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Public Ruling Duties Act:

LAND RICH DUTY – COMMISSIONER'S SATISFACTION IN RELATION TO RELATED PERSON'S INTEREST BEING USED AND ACQUIRED INDEPENDENTLY

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. Section 157(2) of the *Duties Act 2001* (the Duties Act) imposes land rich duty on the dutiable value of a relevant acquisition.
2. Under s.158 of the Duties Act a person makes a relevant acquisition if –
 - (a) the person acquires a majority interest¹ in a land rich corporation² or
 - (b) the person acquires an interest³ in a corporation and, when the following are aggregated, the aggregation results in a majority interest in a land rich corporation –
 - (i) interests acquired by the person in the land rich corporation in the preceding three years and
 - (ii) interests acquired by related persons of the person in the land rich corporation if the interests were acquired in the preceding three years and
 - (iii) interests held by related persons of the person in the land rich corporation if the person and the related persons became related persons in the preceding three years or
 - (c) having acquired a majority interest in a land rich corporation under paragraph (a) or (b) for which land rich duty was imposed, the person's interest in the corporation increases.

¹ Section 159(2) of the Duties Act

² Section 165 of the Duties Act

³ Section 159(1) of the Duties Act

3. The term 'related person' is broadly defined in s.164(1) of the Duties Act. Section 164(2) expands the definition of related person to include persons who acquire interests in a corporation under essentially one arrangement.
4. However, ss.164(3) and (4) of the Duties Act provides the Commissioner with the discretion not to treat persons identified in s.164(1), other than subsection (1)(d), as related persons of another person in certain circumstances.
5. The discretion does not apply to persons who are related under the expanded definition in s.164(2) of the Duties Act.
6. This Public Ruling sets out how the Commissioner will be satisfied under ss.164(3) or (4) of the Duties Act.

Ruling and explanation

7. For an acquisition that is a relevant acquisition because of an interest mentioned in s.158(1)(b)(iii), the Commissioner will exercise the discretion under s.164(3) of the Duties Act when satisfied that the interests of the persons will be used independently and will not be used for a common purpose.
8. For another acquisition the Commissioner will exercise the discretion under s.164(4) when satisfied that the interests of the persons—
 - (a) were acquired, and will be used, independently and
 - (b) were not acquired, and will not be used, for a common purpose.
9. To assist the Commissioner in determining the matters above the following must be lodged—
 - (a) a statutory declaration by each of the persons, declaring that—
 - (i) there is no arrangement, understanding or agreement, whether in writing or orally, between any of the persons, under which the interests are acquired, or the interests held are to be used inter-dependently and for a common purpose
 - (ii) none of the persons required as a condition of any arrangement, understanding or agreement to acquire the interests, whether in writing or orally, the making or completing of any other arrangements, understandings or agreements to acquire the interests and
 - (iii) all of the arrangements, understandings or agreements to acquire the interests whether in writing or orally, were made independently of each other.
 - (b) all written arrangements, understandings or agreements and any other information relevant to the acquisition.

Date of effect

10. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of Issue 3 July 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA164.2.1	3 July 2009	3 July 2009	30 June 2011

Superseded