Duties Act Bulletin

This Bulletin provides an overview of the landholder duty provisions in the *Duties Act 2000*, which come into effect on 1 July 2012.

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The *Duties Amendment (Landholder) Act 2012* (the Landholder Act) received Royal Assent on 27 June 2012. The Landholder Act introduces the landholder duty provisions into the *Duties Act 2000* (the Act), replacing the land rich duty provisions which have existed in Victoria since 1987.

The landholder provisions apply to acquisitions of interests in certain land holding entities and are contained in Chapter 3 of the Act. The landholder provisions come into operation on 1 July 2012.

The key design features of Victoria's new landholder provisions are described below:

1. **Landholder entities** – a 'landholder' is any of the following entities that has land holdings in Victoria with a market value of $1 million or more:
   - a private unit trust scheme;
   - a private company;
   - a wholesale unit trust scheme;
   - a listed company;
   - a public unit trust scheme (being a listed trust, a widely held trust or a declared public unit trust scheme).
2. **Land value threshold** – the minimum value of land which a landholder must own, or be taken to be entitled to, in order to fall within the landholder duty base is $1 million or more in market value. A duty concession is provided if a relevant acquisition occurs in an entity which has land holdings valued between $1 million and $2 million.

   The land ratio test, which existed under the land rich provisions, has been removed as it is not relevant to the landholder model. This test was relevant to determining whether an entity was 'land rich'.
3. **Land tracing thresholds** – tracing provisions look through land holding structures to identify land a landholder is taken to be entitled to through other entities (linked entities). This land is in addition to land (if any) held by the landholder in its own right. The land a landholder is taken to be entitled to through linked entities will only be included in the value of the landholder's land holdings if it is entitled to the following on a notional winding up of all linked entities:
   - 20% or more of the property in a private company or private unit trust scheme; or
   - 20% or more of the property in a listed company or listed unit trust scheme.
4. **Fixtures** – to overcome the need to rely on the common law to determine whether an item attached to land is a fixture, the landholder model inserts a statutory definition. The definition specifies that land includes anything fixed to the land, whether or not the item:
   - constitutes a fixture at law; or
   - is owned separately from the land; or
   - is notionally severed or considered to be legally separate to the land as a result of the operation of any other Act or law.

   There are a number of exceptions to the statutory definition, including:
   - goods that are also excluded from the direct transfer duty base;
   - an item that is owned by a person other than the landholder and is not used in connection with the land.

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5. **Acquisition thresholds** - a person is liable to pay landholder duty if the person makes a relevant acquisition in a landholder. A relevant acquisition is the acquisition of a certain percentage interest in a landholder, or the acquisition of a further interest (which is usually made through the acquisition of shares or units). The acquisition thresholds for the different types of landholder entities are as follows:
   - 20% or more in a private unit trust scheme;
   - 50% or more in a wholesale unit trust scheme or a private company;
   - 90% or more in a public unit trust scheme or a listed company.

   When a person makes a relevant acquisition in a public unit trust scheme or a listed company, by acquiring an interest of 90% or more in the entity, duty will be charged at the concessional rate of 10% of the duty that would normally be chargeable on the transaction.

6. **Time frame for aggregation of interests** - interests acquired in a landholder are aggregated when acquired by the same person, an associated person, and any other person in an associated transaction. All of those acquisitions are aggregated and taken into account when determining whether a person has made a relevant acquisition.

   The 3 year aggregation rule that applied under the land rich provisions has been removed. However, duty is only charged on interests acquired within 3 years prior to the person making the relevant acquisition.

7. **Acquisition of an economic entitlement** – the landholder provisions introduce a new concept of an 'economic entitlement'. This provision is anti-avoidance in nature and targets the acquisition of certain entitlements to income or capital relating to a landholder, linked entity or the landholdings of a landholder or linked entity.

   If a person acquires an economic entitlement of 50% or more in a private landholder (ie, a private company or private unit trust scheme), the person is treated as if he or she has made a relevant acquisition under the landholder provisions. This will only apply if a person has not made a relevant acquisition of an interest in a private landholder.

   Importantly, this provision does not apply to public/listed landholders.

8. **Duty concession – anomalous duty outcome** – the Commissioner of State Revenue (the Commissioner) is given a discretion to reduce the duty payable on a relevant acquisition. To exercise this discretion, the Commissioner must firstly be satisfied that:
   - the landholder provisions result in an anomalous duty outcome; and
   - the duty payable under the landholder provisions is greater than the duty that would be payable under the direct transfer duty provisions had the relevant acquisition been a transfer of the land of the landholder to the person who made the relevant acquisition.

   Once satisfied, the Commissioner may reduce the duty payable to an amount not less than the duty that would have been payable under the direct transfer duty provisions had the acquisition been a transfer of the land of the landholder to the person.

   This duty concession does not apply to a relevant acquisition that is an economic entitlement or the acquisition of control.

9. **Wholesale unit trust schemes** – the landholder provisions have made some changes to the rules applying to wholesale unit trust schemes. These changes include:
   - a relaxation of the registration criteria for wholesale unit trust schemes such that not less than 70% of the units in the scheme are held by qualified investors (previously this test was 80%);
   - a broader definition of 'qualified investor' so that an expanded list of persons are now considered 'qualified investors';

- there is a new temporary concession for redemption of units in these schemes, so that for a period of 30 days from when the redemption occurs, the wholesale unit trust scheme is permitted to have not less than 50% of the units held by qualified investors and no qualified investor holds 70% or more of the units in the scheme. These measures make it easier to manage the unitholdings of the scheme; and
- transitional provisions to ensure the continuity of registration of existing wholesale unit trust schemes under the landholder provisions.

10. **Conversion provisions** – the land rich provisions imposed duty on the conversion of a private unit trust scheme to a public unit trust scheme. This will continue under the landholder provisions, which will also impose duty on the conversion of a private company to a listed company. The landholder provisions have also clarified and simplified the circumstances in which the conversion provisions apply.

    Importantly, a duty concession has been provided. Where the conversion of a private unit trust scheme or private company is dutiable, the duty charged on the transaction will only be 10% of the duty that would normally be chargeable.

11. **Transitional provisions** – to ensure an appropriate transition from the land rich duty model to the landholder duty model, transitional provisions have been provided. In summary they apply as follows:
    - interests acquired by a person in a landholder before 1 July 2009 will not be aggregated with other interests in the landholder acquired by the person, an associated person or any person in an associated transaction on or after 1 July 2012;
    - interests acquired by a person in a listed company before 1 July 2012 will not be aggregated with other interests in it acquired by the person, an associated person or any person in an associated transaction on or after 1 July 2012;
    - an economic entitlement acquired by a person before 1 July 2012 will not be aggregated with an economic entitlement acquired by the person or an associated person on or after 1 July 2012;
    - duty will not be chargeable in respect of an interest acquired by a person in a scheme or company on or after 1 July 2009 and before 1 July 2012 if the scheme or company was not a land rich landholder under the land rich provisions; and
    - a wholesale unit trust scheme or declared public unit trust scheme registered under the land rich duty provisions will be taken to be registered under the landholder duty provisions until its registration expiry date.

Further information

For further information on the new provisions, please refer to the Landholder Acquisitions section of the SRO website.

Otherwise please contact the SRO:

Website	**www.sro.vic.gov.au**
Email	landholder@sro.vic.gov.au
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