

# Revenue Rulings

## Landholder Provisions – Valuation of Land Holdings

### Revenue Ruling DA.060

| Ruling history  |             |
|-----------------|-------------|
| Ruling no.      | DA.060      |
| 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.

In determining whether a company or unit trust scheme is a landholder (and the amount of duty payable on a relevant acquisition), the value of its land holdings must be ascertained. In certain circumstances, the company or unit trust scheme's land holdings may include land held by linked entities and discretionary trusts and land deemed to be owned as a result of uncompleted agreements.

For information on the constructive ownership of land through linked entities, please refer to Revenue Ruling DA.058. For information on the constructive ownership of land through discretionary trusts, please refer to Revenue Ruling DA.059.

The purpose of this Revenue Ruling is to identify the type of valuation evidence and the circumstances in which such evidence may be required by the Commissioner of State Revenue (the Commissioner) when determining whether a company or unit trust scheme is a landholder and the amount of duty (if any) payable on a relevant acquisition. The Ruling also sets out the circumstances that may result in a referral of a matter to the Valuer-General or another competent valuer for valuation.

#### Ruling

##### Land Holdings

Section 72(1) of the Act defines a 'land holding' as an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor

or a profit à prendre. 'Land' is not defined in the Act. Based on section 38 of the *Interpretation of Legislation Act 1984* (Vic), 'land' for the purpose of the Act includes land covered with water, and any estate, interest, easement, servitude, privilege or right in or over land, such as a lease.

Section 73(1) of the Act provides that 'land' includes anything fixed to the land, whether or not the item –

- (a) constitutes a fixture at law; or
- (b) is owned separately from the land; or
- (c) is notionally severed or considered to be legally separate to the land as a result of the operation of any other Act or law.

However, the Commissioner can determine that 'land' does not include a thing fixed to the land if the thing is owned by someone other than the owner of the land or an associated person of the owner of the land and the thing is not used in connection with the land.

Section 89G specifies that the provisions in Chapter 2 of the Act for ascertaining the value of transfers chargeable with ad valorem duty apply in the same way to the value of land holdings for landholder purposes. Accordingly, section 22 of the Act (contained in Chapter 2), which defines 'unencumbered value', is relevant when determining the unencumbered value of a landholder's land holdings.

The statement of financial position (balance sheet) of a company or unit trust generally records the value of assets, including land holdings, on a historical cost basis. The Commissioner's view is that historical cost is not necessarily reflective of unencumbered value. The Commissioner considers that the most accurate method of determining the unencumbered value of a company or unit trust scheme's land holdings is by way of valuation. Therefore, the Commissioner may require a person who is liable to duty to provide a valuation by a competent valuer under section 273 of the Act. The Commissioner considers a competent

valuer for these purposes to be either a certified practising valuer who is a member of the Australian Property Institute or a member of the Real Estate Institute of Victoria Ltd with sworn valuer accreditation.

The Commissioner will generally require a taxpayer to obtain and provide a valuation from a competent valuer on any one or more of the company or unit trust scheme's land holdings if:

- (a) the value of the land holding, as estimated by the taxpayer, is above \$1 million or is low in comparison with its municipal capital improved value (irrespective of its estimated value); or
- (b) the land holding was acquired by the company or unit trust more than 12 months before the date of the relevant acquisition; or
- (c) the taxpayer has submitted a valuation from a competent valuer where:
  - (i) the valuation provides a value for the land more than 12 months before the date of the relevant acquisition; or
  - (ii) the valuation provides a value for the land within 12 months of the date of the relevant acquisition but the valuation has not taken into account planning approvals or permits obtained or other improvements made to the land prior to the date of the relevant acquisition.

The Commissioner may also require the taxpayer to provide a valuation from a competent valuer pursuant to section 273 of the Act in any other circumstances the Commissioner considers necessary. Such circumstances may include a valuation of a leasehold interest where a company or unit trust scheme's status as a landholder is dependent on the value of such an interest.

#### **Referral to Valuer-General or other competent valuer**

The Commissioner may refer a matter for valuation to the Valuer-General or another competent valuer under section 273(2) of the Act. The circumstances in which the Commissioner will consider referring a matter for valuation include (but are not limited to) when:

- (a) a taxpayer provides informal valuation information (e.g. a letter of appraisal from a real estate agent); or
- (b) a taxpayer provides formal valuation information (e.g. a valuation from a competent valuer) which the Commissioner considers does not accurately reflect the unencumbered value of the company or unit trust scheme's land holdings.

If the Commissioner obtains a valuation from the Valuer-General or another competent valuer, the taxpayer may be liable to pay the cost of the valuation in the circumstances set out in section 273(3) of the Act.

#### **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.**