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Public Ruling Duties Act:

LAND RICH DUTY— ACQUISITIONS OF INTERESTS IN A CORPORATION PREVIOUSLY LISTED ON A RECOGNISED STOCK EXCHANGE

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

- Chapter 3, Part 1 of the *Duties Act 2001* (the Duties Act) imposes land rich duty on the dutiable value of a relevant acquisition.¹
- Section 158(1) of the Duties Act provides that a person makes a relevant acquisition if:
 - the person acquires a majority interest² in a land rich corporation or
 - 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—
 - interests acquired by the person in the land rich corporation in the preceding 3 years
 - interests acquired by related persons of the person in the land rich corporation if the interests were acquired in the preceding 3 years
 - 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 3 years or
 - 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 157(1) & (2) of the Duties Act

² The term majority interest is defined by s.159(2) of the Duties Act. From 16 June 2006, a majority interest is an interest of 50% or more: s.6 of the *Revenue Legislation Amendment Act 2006*.

³ The term interest is defined by s.159(1) of the Duties Act.

3. The interests of related persons are aggregated to determine whether there is a relevant acquisition.⁴ For Chapter 3, Part 1 of the Duties Act, a related person includes a related body corporate.⁵ The term related body corporate⁶ has the same meaning for the Duties Act as it has for s.50 of the *Corporations Act 2001* (Cwlth).
4. A land rich corporation⁷ is an unlisted corporation that—
 - (a) has land-holdings in Queensland, the unencumbered value of which are \$1,000,000 or more and
 - (b) has land-holdings, whether within or outside of Australia, comprising 60%⁸ or more of the unencumbered value of all of its property.
5. An unlisted corporation⁹ is a corporation whose shares are not quoted on the market operated by a recognised stock exchange.¹⁰
6. The purpose of this Public Ruling is to confirm the operation of s.158(1)(b) of the Duties Act, in the following circumstances –
 - (a) related persons acquire interests in a corporation which, at the time the interests are acquired, is listed on a recognised stock exchange and has land-holdings to the extent specified by s.165(1)
 - (b) subsequent to those acquisitions of interests, the corporation de-lists, thereby becoming a land rich corporation, as defined
 - (c) after the corporation de-lists, a further interest is acquired by one of the related persons.

Ruling and explanation

7. For determining whether an acquisition is a relevant acquisition, the status of the corporation must be considered at the time of that acquisition, not at any earlier time when interests in the corporation may have been acquired.

Example 1

Property Co is a corporation whose shares are quoted on the Australian Stock Exchange and which has land-holdings to the extent specified by s.165(1) of the Duties Act.

⁴ Section 158(1)(b) of the Duties Act.

⁵ Section 164 of the Duties Act

⁶ Definition related body corporate in Schedule 6 of the Duties Act.

⁷ Sections 165(1) & (2) of the Duties Act

⁸ Section 7 of the *Revenue Legislation Amendment Act 2006* amended the threshold percentage from 80% to 60% from 16 June 2006.

⁹ Definition unlisted corporation in Schedule 6 of the Duties Act

¹⁰ Recognised stock exchange in Schedule 6 of the Duties Act; s.8 of the *Duties Regulation 2002*.

On 25 June 2002, 3 related bodies corporate acquire interests in Property Co –

25/06/02	Coy A	80%
25/06/02	Coy B	5%
25/06/02	Coy C	<u>15%</u>
Total interests acquired		<u>100%</u>

No land rich duty was imposed on the acquisitions because at 25 June 2002, the corporation's shares were quoted on a recognised stock exchange, the ASX.

In September 2002, Property Co is de-listed from the ASX, thereby becoming an unlisted corporation. Property Co's land-holdings remain unchanged, ie, it is still land rich to the extent specified by s.165(1) of the Duties Act. Property Co is now a land rich corporation, as defined.

On 1 December 2002, Coy A acquires the combined interests of Coy B and Coy C in Property Co –

Coy A's existing interest	80%	(acquired on 25/06/02)
Additional interest acquired	<u>20%</u>	(5% + 15%)
Total interest of Coy A Pty Ltd	<u>100%</u>	

Coy A has made a relevant acquisition because the aggregation under s.158(1)(b) results in a majority interest in Property Co, a land rich corporation –

Current acquisition by Coy A	20%	s.158(1)(b)
Interest acquired by Coy A in the 3 years preceding 1/12/02	<u>80%</u>	s.158(1)(b)(i)
Total	<u>100%</u>	

The dutiable value of the relevant acquisition by Coy A is the unencumbered value of all Queensland land-holdings of Property Co as at 1 December 2002, multiplied by the interest in, or total of interests in, the corporation constituting the relevant acquisition.¹¹

Unencumbered value of all Queensland land-holdings of Property Co as at 1/12/02	\$5,000,000
Total of the interests in Property Co constituting the relevant acquisition	100%
Dutiable value of relevant acquisition (\$5M times 100%)	\$5,000,000

8. In certain circumstances, the dutiable value is calculated only on the increase in a person's interest. However, the dutiable value of a relevant acquisition cannot be calculated in that way if land rich duty has not been paid on an earlier acquisition of a majority interest by the person, or on an earlier relevant acquisition through aggregation of interests of the person and related persons.¹²

¹¹ Section 179(1) of the Duties Act

¹² Sections 179(2) & (3) of the Duties Act

Example 2

Same scenario as Example 1.

No land rich duty was imposed on the earlier acquisitions by Coy A, Coy B and Coy C on 25 June 2002 because at that time, Property Co was a corporation whose shares were quoted on the ASX. Therefore, s.179(2) and (3) do not apply in respect of the acquisition of the further interest of 20% by Coy A on 1 December 2002.

Consequently, the dutiable value of the relevant acquisition cannot be calculated based only on the increase in Coy A's interest. Instead, the dutiable value must be calculated on 100% of the unencumbered value of Property Co's Queensland land-holdings.

9. Where interests are acquired in a corporation before the commencement of the Duties Act, the savings and transitional provisions of the Duties Act operate in respect of the aggregating of interests for land rich duty.¹³ If interests are acquired in a corporation both before and after the commencement of the Duties Act, the status of the corporation must be viewed as at the time of the most recent acquisition to determine whether the corporation is a land rich corporation, as defined.

Example 3

Same scenario as example 1, except that the earlier acquisitions by Coy A, Coy B and Coy C took place before the commencement of the Duties Act. No land rich duty was imposed on those acquisitions because at that time, Property Co was a corporation whose shares were quoted on the ASX. The dutiable value of the relevant acquisition made after the commencement of the Duties Act must be calculated on 100% of the unencumbered value of Property Co's Queensland land-holdings, because at the time of the relevant acquisition (1 December 2002), Property Co was a land rich corporation, as defined.

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
DA158.1.1	24 February 2009	24 February 2009	14 April 2010
Supersedes Practice Direction DA65.2	26 June 2006	26 June 2006	23 February 2009

¹³ Section 523 of the Duties Act