

Revenue Rulings

Landholder Provisions – General Issues Relating to Trust Registration Applications

Revenue Ruling DA.061

Ruling history	
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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.

Section 89Q of the Act allows the trustee of a unit trust scheme to apply for registration of the scheme as a wholesale unit trust scheme, an imminent wholesale unit trust scheme, a declared wholesale unit trust scheme or a declared public unit trust scheme. Application forms are available on the State Revenue Office (SRO) website. For information on the registration of a unit trust scheme as a declared wholesale unit trust scheme or a declared public unit trust scheme, please see Revenue Rulings DA.062 and DA.063, respectively.

The purpose of this Revenue Ruling is to provide guidance on certain issues relating to trust registration applications under Part 2 of Chapter 3 of the Act, including the Commissioner of State Revenue's (the Commissioner) ability to backdate the registration of a unit trust scheme and to look through the registered unit holders of the scheme.

Ruling

An application for registration must be made in the relevant approved form available on the SRO website. Duties Form 59 is to be used by a unit trust scheme seeking registration as a wholesale unit trust scheme, an imminent wholesale unit trust scheme or a declared wholesale unit trust scheme. Duties Form 60 is to be used by a unit trust scheme seeking registration as a declared public unit trust scheme. The Commissioner will not process an application for registration unless all the relevant parts of the application form are completed in full and the specified documentation and information listed in the form is provided.

In considering an application for registration, the Commissioner may request further information to determine the application and is permitted under section 89Q(3) of the Act to take into account any matter he considers relevant. Where the Commissioner considers further information is required to determine an application for registration, the application will not be processed until the further information is provided.

It should be noted that a registered imminent wholesale unit trust scheme that meets the criteria for registration as a wholesale unit trust scheme during or at the end of the 12 month registration period will not automatically be registered by the Commissioner as a wholesale unit trust scheme. A separate application must be made for registration as a wholesale unit trust scheme under section 89S of the Act.

Registration backdating

Section 89V(1) of the Act provides that registration may be granted to commence on a day before the date on which the application for registration is approved.

When seeking registration of a unit trust scheme under the Act, a trustee must satisfy the Commissioner that the scheme meets various registration criteria. One common criterion is that registration is not being sought for the purpose of, or as part of a scheme or arrangement with a collateral purpose of, avoiding or reducing duty otherwise chargeable under Part 2 of Chapter 3.

If a relevant acquisition has occurred in a scheme that has not registered under the Act, and the trustee subsequently seeks registration to a period on or before the date of the relevant acquisition, the Commissioner will take the view that registration of the scheme is being sought for the purpose (or collateral purpose) of avoiding or reducing the duty chargeable under Part 2 of Chapter 3 of the Act. In such circumstances, the Commissioner will not make the registration of the unit trust scheme retrospective to a date before the liability to duty arose.

The Commissioner will also not grant or backdate registration of a unit trust scheme as a declared public unit trust scheme or declared wholesale unit trust scheme solely so that a unit trust scheme in which it owns units can qualify for registration as a wholesale unit trust scheme.

Under sections 89J and 89K of the Act, a unit trust scheme that ceases to be a widely held trust or a wholesale unit trust scheme as a result of the redemption of units in the scheme is granted, within certain prescribed criteria, a 30 day period to revert back to a widely held trust or wholesale unit trust scheme. Consequently, where section 89J or 89K of the Act applies and the relevant 30 day period has not expired, the Commissioner will not entertain an application for registration of a scheme as a declared public unit trust scheme or a declared wholesale unit trust scheme. However, the Commissioner will entertain an application for registration lodged after the expiry of the 30 day period where the scheme has failed to revert back to a widely held trust or wholesale unit trust scheme within the relevant period of time. If no relevant acquisition was made in the scheme during the 30 day period, the Commissioner may make the registration of the scheme retrospective to the commencement of the 30 day period. If a relevant acquisition did occur in the scheme during the 30 day period, the Commissioner will not make the registration of the scheme retrospective to a date before the liability to duty arose.

Example 1 is an example of where the Commissioner would be inclined to backdate the registration of a unit trust scheme. Example 2 is an example of where the Commissioner would not be inclined to backdate the registration of a unit trust scheme.

Example 1

A unit trust scheme is registered as an imminent wholesale unit trust scheme. At the end of the 12 month period for registration as an imminent wholesale unit trust scheme, the scheme satisfies the criteria to be registered as a wholesale unit trust scheme. However, the trustee of the scheme overlooks the requirement that a separate application must be made for registration as a wholesale unit trust scheme. Sometime later, the trustee becomes aware of this requirement because of an investment it wishes to make in another scheme that is registered as a wholesale unit trust scheme. Prior to making this investment, the trustee of the scheme applies to be registered

as a wholesale unit trust scheme and requests that registration be backdated to the date its registration as an imminent wholesale unit trust scheme ceased. No relevant acquisitions have been made in or by the scheme during this period of time. In these circumstances, the Commissioner would be inclined to backdate the registration of the scheme as registration is not being sought to avoid duty on any relevant acquisitions made in or by the scheme.

Example 2

A unit trust scheme that was established for the purposes of investment by professional and institutional investors holds 3 parcels of land in Victoria worth \$100 million each. Qualified investors hold 65% of the units in the scheme. The remaining 35% of the units are held by a single non-qualified investor who acquired the units a year ago from a previous investor in the scheme that was also a non-qualified investor. As this acquisition constituted a dutiable relevant acquisition in the scheme, the non-qualified investor successfully convinces the trustee of the scheme to seek registration of the scheme as a declared wholesale unit trust, effective from a date prior to the relevant acquisition. In these circumstances, even if the Commissioner was inclined to register the scheme as a declared wholesale unit trust, registration may not be granted retrospectively, particularly to a date prior to the relevant acquisition.

Registered unit holders and look through

In determining whether a unit trust scheme satisfies the relevant criteria for registration under Part 2 of Chapter 3 of the Act, the Commissioner will not look beyond the registered unit holders of the scheme. The only exception is where a unit holder is a bare trustee, nominee or custodian separately holding units in the scheme for different beneficial owners (including qualified investors under section 89P of the Act) who could call for the units at any time. In all other cases, the Commissioner will not look through registered unit holders to determine a scheme's status under the Act.

Example 3 is an example of where the Commissioner would look through the registered unit holders of a scheme. Example 4 is an example of where the Commissioner would not look through the registered unit holders of a scheme.

Example 3

A unit trust scheme with 1000 unit holders has a single registered unit holder that holds 36% of the units in the scheme. This unit holder is a professional nominee company which happens to have been separately appointed to hold 19% of the units in the scheme on behalf of Mr X and 17% of the units on behalf of Mr Y. Mr X and Mr Y are not associated persons and are able to call for their units at any time. In these circumstances, the Commissioner will look through the professional nominee company when determining and characterising the scheme's status and/or registration under the Act.

Example 4

A unit trust scheme has 100 unit holders, one of whom holds a 70% interest in the scheme (the registered unit holder) as trustee of a managed investment scheme with over 300 members. As the 70% interest is held by the trustee of another unit trust scheme (on behalf of all the unit holders of the scheme), the Commissioner will not look through the registered unit holder when determining and characterising the scheme's status and/or registration under 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 SRO or request a private ruling in accordance with the guidelines in 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.