

Revenue Rulings

Landholder Provisions – Declared Public Unit Trust Schemes

Revenue Ruling DA.063

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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 public unit trust scheme is defined in section 3 of the Act to mean a listed trust, a widely held trust and a registered declared public unit trust scheme. A public unit trust scheme, however, does not include a unit trust scheme that is, or was at any time, a wholesale unit trust scheme or eligible for registration as such.

Sections 89Q and 89R of the Act provide for the registration of a unit trust scheme as a declared public unit trust scheme. These sections allow a unit trust scheme to overcome anomalies associated with its status under the Act when it is effectively public in nature and purpose but fails to meet the necessary criteria for recognition as such.

Under sections 89Q and 89R of the Act, the trustee of a unit trust scheme may apply for registration and the Commissioner of State Revenue (the Commissioner) may register the scheme as a declared public unit trust scheme if the Commissioner is satisfied that the scheme meets the criteria for registration. The criteria for registration as a declared public unit trust scheme are -

- (a) the scheme should be registered as a declared public unit trust scheme; and
- (b) 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 of the Act.

In considering an application for registration, the Commissioner is permitted under section 89Q(3) of the Act to take into account any matter he considers relevant.

The purpose of this ruling is to explain the factors the Commissioner will take into account when determining whether a scheme should be registered as a declared public unit trust scheme and when he is likely to make such a determination.

Ruling

The factors that the Commissioner will consider when making a determination as to whether a unit trust scheme should be registered as a declared public unit trust scheme include (but are not limited to)-

- The purpose and nature of the scheme and whether it is effectively public;
- Whether units in the scheme were offered to the public, or an appreciable section of the public;
- Whether the scheme was established for a particular investor or group of investors;
- The degree of ownership and/or control a particular investor or group of investors has/have over the scheme;
- The total number of unit holders in the scheme and whether units are widely held by persons who are not associated with each other;
- The reasons the scheme is unable to qualify as a public unit trust scheme and whether this is due to factors beyond its control; and
- Whether the unit trust scheme was at any time a wholesale unit trust scheme or eligible for registration as such.

Generally, the Commissioner would be satisfied that a scheme should be registered as a declared public unit trust scheme where the scheme does not quite meet the criteria of a public unit trust scheme but is otherwise considered to be public in nature and purpose.

In determining whether a unit trust scheme is effectively public, 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 who could call for the units at any time. In all other cases, the Commissioner will not look through the registered unit holders in order to characterise the scheme as one that should be registered as a declared public unit trust scheme.

Where the Commissioner finds a scheme is effectively public, he is more likely to be satisfied that the scheme should be registered as a declared public unit trust scheme if its failure to qualify as a public unit trust scheme is at the margin and due to factors beyond its control. Factors beyond the control of a scheme will not include acquisitions of interests in the scheme that prevent it from qualifying as a public unit trust scheme unless the acquisitions were not contemplated by the acquirers (e.g. a redemption or cancellation of units/shares that gives rise to acquisitions by associated persons that the Commissioner has accepted should not be aggregated for duty purposes under section 78(2) of the Act). However, factors beyond the control of the scheme may include restrictions on the scheme's ability to create and issue new or further units so as to come within the definition of a public unit trust scheme.

Examples 1 and 2 are situations where the Commissioner would be inclined to register a unit trust scheme as a declared public unit trust scheme.

Example 1

A managed investment scheme that is closed to new investments and has 280 unit holders all of whom acquired their interests pursuant to a product disclosure statement issued to the public and none of whom (whether individually or together with any associated person) is entitled to more than 20% of the units in the scheme. Such a scheme may be considered public in nature as it has a wide spread of public investors and is structured, owned and operated in a manner that is consistent with the criteria of a widely held trust. If the trustee of the scheme is prohibited from creating and issuing new or further units in the scheme so as to come within the criteria of a public unit trust scheme, the Commissioner would be inclined to treat the scheme as one that should be registered as a declared public unit trust scheme.

However, if there are no restrictions on the creation or issue of new or further units, registration may be conditional on the trustee issuing new or further units to investors within an agreed time frame.

Example 2

A unit trust scheme that has attracted 500 unit holders under a product disclosure statement issued to the public, is unable to satisfy the criteria of a widely held trust due to the underwriter being required to take up a shortfall of units in the scheme. In such circumstances, the Commissioner may register the scheme as a declared public unit trust scheme on the condition that the underwriter's interest in the scheme is sold or diluted within an agreed timeframe.

Examples 3, 4 and 5 are situations where the Commissioner would not be inclined to register a scheme as a declared public unit trust scheme.

Example 3

A unit trust scheme with 100 unit holders, one of whom holds a 70% interest in the scheme as trustee of a managed investment scheme with over 300 members. As the Commissioner does not look beyond a registered unit holder of a scheme where the registered unit holder is the trustee of another unit trust scheme, he would not be satisfied that there is a sufficient spread of public unit holders in the unit trust scheme to register it as a declared public unit trust scheme.

Example 4

A unit trust scheme that is akin to a wholesale unit trust scheme but unable to meet the qualified investor holding requirements. As the nature of the scheme is more wholesale than public, the Commissioner would not be inclined to register the scheme as a declared public unit trust scheme.

Example 5

A unit trust scheme that is seeking registration as a declared public unit trust scheme so that a trust in which it owns units can qualify for registration as a wholesale unit trust scheme. In these circumstances, the Commissioner would not be satisfied that the registration is not being sought as part of a scheme or arrangement with a collateral purpose of avoiding or reducing duty otherwise chargeable under Part 2 of Chapter 3 of the Act.

The above considerations are provided as a guide only and are not an exhaustive list. The Commissioner will

consider each application based on its own individual facts when determining whether or not a unit trust scheme should be registered as a declared public unit trust scheme.

In all cases the onus is on the applicant to provide the Commissioner with the necessary information in order to make an informed decision on whether the unit trust scheme meets the criteria to be registered as a declared public unit trust scheme. To assist applicants in applying for such registration, the Commissioner has developed an application form which is available on the State Revenue Office website (Duties Form 60). Please note that the Commissioner will not process an application for registration unless the relevant form is completed in full and submitted with all relevant documentation and information.

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.