



## Landholder Duty

Chapter 3 of the *Duties Act 2008*

13 June 2019

When a person acquires an interest in a corporation or unit trust that holds land assets in Western Australia, they may be liable to pay landholder duty under the *Duties Act 2008* (Duties Act).

### Meaning of landholder

A corporation or unit trust is a landholder if it, or a linked entity, is entitled to Western Australian land assets valued at \$2 million or more. If interests in multiple entities are acquired under one arrangement, the value of the land assets of each entity may be combined.

### Land assets

A *land asset* means:

- land, including any estate or interest in land and a pastoral lease
- mining tenements and derivative mining rights<sup>1</sup> and
- things fixed to land and certain rights relating to fixed infrastructure.<sup>2</sup>

### Linked entities

A linked entity's entitlement to land assets is taken into account when determining if a corporation or unit trust scheme is a landholder. A higher entity (such as the entity in which the interest is acquired) is linked to a lower entity (such as a subsidiary) if:

- the lower entity is a listed corporation or unit trust in which the higher entity directly holds an interest of at least 90 per cent or
- the lower entity is an unlisted entity in which the higher entity has a direct or indirect interest of at least 50 per cent.

A higher entity has a direct or indirect interest in an unlisted entity if there are one or more ownership chains between the entities. An ownership chain exists if:

- for a corporation or unit trust scheme, the higher entity owns shares or units in the lower entity
- the lower entity is the trustee of a discretionary trust and the higher entity is a potential beneficiary of that trust<sup>3</sup>
- the lower entity is a partnership where the higher entity is a partner that –

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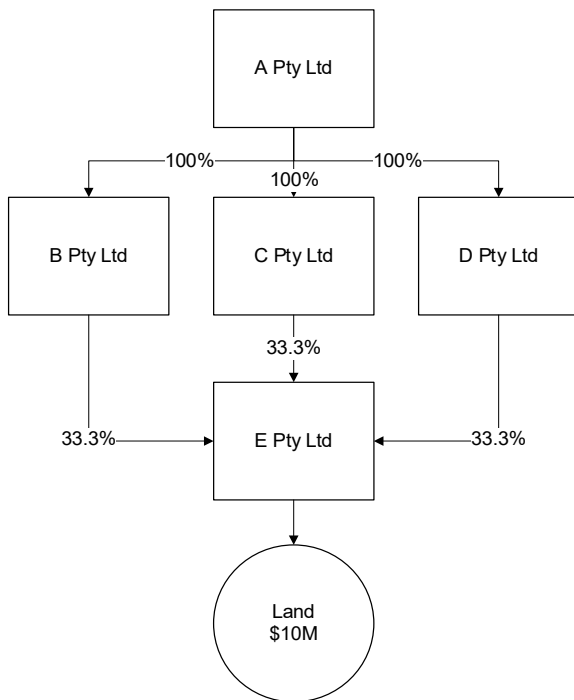
<sup>1</sup> See the [‘Derivative Mining Rights’](#) fact sheet.

<sup>2</sup> See Commissioner's Practice [DA 46 ‘Things Fixed to Land that are Removed’](#).

<sup>3</sup> The Commissioner may determine that the landholder is not linked to a discretionary trust in which it is a beneficiary, or has an interest of less than 100 per cent. See Commissioner's Practice [DA 41 ‘Landholder Duty-Extent of interest in a Discretionary Trust’](#).

- has contributed, or is required to contribute, 50 per cent or more of the partnership's capital or
- is required to bear 50 per cent or more of the partnership's losses or
- there is a series of entities between the higher entity and the lower entity where each entity has a direct interest in the next.

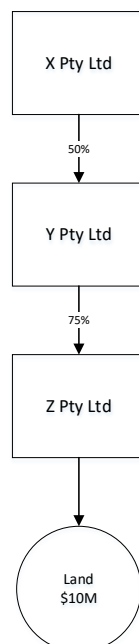
#### Example 1 – Ownership chains



A Pty Ltd has a total direct or indirect interest of 100 per cent in E Pty Ltd through the three ownership chains involving B Pty Ltd, C Pty Ltd and D Pty Ltd. This means that E is linked to A for landholder purposes.

A linkage chain exists when several entities are connected because they are linked to each other. Through a linkage chain, a landholder's interest in an entity is determined by multiplying the percentage interest held in each consecutive entity in the chain. This may result in the main entity having a total interest of less than 50 per cent in a lower entity, but still being linked to that lower entity.

#### Example 2 – Linkage chain



Although X Pty Ltd has a total indirect interest in Z Pty Ltd of 37.5 per cent, Z is linked to X through a linkage chain because:

- Z is linked to Y through a direct 75 per cent interest and
- Y is linked to X through a direct 50 per cent interest.

## **Related persons**

For landholder duty purposes, the following are *related persons*:

- spouses, de facto partners, and parents and children (including step-children)
- related corporations
- trustees of trusts with common beneficiaries
- a corporation and an individual who is a majority shareholder, director or secretary of that corporation or a related corporation
- a trustee of a trust and an individual who is a beneficiary of that trust
- a trustee of a trust and a corporation, if the corporation or majority shareholder, director or secretary of that corporation, or a related corporation, is a beneficiary of that trust and
- persons or entities making acquisitions that form substantially one arrangement or that arise from the acquirers acting in concert with each other.<sup>4</sup>

In certain circumstances, the Commissioner may decide to treat related persons as unrelated. This may change the landholder duty liability of an acquisition.<sup>5</sup>

## **Acquiring an interest**

A person's interest in a landholder is equal to their entitlement to surplus property when the landholder is wound up. This is usually based on the number of shares or units they hold.

## **Relevant acquisition**

A person acquiring an interest in a landholder is liable for landholder duty if a *relevant acquisition* has occurred.

A person makes a *relevant acquisition* if before the acquisition:

- the person does not have a significant interest and after the acquisition the person has a significant interest
- the person's interest is a significant interest and after the acquisition the person's interest increases
- the combined interest of the person and any related persons is not a significant interest and after the acquisition the combined interest is a significant interest or
- the combined interest of the person and any related persons is a significant interest and after the acquisition the combined interest increases.

A *significant interest* is:

- an interest of at least 90 per cent in a listed landholder<sup>6</sup> or
- an interest of at least 50 per cent in an unlisted landholder.

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<sup>4</sup> Except where the acquisitions result from a public float or a prescribed demerger of a listed entity.

<sup>5</sup> See Commissioner's Practice [DA 2 'Landholder Duty – Related Persons and Commissioner's Discretion'](#).

<sup>6</sup> This means an entity listed on a prescribed financial market, including the Australian Stock Exchange and all World Federation of Exchanges' members.

### ***When an acquisition occurs***

A relevant acquisition occurs:

- if there is an agreement for the acquisition (such as a share sale agreement) – when the agreement is made or
- if the entity is not a landholder when the agreement is made but is a landholder when the agreement is completed – when the agreement is completed or
- in any other case – when the interest is acquired.

### **Acquisitions from substantially one arrangement**

The duty outcome for an acquisition in one entity may be affected by another transaction that arises from or forms substantially one arrangement.<sup>7</sup>

If the acquisitions or transactions occur at different times, the earlier acquisition may need to be reassessed. It is also possible for an acquisition to only become liable when a later acquisition occurs.<sup>8</sup>

### ***Acquisitions in entities with total value of land assets of \$2 million or more***

An entity entitled to land assets of less than \$2 million will be a landholder for duty purposes when:

- there are acquisitions in two or more entities entitled to land assets
- the acquisitions form substantially one arrangement and
- the combined value of the entities' land assets is \$2 million or more.

#### ***Example 3 – Acquisitions in entities at the same time***

Person A acquires all of the units in Unit Trust 1, Unit Trust 2 and Unit Trust 3 as part of one arrangement.

- Unit Trust 1 is entitled to land in Western Australia valued at \$1.5 million.
- Unit Trust 2 is entitled to land in Western Australia valued at \$800,000.
- Unit Trust 3 is entitled to land in Western Australia valued at \$1.7 million.

Although none of the unit trusts holds land assets valued at \$2 million or more, they are each deemed to be a landholder as the combined value of the land assets is \$4 million.

Duty assessments are separately issued based on landholder values of \$1.5 million, \$800,000 and \$1.7 million.

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<sup>7</sup> See Revenue Ruling [DA 25 'Substantially One Arrangement'](#).

<sup>8</sup> For more information see Duties Act s 204F – s 204H and clause 100 of the Explanatory Memorandum for the Revenue Laws Amendment Bill 2018.

#### Example 4 – Acquisitions in entities at different times

Person B enters into an option agreement that gives them the option to acquire 50 per cent of the shares in C Pty Ltd and D Pty Ltd from the same person. C and D are entitled to adjacent parcels of farming land valued at \$1.2 million and \$3 million respectively.

On 1 September 2019, B exercises the option for shares in C and acquires a 50 per cent interest. On 1 November 2019, B exercises the option for shares in D and acquires a 50 per cent interest.

When the interest in C is acquired, it is not a landholder and there is no landholder duty on the acquisition. When the interest in D is acquired, C becomes a landholder because the acquisitions from substantially one arrangement and the combined value of the entities' land is \$4.2 million. This means the acquisition on 1 September 2019 becomes retrospectively liable for landholder duty.

Duty based on a value of \$600,000 (\$1.2 million x 50 per cent) applies to the acquisition in C and duty based on a value of \$1.5 million (\$3 million x 50 per cent) applies to the acquisition in D.

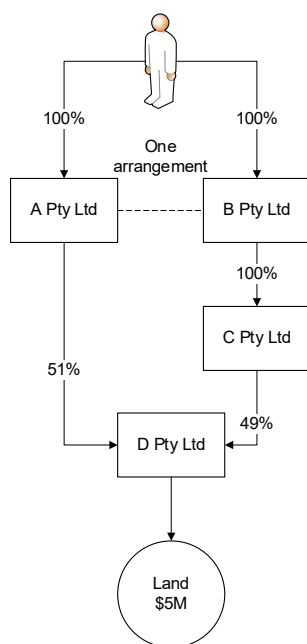
#### Acquisitions in entities which have an interest in the same lower entity

Where there are acquisitions in two or more entities (main entities) that form substantially one arrangement and

- at least one main entity has a direct or indirect interest in a lower entity that is less than 50 per cent and
- the combined direct or indirect interest the main entities have in the lower entity is at least 50 per cent

each of the main entities will be linked to that lower entity.

#### Example 5 – Acquisitions in entities with interests in same lower entity



Person Z acquires a 100 per cent interest in A Pty Ltd and B Pty Ltd as part of one arrangement.

A has a direct interest in D of 51 per cent which means D is linked to A.

B has an indirect interest in D of 49 per cent through an ownership chain involving C Pty Ltd. The total interest that A and B have in D is 100 per cent, which means D is also linked to B.

Duty will be assessed on:

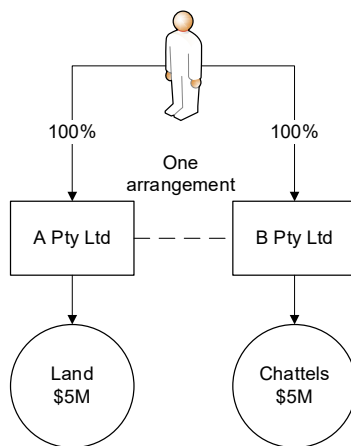
- the acquisition of A based on a value of \$2.55 million (\$5 million x 51 per cent) and
- the acquisition of B based on a value of \$2.45 million (\$5 million x 49 per cent).

### ***Acquisition of an interest in a landholder and transaction involving only chattels***

An entity that is only entitled to chattels will be a landholder when:

- there are acquisitions in that entity and another entity entitled to land assets of \$2 million or more and
- the acquisitions form substantially one arrangement.

#### ***Example 6 – Interests acquired in landholder and entity that holds chattels***



A person acquires 100 per cent of the shares in A Pty Ltd and B Pty Ltd as part of one arrangement.

As A is a landholder, B is deemed a landholder. Duty will apply to the acquisition of A on the land value of \$5 million and to the acquisition of B on the chattels value of \$5 million.

A transaction involving the acquisition of chattels only will be dutiable if it forms substantially one arrangement with a relevant acquisition in a landholder.

#### ***Example 7 – Acquisition of chattels as part of one arrangement with landholder acquisition***

E Pty Ltd purchases all of the shares in F Pty Ltd from G Ltd. F holds mining tenements valued at \$10 million, which means there is a relevant acquisition in a landholder.

On the same day, E also purchases mining equipment valued at \$20 million from G. The mining equipment is currently in use on the tenements held by F.

As the transactions form substantially one arrangement, the purchase of the mining equipment is subject to transfer duty on a dutiable value of \$20 million. Landholder duty applies to the relevant acquisition based on a value of \$10 million.

## Calculating landholder duty

For the purposes of calculating landholder duty, a landholder's value is determined by combining:

- the value of the landholder's land assets and chattels<sup>9</sup> and
- the value of any linked entity's land assets based the landholder's interest in that entity.

Landholder duty is calculated on the value of an acquirer's interest in the landholder immediately after the relevant acquisition.<sup>10</sup> This is reduced by the duty calculated on the value of the acquirer's *excluded interest* (if any).

An *excluded interest* is the total of:

- an interest held more than three years prior to the relevant acquisition
- an interest acquired by a relevant acquisition if landholder duty was chargeable and
- an interest acquired prior to the landholder (or any linked entity) having an entitlement to land assets in Western Australia. An excluded interest does not include the interest acquired by the relevant acquisition.

### Example 8 – Excluded interests

XYZ Ltd is an unlisted corporation which holds land assets and chattels valued at \$5 million. Person A acquires interests in XYZ as follows:

- 20 per cent on 1 January 2020 (acquisition 1)
- 20 per cent on 1 July 2021 (acquisition 2)
- 20 per cent on 1 January 2024 (acquisition 3)
- 40 per cent on 1 January 2025 (acquisition 4)

The duty for each acquisition is as follows:

- Acquisition 1 – There is no duty payable because A has not acquired a significant interest (total interest 20 per cent)
- Acquisition 2 – There is no duty payable because A has not acquired a significant interest (total interest 40 per cent)
- Acquisition 3 – A's total interest is now 60 per cent, which means there has been a relevant acquisition of a significant interest. There is an excluded interest of 20 per cent because A held this interest more than three years prior to the acquisition date. The duty payable will be:
  - duty calculated on the value of the interest held immediately after the acquisition of \$3 million (60 per cent x \$5 million) *less*
  - duty calculated on the value of the excluded interest of \$1 million (20 per cent x \$5 million).
- Acquisition 4 – A's significant interest has increased to 100 per cent, which means there has been a relevant acquisition. There is an excluded interest of 60 per cent because 40 per cent has been held for more than three years and duty was paid when the further 20 per cent acquired. The duty payable will be:
  - duty calculated on the value of the interest held immediately after the acquisition of \$5 million (100 per cent x \$5 million) *less*
  - duty calculated on the total value of the excluded interests of \$3 million (60 per cent x \$5 million).

<sup>9</sup> The Commissioner has published a number of practices to provide guidance on valuing various different types of land assets and chattels

<sup>10</sup> The general rate of transfer duty set out in Division 1 of Schedule 2 to the Duties Act applies.

## Exempt acquisitions

A relevant acquisition may be fully or partly exempt from landholder duty where:

- a direct transfer of the landholder's land assets to the acquirer would be fully or partly exempt from transfer duty or fully or partly liable for nominal duty
- the acquisition is by one member of a corporate family from another member of the same corporate family<sup>11</sup>
- an acquisition occurs to facilitate a court-approved compromise or arrangement<sup>12</sup> or
- a family member acquires an interest in a landholder that uses land assets for primary production.<sup>13</sup>

The agreement or acquisition statement must be lodged with the Commissioner even if a relevant acquisition is exempt (see lodgment requirements below).

## Liability

The parties following are jointly and severally liable to pay landholder duty:

- the acquirer
- if the landholder is a corporation – the corporation
- if the landholder is a unit trust – the trustee and
- a related person of the acquirer who holds an interest (other than an excluded interest) in the landholder immediately after the relevant acquisition.

Within two months of an acquisition, any of these liable parties may apply to the Commissioner to determine whether a landholder duty liability has arisen.

## Lodgment Requirements

When there is a relevant acquisition in a landholder, one of the liable parties must lodge form [FDA22 'Landholder Acquisition Statement'](#) or an agreement for the acquisition within two months after the acquisition occurs.

A person may apply to lodge periodical statements using [Form FDA20 'Application to Lodge Periodical Statements'](#) if they have acquired an interest in a landholder and expect to make more acquisitions (for example they have acquired a 90 per cent interest in a listed landholder and have commenced compulsory acquisition of the remaining 10 per cent).

When an acquisition becomes a relevant acquisition because another acquisition occurs, a liable party must lodge [FDA22 'Landholder Acquisition Statement'](#) or an agreement for the first acquisition within two months after the later acquisition.

## Foreign Landholder Duty

Additional duty may be payable if a foreign person acquires an interest in a landholder which holds residential land in Western Australia. See the ['Foreign Landholder Duty'](#) fact sheet.

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<sup>11</sup> For more information see the ['Entity Restructuring'](#) fact sheet.

<sup>12</sup> Under *Corporations Act 2001* (Cth) Part 5.1.

<sup>13</sup> See the ['Exempt Family Farm Transaction – Landholder Duty'](#) fact sheet.



## Contact RevenueWA

<b>Web Enquiry</b>	<a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a>	<b>Website</b>	<a href="http://WA.gov.au">WA.gov.au</a>
<b>Office</b>	200 St Georges Terrace Perth WA 6000	<b>Phone</b>	(08) 9262 1100 1300 368 364 (WA country landline callers)
<b>Postal</b>	GPO Box T1600 Perth WA 6845		

**Note:** This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.