



Contents	Page
What this Ruling is about	1
Ruling and explanation	2
Date of effect	3
References	3

Public Ruling Duties Act:

LAND RICH DUTY – RELATED PERSONS – SECTION 164(2) OF THE *DUTIES ACT 2001*

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. This Public Ruling outlines certain circumstances in which persons, generally, will not be considered to be related under s.164(2) of the *Duties Act 2001* (the Duties Act) for the purposes of Chapter 3 Part 1 of the Duties Act (the land rich provisions).
2. The land rich duty provisions only apply to unlisted corporations¹. These are corporations whose shares are not quoted on the market operated by a recognised stock exchange.
3. Section 157 of the Duties Act imposes land rich duty on the dutiable value of a relevant acquisition².
4. A person makes a relevant acquisition if –
 - (a) the person acquires a majority interest³ in a land rich corporation⁴ or
 - (b) the person or related person acquires an interest in a corporation and, when aggregated with certain acquisitions, a majority interest results⁵ or
 - (c) having acquired a majority interest, the person's interest in the corporation increases⁶.

¹ Defined in Schedule 6 of the Duties Act

² Defined in s.158(1) of the Duties Act

³ Defined in s.159(2) of the Duties Act

⁴ Section 165 of the Duties Act

⁵ Section 158(1)(b) of the Duties Act

⁶ Section 158(1)(c) of the Duties Act

5. A person acquires an interest in a corporation if the person obtains an interest, or increases the person's interest, in the corporation regardless of how it is obtained or increased. A person may acquire an interest in a corporation in a number of ways, including through an issue or transfer of shares.⁷
6. Section 164 of the Duties Act lists the persons who are related persons for the purposes of the land rich provisions.
7. Section 164(2) of the Duties Act states that a person is a related person of another person if the persons acquire interests in a corporation and the acquisitions form, evidence, give effect to or arise from what is substantially one arrangement.

Ruling and explanation

Subscribers acquiring shares under a public float

8. While each transaction will be considered on its individual merits, the acquisitions of shares in a public float by persons who are not 'related' for the purposes of s.164(1) of the Duties Act, would, generally, not be considered to be acquisitions by related persons for the purposes of s.164(2).
9. Section 164(2) of the Duties Act refers to 'persons', which encompasses a wide range of relationships including, but not limited to:
 - (a) partners in a partnership
 - (b) persons who, although not related under s.164(1) of the Duties Act at the time of the acquisition or acquisitions, become related within the meaning of that section soon after they acquire their respective shareholdings.
10. The Commissioner may require details of acquisitions under a public float to determine whether or not a majority acquisition by "related persons" has occurred.

Transfers of shareholdings by listed corporations

11. The situation may arise in which:
 - (a) a listed corporation holds a majority interest in an unlisted corporation that is a land rich corporation as defined in s.165 of the Duties Act and
 - (b) the listed corporation transfers its interest in the land rich corporation to the shareholders of the listed corporation.

Example

ABC Co Ltd (ABC) is a listed corporation of which XYZ Co Pty Ltd (XYZ) is a wholly owned subsidiary. XYZ is a land rich corporation. ABC transfers all shares in XYZ to the shareholders of ABC.

⁷ Section 162 of the Duties Act

12. While each transaction will be considered on its individual merits, the Commissioner would, generally, consider that the acquisitions of shares by persons in the circumstances outlined in paragraph 11, where those persons are not 'related' for the purposes of s.164(1) of the Duties Act, are not acquisitions by 'related persons' for the purposes of s.164(2).
13. The Commissioner may require details relating to the acquisition of the shares to determine whether or not a majority acquisition by 'related persons' has occurred.

Date of effect

14. 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
DA164.1.1	3 July 2009	3 July 2009	30 June 2011