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Public Ruling Duties Act:

SECURITIES QUOTED ON THE MARKET OPERATED BY A RECOGNISED STOCK EXCHANGE – STAPLED SECURITIES

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. A stapled security is a financial product comprising two or more securities, such as a share in a corporation and a unit in a unit trust, which are contractually bound together and cannot be traded separately. Generally, each individual security forming part of the stapled security retains its legal character and there is no variation of the rights or obligations attaching to the individual security.
2. If a stapled security is quoted on a stock exchange, a price attaches to the quoted stapled security as a whole. No price attaches to each security forming part of the quoted stapled security.
3. Landholder duty is imposed on certain acquisitions of interests in landholders.¹ An acquisition of an interest in a listed or unlisted corporation or listed unit trust, that holds land in Queensland valued at \$2,000,000 or more, may attract landholder duty.²
4. Corporate trustee duty is imposed on certain acquisitions of interests in corporate trustees or relevant corporations for corporate trustees.³ The corporate trustee duty provisions only apply to acquisitions of interests in unlisted corporations.⁴

¹ Chapter 3, Part 1 of the *Duties Act 2001* (the Duties Act)

² Sections 165 and 165A of the Duties Act

³ Chapter 3, Part 2 of the Duties Act

⁴ Defined in Schedule 6 of the Duties Act

5. Transfer duty is imposed on the dutiable value of a dutiable transaction.⁵ A trust acquisition or trust surrender is a dutiable transaction.⁶ However, transfer duty does not apply to a trust acquisition or trust surrender of a trust interest in a public unit trust, other than a majority trust acquisition in a land holding trust.⁷ A public unit trust is defined to include, among others, a listed unit trust.⁸ A listed unit trust is a unit trust the units in which are quoted on the market operated by a recognised stock exchange.⁹
6. The term 'quoted' is not defined in the *Duties Act 2001* (the Duties Act) and therefore has its ordinary meaning.
7. The expression recognised stock exchange is defined as the Australian Securities Exchange or another stock exchange prescribed under a regulation.¹⁰ The *Duties Regulation 2002* prescribes as recognised stock exchanges the Australia Pacific Exchange Limited, the Bendigo Stock Exchange Ltd, the Stock Exchange of Newcastle Limited, and a stock exchange that is a member of the World Federation of Exchanges.¹¹

Ruling and explanation

8. Where a stapled security is quoted on the market operated by a recognised stock exchange, for the purposes of the Duties Act, the individual securities which comprise the stapled security are quoted on the market operated by the stock exchange. That is, each individual component of the stapled security is quoted in its own right.
9. When determining any duty consequences of a transaction involving a stapled security, the provisions of the Duties Act are applied to the individual components of the stapled security.
10. Where an individual security forming part of a stapled security quoted on the market operated by a recognised stock exchange is a share in a corporation, that corporation is a corporation whose shares are quoted on the market operated by a recognised stock exchange. As the corporation is listed, acquisitions of interests will not attract corporate trustee duty. However, where the listed corporation is a landholder, landholder duty will apply where the interest acquired is 90% or more.¹²
11. Similarly, where an individual security forming part of a stapled security quoted on the market operated by a recognised exchange is a unit in a unit trust, that unit trust is a listed unit trust and therefore a public unit trust.¹³ Therefore, any trust acquisition or trust surrender of a trust interest in such a unit trust would not be liable for transfer duty as the unit trust is a listed unit trust. However, where the listed unit trust is a landholder, landholder duty will apply where the interest acquired is 90% or more.¹⁴

⁵ Section 8 of the Duties Act

⁶ Section 9(1)(i) of the Duties Act

⁷ Section 49(2) of the Duties Act

⁸ Section 68(a) of the Duties Act

⁹ Section 69 of the Duties Act

¹⁰ Schedule 6 of the Duties Act

¹¹ Section 8 of the Duties Regulation 2002

¹² Sections 159(2)(b) and 165A of the Duties Act

¹³ A listed unit trust cannot be a land holding trust for Chapter 2, Part 8 of the Duties Act. Refer to the definition of land holding trust in Schedule 6 of the Duties Act, the definition of wholesale unit trust in s.72(1) and (2) of the Duties Act and pooled public investment unit trust in s.75 of the Duties Act.

¹⁴ Sections 159(2)(b) and 165A of the Duties Act

Example

A stapled security, comprising a share in X Ltd and a unit in Y Unit Trust, is quoted on the Australian Securities Exchange.

For the purposes of the Duties Act, each individual component of the stapled security, that is, the share in X Ltd and the unit in Y Unit Trust, is quoted in its own right on the Australian Securities Exchange.

For transactions involving the quoted stapled securities:

- *in respect of the shares in X Ltd, corporate trustee duty would not apply as X Ltd is not an unlisted corporation*
- *in respect of the units in Y Unit Trust, any trust acquisition or trust surrender of a trust interest would not be liable for transfer duty as Y Unit Trust is a listed unit trust, and is therefore a public unit trust and*
- *the landholder provisions would apply if either entity is a landholder.*

Date of effect

12. This Public Ruling takes effect from 1 July 2011.

Tony Kulpa
Deputy Commissioner of State Revenue
Date of Issue 30 June 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.5.3	30 June 2011	1 July 2011	2 September 2013
DA000.5.2	15 April 2010	15 April 2010	30 June 2011
DA000.5.1	24 February 2009	24 February 2009	14 April 2010
Supersedes Practice Direction DA 78.3	10 October 2008	10 October 2008	23 February 2009