



## REVENUE RULING

DA 9.0

## DUTIES LANDHOLDER DUTY – INTERESTS HELD BY TRUSTEES

### RULING HISTORY

Revenue Ruling	Issued	Effective Date	
		From	To
DA 9.0	October 2008	October 2008	8 May 2016

### INTRODUCTION

1. An acquisition of an interest in an entity that is a landholder will be subject to landholder duty under Chapter 3 of the *Duties Act 2008* (“Duties Act”) if it is a relevant acquisition.
2. The purpose of this Revenue Ruling is to clarify the treatment of a relevant acquisition by the trustee of a trust.

### BACKGROUND

3. For the purposes of landholder duty, an acquisition of an interest in an entity will generally be a relevant acquisition if the person making the acquisition obtains, or already holds, a significant interest in the entity.
4. Section 153(1) of the Duties Act provides that a reference in Chapter 3 to an interest in a landholder or other entity is to an entitlement to the surplus property of the landholder or other entity if it were to be wound up.
5. Section 3 of the Duties Act provides that “entitled” means –
  - (a) in relation to a person as trustee of a unit trust scheme or other trust – entitled for the purposes of the scheme or trust; and
  - (b) otherwise – beneficially entitled.
6. Section 9 of the *Interpretation Act 1984* (“Interpretation Act”) provides that where a word or phrase is defined in a written law, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## RULING

7. The meaning of the term “entitled” that is given in section 3 of the Duties Act is considered to be applicable to the interpretation of section 153(1) of the Duties Act, as a result of the operation of section 9 of the Interpretation Act.
8. In considering a person’s interest in a landholder or other entity, where a person has an entitlement to the surplus property of a landholder or other entity if it were to be wound up, and that entitlement is held by the person as trustee of a trust, then that person would be considered to have an interest in the landholder or entity in their capacity as trustee of that particular trust.
9. Where a person holds interests in a landholder or other entity on behalf of a number of different trusts, that person would be taken to be a separate person in relation to each trust, and each interest held on behalf of a trust would be taken to be a separate interest.
10. The effect is that when considering if a person holds or has acquired a significant interest in an entity, interests that are held or acquired in the person’s capacity as trustee of several different trusts that are otherwise unrelated would not be combined to determine if the person holds or has acquired a significant interest in the entity. Rather, each interest held on behalf of each trust would be treated as if it were held by a separate person.
11. It should be noted that in treating a person to be a separate person in respect of each separate trust of which the person is trustee, those separate persons may still be regarded as being related persons under section 162(1) of the Duties Act. Examples of when this may occur include (but are not limited to) situations where the separate trusts in question have common beneficiaries, or where the interests held or acquired on behalf of each trust were acquired by virtue of acquisitions that arise from substantially one transaction or one series of transactions.
12. Notwithstanding paragraph 11 above, the Commissioner may determine, pursuant to section 162(2) and (3) of the Duties Act, that such persons are not related for the purposes of sections 163 and 164 of the Duties Act, if he is satisfied that they are not acting in concert with each other and their interests in the entity were acquired independently and not for a common purpose.
13. The determination provided for in section 162(2) is not available in the case of acquisitions made by related corporations. A reference to a corporation here is considered to be a reference only to a corporation acting in its own right, not as trustee of a trust. The Commissioner is therefore not prohibited from making such a determination where the trustee is a corporation.