracting from that amount the duty that would be chargeable in respect of the prior interests. The reference to duty chargeable is not a reference to duty actually paid on the prior interests at the time of their acquisition, but rather a reference to the duty that would be chargeable under section 86(1) of the Act at the time of the acquisition of the further interest.

Example 3: Acquisition of a further interest

A person made a relevant acquisition of a 25% interest in a landholder that was a private unit trust scheme and land rich in June 2010. At that time the Victorian land holdings of the scheme were valued at \$10 million and the duty paid in respect of the acquisition was \$137,500 (\$10 million x 25% x 5.5%). In July 2012 that person acquired a further 10% interest in the scheme. By July 2012, the value of the scheme's Victorian land holdings had increased to \$12 million. The duty payable on the acquisition of the further interest is calculated as follows:

Value of Scheme's Vic Land Holdings in July 2012	\$12,000,000
Sum of Further and Prior Interests	35%
Dutiable Value of Further and Prior Interests (\$12m x 35%)	\$4,200,000
Relevant Rate of Duty	5.5%
Duty Payable on Further and Prior Interests	\$231,000
Dutiable Value of Prior Interest (\$12m x 25%)	\$3,000,000
Relevant Rate of Duty	5.5%
Dutiable Payable on Prior Interest (\$3m x 5.5%)	\$165,000
Duty Payable on Acquisition of Further Interest (\$231,000 - \$165,000)	\$66,000

Duty calculation – Public landholders

A relevant acquisition in a public landholder (i.e. a listed company or public unit trust scheme) is chargeable under section 87 of the Act at a concessional rate of 10% of the duty that would be chargeable under Chapter 2 of the Act on a transfer of 100% of the Victorian land holdings of the landholder. This is the case, even if the relevant acquisition is not the acquisition of an interest of 100% in the landholder. The duty is calculated based on the value of the land holdings of the landholder at the date of the relevant acquisition.

The concessional rate of duty does not apply in respect of a relevant acquisition in a listed company that been listed for less than 12 months, a declared public unit trust that has been registered as such for less than 12 months or a widely held trust that has satisfied the definition of a widely held trust for less than 12 months. In these circumstances, the duty will be calculated as if the relevant acquisition was made in a private landholder.

Example 4: Acquisition in a public landholder

The duty payable on a relevant acquisition where a bidder has acquired 95% of the shares in a listed company under a takeover bid when the Victorian land holdings of the scheme were valued at \$20 million is calculated as follows:

Value of Landholder's Vic Land Holdings	\$20,000,000
Deemed Interest Acquired	100%
Dutiable Value of Interest (\$20m x 100%)	\$20,000,000
Relevant Rate of Duty	5.5%
Duty otherwise Payable on Interest (\$20m x 5.5%)	\$1,100,000
Concessional Rate of Duty Payable	10%
Duty Payable on Relevant Acquisition (\$1.1m x 10%)	\$110,000

No further duty is payable if the bidder subsequently acquires the remaining 5% of the shares in the company. This concession only applies to the bidder and not to associated persons of the bidder.

Duty concession for an anomalous duty outcome

Under section 89E of the Act, the Commissioner has discretion to reduce the duty payable on a relevant acquisition to an amount not less than the duty that would be payable under Chapter 2 of the Act, had the subject of the relevant acquisition been a transfer of the land of the landholder to the person. This concession applies to relevant acquisitions, other than through the acquisition of an economic entitlement under section 81 of the Act or control under section 82 of the Act, where –

- the Commissioner is satisfied that the application of the landholder provisions results in an anomalous duty outcome; and
- the duty payable under the landholder provisions is greater than the duty that would be payable under Chapter 2 of the Act had the subject of the relevant acquisition been a transfer of the land of the landholder to the person.

The concession does not apply where a higher duty outcome results from the intended application of Chapter 3 of the Act. However, it can apply in circumstances where a landholder's land holdings include leasehold estates and/or primary production land.

Leasehold estates/interests

Except for the types of leasehold estates specifically defined as dutiable property in section 10(1) of the Act, the Commissioner recognises that leasehold estates are not dutiable property for the purposes of Chapter 2 of the Act. For landholder purposes, however, the definition of a land holding in section 72(1) does not specifically exclude a leasehold estate. In circumstances where a company or unit trust scheme is the lessee of land, the value of the leasehold estate must be included in the value of the company or unit trust scheme's land holdings when determining whether it is a landholder. However, the Commissioner has determined that duty will not be calculated with reference to the value of any leasehold estate unless it is a type that is dutiable under Chapter 2 of the Act. Consequently, if a person makes a relevant acquisition in a landholder whose Victorian land holdings comprise:

- only leasehold estates that are not dutiable property, no duty will be payable as the acquisition of the interest is exempt under section 89D(a) of the Act;
- leasehold estates (none of which are dutiable property) and freehold land, duty will be payable with reference to the value of the freehold land only as the concession in section 89E of the Act will apply to exclude the non-dutiable leasehold estates from the duty calculation; and
- leasehold estates (some or all of which are dutiable property) and/or freehold land, duty will be payable with reference to the value of all the landholder's land holdings that would be dutiable on a transfer under Chapter 2 of the Act (both leasehold and freehold estates).

Primary production land

In prescribed circumstances, section 56 of the Act exempts from duty the transfer of land used for primary production. By virtue of sections 89D(a) and 89E of the Act, this exemption is relevant in determining the duty consequences on relevant acquisitions in landholders whose land holdings include primary production land. Consequently, where the conditions for the application of section 56 are satisfied, the Commissioner has determined the following treatment in respect of a relevant acquisition in a landholder whose Victorian land holdings comprise:

- only primary production land, the acquisition will be exempt from duty under section 89D(a); and

(b) primary production land and non-primary production land, duty will be calculated with reference to the value of the non-primary production land only as section 89E of the Act will apply to exclude the primary production land from the duty calculation.

Further assistance

If a taxpayer requires advice on the interpretation and application of Part 2 of Chapter 3 of the Act in relation to their particular circumstances, the taxpayer may contact the Landholder Acquisitions Branch at the State Revenue Office or apply for a private ruling in accordance with Revenue Ruling GEN.009. In all cases, the onus is on the taxpayer to provide the Commissioner with the necessary information to enable an informed decision to be made.

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.