

Land Rich Provisions – General Interpretation Issues

Revenue Ruling DA.036

Ceased 28 August 2008 - Replaced by [DA-043](#), [DA-044](#), [DA-045](#), & [DA-046](#) - Please refer to our [website](#) for details.

Preamble

The land rich provisions in Part 2 of Chapter 3 of the *Duties Act 2000* (the Act) charge Duty on relevant acquisitions of interests in land rich landholders. The purpose of this Revenue Ruling is to clarify some of the general interpretation issues relating to the application of those provisions.

Ruling

Landholders

Section 71(1) of the Act defines a landholder as either a private company, a private unit trust scheme or a wholesale unit trust scheme. The definitions of these terms are contained in section 3 of the Act and effectively mean that a landholder for land rich purposes does not include:

- (a) a listed company, being a company that is listed and whose shares are quoted on the Australian Stock Exchange (ASX) or any exchange of the World Federation of Exchanges (WFXs) unless the listed company is declared by the Commissioner of State Revenue (the Commissioner) to be a private company; or
- (b) a listed trust, being either:
 - i. a unit trust scheme all the units in which are quoted on the ASX; or
 - ii. a unit trust scheme all the units in which are quoted on any exchange of the WFXs (other than the ASX) and that is declared by the Commissioner to be a listed trust.

Uncertainty has arisen in relation to the status of a company or trust listed on the ASX if its securities are suspended from quotation or a trading halt or interruption occurs. According to the ASX Listing Rules, securities that are suspended or subject to a trading halt or interruption may be reinstated to quotation without a fresh application for quotation. Hence, a suspension, trading halt or interruption does not amount to a permanent ending of quotation and does not mean that the securities are not quoted for the purposes of the ASX Listing Rules. Consequently, the Commissioner will accept that the securities of a listed company or listed trust are still quoted on the ASX even if they have been temporarily suspended or subject to a trading halt or interruption. Therefore,

temporary suspensions or trading halts will not disqualify a company or trust from being treated as a listed company or listed trust for the purposes of the Act.

The definition of a "listed trust" in section 3 of the Act states that all the units of the trust must be quoted on a relevant exchange. The Commissioner will be satisfied that a trust has met this requirement if all the classes/types of units that give unit holders a beneficial entitlement to participate in a distribution of property of the trust on a winding up are quoted on the exchange. It is not necessary for other classes/types of units to be quoted on the relevant exchange for the unit trust scheme to be a listed trust for the purposes of the Act.

Uncertainty has also arisen in relation to the status of a listed trust where the units of the trust form part of a stapled security that is quoted on the ASX. Whilst a unit forming part of a quoted stapled security is not considered to be quoted in its own right (*Re Australand Holdings Ltd* [2005] NSWSC 835), the Commissioner will regard the units of such a trust as being quoted for the purposes of the listed trust definition in section 3 of the Act.

Land Rich Tests

Section 71(2) of the Act provides that a landholder is land rich if **both** of the following tests are satisfied:

- (a) it has land holdings in Victoria with an unencumbered value of \$1 million or more; and
- (b) its land holdings in all places, whether within or outside Australia, comprise 60% or more of the unencumbered value of all the landholder's property.

In determining whether a landholder is land rich (and the amount of Duty payable on a relevant acquisition), the value of its land holdings and other property must be ascertained, including, in certain circumstances, those owned indirectly through linked entities and discretionary trusts and those deemed to be owned as a result of uncompleted agreements [sections 73, 74 and 75].

Land Holdings

A "land holding" is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit a prendre [section

72(1)]. "Land" is not defined in the Act. Based on the *Interpretation of Legislation Act 1984 (Vic)*, "land" for the purpose of the Act includes buildings and other structures permanently affixed to land, land covered with water, and any estate, interest, easement, servitude, privilege or right in or over land.

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 land rich purposes [section 87(1)]. 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 landholder or linked entity 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 landholder'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 landholder'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 landholder more than one year before the date of the relevant acquisition; or
- (c) the taxpayer has submitted a valuation from a competent valuer that is over 12 months old (i.e. a valuation that provides a value for the relevant land holding(s) more than one year 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.

Property

To determine whether a landholder is land rich, the unencumbered value of all of its property, other than property excluded under sections 71(3), (4) and (5) of the Act, must also be ascertained. While "property" is not defined in the Act, its meaning is not restricted to dutiable property. Based on common law principles, the term "property" includes both real and personal property.

As noted above, the Commissioner's view is that historical cost is not necessarily reflective of unencumbered value. However, to reduce compliance costs, the Commissioner will generally only require a taxpayer to provide valuations in respect of land holdings and not other property. Therefore, when calculating the unencumbered value of a landholder's property (other than land holdings) for the purposes of section 71(2) of the Act, the value attributed to such items in the landholder's most recent financial statements (preferably audited) may be relied upon, provided the financial statements were prepared within 12 months of the relevant acquisition and all disposals and acquisitions of items of property (other than land) between the date of the financial statements and the date of the relevant acquisition are identified.

If a taxpayer does not wish to rely on the value attributable to an item of property in the landholder's financial statements, the Commissioner will require the taxpayer to provide a valuation of the relevant item by an appropriately qualified independent valuer. An independent valuation will also be required in respect of any item of property (whether tangible or intangible) the taxpayer claims to exist at the time of the relevant acquisition but is not disclosed in the landholder's financial statements (eg. goodwill).

Where the Commissioner considers an independent valuation obtained and provided by a taxpayer does not accurately reflect the true value of the item of property (including land), the Commissioner may refer the matter to the Valuer-General or another competent valuer for a valuation. In certain circumstances, the taxpayer may be liable to pay the cost of such a valuation [section 273].

Constructive Ownership of Land Holdings and Other Property Through Linked Entities

A landholder's property (including land) is not limited to direct ownership. In certain circumstances, it may include indirect ownerships traced through linked entities and discretionary trusts [section 74 and 75].

This section explains the constructive ownership of land and other property of linked entities. It does not deal with the constructive ownership of land and other property through discretionary trusts. For information on the tracing of land and other property through discretionary trusts please see Revenue Ruling DA-033 which is available on the SRO website.

Under section 74(7) of the Act, a linked entity means any person or body, corporate or unincorporated, that may hold property in its own right or for the benefit of any person. The definition of a linked entity includes a trust but does not include a natural person, a public unit trust scheme or a listed company.

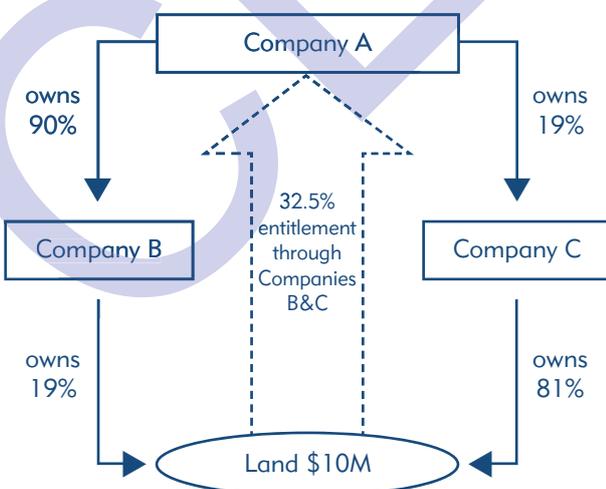
A landholder may be deemed to hold land or other property if the landholder is entitled to it through a linked entity [section 74(1)]. It is not necessary for the landholder to have a direct interest in a linked entity for the landholder to be entitled to the linked entity's land or other property. Instead, the focus of the constructive

ownership provisions is on the proportionate interest a landholder would be entitled to receive in land or other property through a linked entity, not the proportionate interest a landholder holds in a linked entity. The interest a landholder is entitled to through a linked entity is the proportion of land or other property the landholder would be entitled to receive as a result of the winding up of all linked entities without regard to any liabilities [sections 74(3) and (4)].

The operation of the constructive ownership provisions is limited to cases where the landholder would ultimately receive at least 20% of the land or other property from the linked entities, if all the linked entities were wound up [section 74(5)]. If the landholder is entitled to receive less than 20% of the land or other property of linked entities on their winding up, the value of that land or other property will not be counted with the landholder's own land and other property.

Example 1: Constructive Ownership of Land through Linked Entities

Company A owns 90% of the shares in Company B and 19% of the shares in Company C. Companies B and C are linked entities of Company A and respectively own a 19% and 81% interest in a Victorian landholding worth \$10 million. If Company B and Company C were wound up, the proportion of the land Company A would be entitled to receive through Companies B and C (and therefore its interest in the land) is 32.5% (being the aggregation of a 17.1% entitlement through Company B [90% x 19%] and a 15.4% entitlement through Company C [19% x 81%]). As Company A is entitled to receive at least 20% of the land owned by Companies B and C, the constructive ownership provisions would operate to deem Company A to be entitled to a 32.5% interest in the land (valued at \$3.25 million). Consequently, Company A would be considered land rich and any acquisition of a significant interest in Company A would be liable to Duty.



Acquisition of an Interest in a Landholder

Section 76(1) of the Act provides that a person has an interest in a land rich landholder if the person has a beneficial entitlement (otherwise than as a creditor or other person to whom the landholder is liable), whether directly or through another person, to a distribution of property from the landholder on a winding up (or vesting) of the landholder.

The focus of section 76(1) is on who has a beneficial entitlement to participate in a distribution of property in the event of a notional winding up of the landholder. The section is not concerned with what a shareholder or unit holder would actually receive on a winding up or whether or not the shareholder or unit holder has a proprietary interest in the property of the landholder.

In *Affinity Health Ltd v Chief Commissioner of State Revenue* [2005] NSWSC 663, the NSW Supreme Court held that, in terms of the NSW land rich provisions, a person has an entitlement to a distribution of property of a landholder on a winding up of the landholder only when the person is entered on the register of members of the landholder.

The above decision is not accepted as a relevant authority in Victoria. Under the Victorian provisions, a person has an interest in a land rich landholder if the person has a "beneficial" entitlement (whether directly or through another person) to a distribution of the property of the landholder on a winding up of the landholder. It is the Commissioner's view that a person obtains such an entitlement on the completion of an agreement for the acquisition of an interest in a landholder and not on the date the person is entered on the register of members of the landholder.

Example 2: Acquisition of an Interest in a Landholder

A has purchased all of B's shares in a land rich landholder. Even though the sale has completed (A has paid B the purchase price in full and received a registrable transfer), the register has not yet been updated and the shares still remain registered with B. As a constructive trust arises in favour of A on full payment of the purchase monies, A would be regarded as having a beneficial entitlement to the property of the landholder on a winding up of the landholder. Accordingly, A would be considered to have an interest in the landholder for the purposes of the land rich provisions. If A purchased the shares as trustee of a trust, the beneficiaries of that trust would be regarded as having an indirect beneficial entitlement (a beneficial entitlement through another person, being A), to a distribution of the property of the landholder on a winding up of the landholder.

For the purposes of the land rich provisions, a person acquires an interest in a land rich landholder if the person obtains an interest beneficially, including if the person's interest increases, regardless of how it is obtained or increased [section 77(1)].

The method by which a person may acquire an interest in a land rich landholder is not limited to an acquisition effected by a transfer. Section 77(2) of the Act sets out a number of ways in which an acquisition can occur including the purchase, gift, allotment or issue of a unit or share, the cancellation, redemption or surrender of a unit or share, the abrogation or alteration of a right pertaining to a unit or share and the payment of an amount owing for a unit or share. Whilst the issuing of units or shares normally confers a right to participate in a distribution on a winding up (vesting in the case of a trust), the capacity to enjoy this right may be withheld until the units or shares have been paid up, either fully or to a specified extent. In such cases, an acquisition will be taken to have occurred when the required payment is made (*Commissioner of Stamp Duties (Qld) v MIM Holdings Ltd* (1999) 99 ATC 5084).

In most cases, the person who is registered as the holder of an interest is the person who has obtained the interest beneficially. However, this may not be the case when a person acquires an interest as trustee for others.

Where the acquisition of an interest in a land rich landholder is by the trustee of a trust, the beneficiaries of the trust may be regarded as having acquired an interest for the purposes of section 77(1) of the Act. In such cases, the beneficiaries as a group, would be considered to have acquired the whole interest purchased by the trustee.

This position is not altered by the High Court decision in *CPT Custodian Pty Ltd v Commissioner of State Revenue; Commissioner of State Revenue v Karingal 2 Holdings Pty Ltd* [2005] HCA 53 (*Karingal*). In *Karingal*, beneficial ownership was considered from the perspective of a right to immediate enjoyment of possession of (or profits from) land. The land rich provisions are not concerned with such a concept but rather with rights to ultimate distribution of property upon a winding up of a land rich landholder. The focus is an entitlement to a stated percentage of whatever the property might be upon a notional winding up of the land rich landholder. Quantification of the entitlement in monetary terms is not necessary for the operation of the provisions.

Accordingly, where the acquisition of an interest in a land rich landholder is by the trustee of a trust, the beneficiaries of the trust as a group may be required to lodge an acquisition statement and pay Duty if the acquisition amounts to a relevant acquisition in the landholder. To reduce complexity and compliance costs, the Commissioner will allow the trustee of the trust to lodge an acquisition statement and make the payment of Duty on behalf of its beneficiaries.

Exempt Acquisitions

The acquisition of an interest by a person in a land rich landholder is exempt in a number of specified circumstances [section 85(1)]. In addition, the Commissioner has discretion to determine that the

acquisition of an interest in a land rich landholder is an exempt acquisition if satisfied that the application of Part 2 of Chapter 3 of the Act to the acquisition in that particular case would not be just and reasonable [section 85(2)].

The Commissioner does not consider section 85(2) of the Act to have a broad application. Generally, the Commissioner will exercise the discretion under section 85(2) to exempt the acquisition of an interest in a land rich landholder if the acquisition would be dutiable because of an anomaly in the application of the land rich provisions (whether or not a specific exemption in the Act applies). The Commissioner takes the view that under these circumstances, it would not be just and reasonable to impose Duty under Part 2 of Chapter 3 of the Act to the acquisition.

Example 3: Illustration of when the Commissioner will exercise the just and reasonable discretion under section 85(2) of the Act

Prior to 1987, A acquired 70% of the issued share capital in a land rich landholder. Two years ago, A transferred shares equating to a 40% interest in the land rich landholder to his son, B. Shortly after the transfer, A died. Under his Will, A left all his belongings including his remaining 30% interest in the land rich landholder to his wife, C. While C's acquisition of shares is exempt pursuant to section 85(1) of the Act, no exemption applies to B's acquisition and thus the relevant acquisition constituted by the aggregation of B's and C's acquisitions (on the basis that B and C are associated persons and their acquisitions have occurred within a 3 year period). As the relevant acquisition is due to A's death, the Commissioner would apply the just and reasonable exemption under section 85(2) of the Act and exempt B's acquisition from Duty. There is no need to exempt C's acquisition under section 85(2) of the Act as it is already exempt under section 85(1). It is important to note that while the Commissioner will treat B's acquisition as exempt in these circumstances, the acquisition may not receive the same treatment if B or any associated person including his mother, C, were to acquire a subsequent interest in the land rich landholder. In such circumstances, there is no basis for not aggregating and assessing B's initial acquisition with other interests acquired by B or an associated person. In contrast, C's acquisition will always be treated as exempt under section 85(1) of the Act no matter what subsequent acquisitions occur. However, the acquisition may be taken into account to determine whether any subsequent acquisitions by C and/or an associated person ought to be charged with Duty.

Example 3 illustrates that the application of section 85(2) to the acquisition of an interest in a particular setting does not necessarily mean that the interest is quarantined from Duty in all settings. Unless the Commissioner determines that the acquisition of the interest ought to be exempt in all settings and not just

the setting which gave rise to the liability to Duty, an exempt acquisition may become liable to Duty on the basis of aggregation with subsequent acquisitions. Further, even if the Commissioner were to determine that the acquisition of an interest ought to be exempt under section 85(2) in all settings, the interest may still be taken into account to determine whether a relevant acquisition has occurred for the purposes of the Act. This is because exempt acquisitions (including exempt acquisitions under section 85(1) of the Act) are not one of the types of interest that are excluded from determining whether a relevant acquisition has occurred under section 79(8) of the Act.

Where the Commissioner determines that the acquisition of an interest ought to be exempt from Duty under section 85(2) of the Act in all circumstances or that the acquisition is exempt under section 85(1) of the Act, no Duty will be charged in relation to the interest acquired under the exempt acquisition where the aggregation of the exempt acquisition with prior or subsequent acquisitions results in a relevant acquisition. To preserve the ongoing Duty free status of such exempt acquisitions, the Commissioner will only charge Duty on the interest acquired under the prior or subsequent acquisition.

Calculation and assessment of duty

Acquisition statement

Section 80 of the Act provides that if a relevant acquisition is made, either or both the acquirer and the landholder (in which the acquisition was made) must prepare and lodge an acquisition statement with the Commissioner within 3 months after the date of the relevant acquisition.

To reduce compliance costs, the Commissioner will not require a landholder to separately lodge an acquisition statement if the acquirer lodges a statement within the required time. However if the landholder becomes aware that the acquirer does not intend to lodge an acquisition statement, the Commissioner will require the landholder to either complete and lodge a statement itself, or to cause the acquirer to complete and lodge a statement. If neither the acquirer nor the landholder lodges a statement in accordance with section 80 of the Act, penalties may be imposed.

Duty calculation

Under section 83 of the Act, Duty on a relevant acquisition is charged at the rates set out in Chapter 2 on the amount calculated by multiplying the unencumbered value of all the landholder's Victorian land holdings at the date of the acquisition by the percentage interest acquired as a result of the relevant acquisition.

Unlike the former land rich provisions, section 83 does not set out a separate method for calculating the Duty payable on a relevant acquisition arising

from the aggregation of interests acquired within a 3 year period by a person alone or together with associated persons or pursuant to associated transactions. In recognition that land values generally increase over time, the Commissioner will allow taxpayers to continue to calculate the Duty payable on relevant acquisitions comprising aggregated interests in accordance with the previous method. Accordingly, where a relevant acquisition is the result of the aggregation of interests acquired within a 3 year period by a person either alone or together with an associated person or pursuant to an associated transaction, the dutiable value of the relevant acquisition is to be calculated in the manner provided by section 83(1) severally in respect of each of the interests comprising the relevant acquisition.

Example 4: Calculation of Duty

The Duty payable on a relevant acquisition comprising the aggregation of a 15% interest in a private unit trust scheme in 2004 when the trust's Victorian landholdings totalled \$2 million with a 15% interest in 2005 when the trust's landholdings were valued at \$4 million is calculated as follows:

Value of 15% interest of trust's Vic landholdings in 2004 [\$2 million x 15%]	\$300,000
Value of 15% interest of trust's Vic landholdings in 2005 [\$4 million x 15%]	\$600,000
Dutiable value of the relevant acquisition	<u>\$900,000</u>
Relevant rate of Duty	5.5%
Duty payable	<u>\$49,500</u>

Leasehold interests

Except for the types of leasehold estates specifically defined as dutiable property in section 10(1)(a) of the Act, the Commissioner recognises that leasehold estates are not dutiable property for the purposes of Chapter 2 of the Act. For land rich purposes, however, the definition of a land holding does not specifically exclude a leasehold estate [section 72(1)]. In circumstances where a landholder is the lessee of land, the value of the leasehold estate must be included in the value of the landholder's land holdings when determining whether it is land rich.

If a person acquires an interest in a landholder whose Victorian land holdings comprise:

- leasehold estates that are dutiable property and freehold land, Duty will be calculated by reference to the value of all the landholder's land holdings;
- only leasehold estates that are not dutiable property, the Commissioner will exempt the acquisition of the interest under section 85(1) and accordingly, no land rich Duty will be payable; and

(c) leasehold estates that are not dutiable property and freehold land, the Commissioner will include the value of the leasehold estates for the purpose of determining whether the landholder is land rich but will exclude their value from the Duty calculation. As a result, Duty will be calculated on the value of the freehold land only.

Primary production land

If a person acquires an interest in a landholder from a lineal ancestor or descendant, the land holdings of the landholder are taken not to include land that is primarily used for primary production when determining whether the landholder's land holdings comprise 60% or more of the unencumbered value of all its property [section 71(5)]. Even so, a landholder that owns both primary production land and other land not used for primary production purposes may still be land rich for the purposes of the Act.

Section 85(1)(a) of the Act provides that an acquisition by a person of an interest in a landholder is exempt if the means by which the person acquired the interest would have resulted in no ad valorem Duty being payable under Chapter 2 had the subject of the acquisition been a transfer of the land of the landholder to the person. The transfer of primary production land between relatives in prescribed circumstances is exempt from Duty under section 56 of Chapter 2 of the Act.

The Commissioner recognises that an anomaly arises in terms of the application of the above two concessions and the calculation of Duty when a person acquires an interest from a lineal ancestor or descendant in a landholder that owns both primary production land and other land not used for primary production purposes. In such circumstances, the concessions may not provide any relief from Duty if the landholder is determined to be land rich on the basis of the non-primary production land. In recognition of this anomaly, the Commissioner will not charge Duty on the value of the primary production land. Duty will only be charged with reference to the value of the non-primary production land.

Assessments

Under sections 80 and 81 of the Act, Duty on a relevant acquisition must be paid, and an acquisition statement must be lodged with the Commissioner, within 3 months after the liability to pay the Duty arises, otherwise a tax default occurs for the purposes of the *Taxation Administration Act 1997* (TAA).

If a taxpayer requires assistance in determining its liability under the land rich 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, or requested by the Commissioner.

A taxpayer requiring assistance should seek the Commissioner's help within 2 months of the date of

the relevant acquisition to allow the Commissioner sufficient time to respond with advice or the issue of an assessment within the statutory 3 month period. Any delays by the taxpayer in the provision of information and documents that prevent the Commissioner from determining the taxpayer's liability within the 3 month period may result in penalty tax and interest being imposed under any assessment issued by the Commissioner. Any delays in the determination of the taxpayer's liability by the Commissioner that are not due to the taxpayer will not result in any penalty tax and interest consequences.

If a taxpayer requests the Commissioner to issue a private ruling and/or an assessment after 2 months of the date of the relevant acquisition, the taxpayer should estimate the Duty payable on the relevant acquisition and pay that amount before the end of the 3 month period. Depending on the circumstances of the matter, any underpayment of Duty may attract penalty tax and interest.

If the taxpayer fails to lodge an acquisition statement, or fails to pay the required Duty within the 3 month period, the Commissioner may impose penalty tax and interest in accordance with sections 24 and 29 of the TAA and the current ruling setting out the Commissioner's policy on penalty tax and interest.

Trust Registration

Section 89L of the Act allows the trustee of a unit trust scheme to apply for registration of the scheme as an imminent public unit trust scheme [section 89M], a declared public unit trust scheme [section 89N], a wholesale unit trust scheme [section 89O], an imminent wholesale unit trust scheme [section 89P] or a declared wholesale unit trust scheme [section 89PA]. Application forms are available on the SRO website.

Registration may be granted to commence on a day before the date on which the application for registration is approved [section 89Q].

Registration criteria

A common criterion for registration of a unit trust scheme under the Act 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 [sections 89M(2)(c), 89N(2)(b), 89O(2)(e), 89P(2)(c) and 89PA(2)(b)].

If a relevant acquisition has occurred in a unit trust scheme that has not sought registration under the Act, and the scheme 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. In those circumstances, the Commissioner will not make the registration of the unit trust scheme retrospective to a date before the liability for Duty arose.

Imminent wholesale unit trust scheme

If a registered imminent wholesale unit trust scheme meets the criteria for registration as a wholesale unit trust scheme during or at the end of the 12 month registration period, it 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 89O.

Qualified investors

The registration criteria for both a wholesale and an imminent wholesale unit trust scheme refers to qualified investors. Section 89K(1) of the Act defines a qualified investor in a unit trust scheme as a person who holds units in the scheme in a number of specified capacities. Sub-paragraph (f) of the definition of qualified investor provides that a person who holds units in the scheme as an agent for a trustee or life company or the Crown referred to in sub-paragraphs (a) to (ea), in its capacity as such an agent, is a qualified investor.

Uncertainty has arisen as to whether a unit holder holding units as "nominee" or as "custodian" of a relevant trustee or a life company or the Crown is a qualified investor for the purposes of section 89K(1)(f) of the Act.

The terms "nominee" and "custodian" are not defined in the Act. The Butterworths *Encyclopaedic Australian Legal Dictionary* defines "nominee" as an agent acting on behalf of a principal. A custodian, in the context of a managed investment scheme registered under the *Corporations Act 2001 (Cth)*, refers to a corporation that holds scheme property on behalf of the responsible entity of the scheme.

The Commissioner will treat the following as a qualified investor under the Act:

- (a) an appropriately appointed custodian, acting in its capacity as custodian and in accordance with the terms of its appointment, on behalf of a trustee or a life company or the Crown specified in sub-paragraphs (a) to (ea) of section 89K(1); and
- (b) a nominee, acting in its capacity as nominee on behalf of a trustee or life company or the Crown specified in sub-paragraphs (a) to (ea) of section 89K(1).

The purpose of this Revenue Ruling is to assist taxpayers to understand and comply with their obligations under Part 2 of Chapter 3 of the Act. 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 Land Rich Unit at the SRO or request a private ruling in accordance with Revenue Ruling GEN.009.

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.01.



February 2006

Commissioner of State Revenue