



Land Rich Disposal Duty

Disposal duty (land rich vendor duty) ceased to apply to a disposal of an interest in a landholder from 2 August 2005

Vendor duty land rich provisions

Effective from 10 November 2004, certain disposals of interests in land rich landholders are liable to land rich disposal duty payable at the same rate as vendor duty.

A landholder includes any of the following:

- a private unit trust scheme
- a wholesale unit trust scheme
- a private company.

These terms are defined in the Dictionary of the *Duties Act 1997*.

What makes a landholder land rich?

A landholder is land rich if:

- it has land holdings in New South Wales with an unencumbered value of \$2 000 000 or more, and
- its land holdings in all places, whether within or outside Australia, comprise 60 per cent or more of the unencumbered value of all its property (except for certain excluded property).

The land holdings of any **linked entity** are also included when determining whether a landholder is land rich.

A unit trust scheme or a private company (the principal entity) is also considered to hold an interest in land held by a **linked entity**, that is, a person:

- who is part of a chain of persons:
 - ▶ which includes the principal entity, and
 - ▶ which is comprised of one or more links, and
 - ▶ in which a link exists if a person would be entitled to receive 20 per cent or more of the unencumbered value of the property of another person if that person were to be wound up, and
 - ▶ who are not linked to the principal entity by a public trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges, and



- who is not a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges.

The value of the interest held via a linked entity is that portion of the unencumbered value the unit trust scheme or private company would be entitled to if each entity in the chain was wound up.

When is duty payable?

Duty is payable by a person who makes a relevant disposal; that is, when a person who has a significant interest in a land rich landholder disposes of all or some of their interest.

A person has a significant interest in the landholder if, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, they would be entitled to:

- in the case of a private unit trust scheme:*
20 per cent or more of the property distributed, or
- in the case of a landholder other than a private unit trust scheme:*
50 per cent or more of the property distributed.

This includes a person who has or had at any time within the three years prior to the disposal:

- a significant interest in the landholder, or
- an interest that, when taken together with interests held by any associated persons, amounts to a significant interest in the landholder.

Note: the three-year period excludes any part of that period that occurred prior to 10 November 2004.

Disposing of an interest

A person with an interest in a land rich landholder disposes of an interest in the landholder if:

- the person ceases to have an interest in the landholder, or
- the person's interest in the landholder decreases, regardless of how that happens.

If you have made a relevant disposal, you must lodge the 'Disposal Statement: Disposal of an Interest in a Land Rich Landholder' (ODA 044) form with the Chief Commissioner.

How is duty calculated?

Duty is chargeable on a relevant disposal at the rate of 2.25 per cent, on the amount calculated by multiplying the unencumbered value of all NSW land holdings of the landholder by the proportion of that value represented by the interest disposed of in the relevant disposal.

Example

XYZ Pty Ltd is a land rich landholder which has land holdings in NSW valued at \$3 million.

Mr A owns 10% and Mrs A owns 40% of the shares in the company, which they acquired when the company was incorporated.

Mr A disposes of his shares, making the transaction a relevant disposal.

The duty payable by Mr A is: 2.25% x (% interest in the land holding x value of all land holdings)

$$= 2.25\% \times (10\% \times \$3\,000\,000) = \$6\,750$$

Note: if a land holding is an exempt land holding, the unencumbered value of this land holding should be deducted from the total unencumbered value when calculating the duty payable on the relevant disposal.

When must duty be paid?

Duty must be paid within three months of when the relevant disposal is made.

What land holdings and transactions are exempt?

Exempt land holdings

a) The following land holdings are to be disregarded when calculating the duty on a disposal if the Chief Commissioner is satisfied that, had a transfer of the land occurred immediately prior to the disposal, the transfer would have been exempt from vendor duty under Chapter 4 of the *Duties Act 1997*:

- primary production land (farms)
- new and substantially new buildings*
- improved vacant land
- land subject to conservation instruments.

*If you (or an associated person) claim this exemption for a relevant disposal, you may only claim it for one disposal.

(ii) Land holdings that have not significantly increased in value
If the unencumbered value of a particular land holding at the disposal date has increased by not more than 12% since the date the person first acquired an interest in the landholder or from the date the landholder acquired the land holding (whichever is later), the unencumbered value of this land holding at the disposal date is to be disregarded when calculating the duty payable.

(iii) Land holdings that have increased between 12 per cent - 15 per cent
If the unencumbered value of a particular land holding at the disposal date has increased by more than 12 per cent, but not more than 15 per cent since the date the person first acquired an interest in the landholder or from the date the landholder acquired the land holding (whichever is later), the unencumbered value of the landholding at the disposal date is to be discounted for the purpose of calculating the duty payable in accordance with the following table:

Increase in unencumbered value of land holding	Discount on unencumbered value
More than 12% but not more than 13%	75%
More than 13% but not more than 14%	50%
More than 14% but not more than 15%	25%

Exempt transactions

Exempt transactions include:

- a) Deceased estates
A transaction is exempt if the interest was disposed of by a person in their capacity as the executor or administrator, or solely as the result of the distribution of the estate of a deceased person.
- b) Relationship breakdown
Certain disposals following the breakdown of a marriage or domestic relationship are exempt from duty
- c) Passive disposals
A passive disposal by a person of an interest in a landholder is exempt if the Chief Commissioner is satisfied:
- ▶ the disposal occurred entirely as a consequence of actions,

MORE INFORMATION



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decisions or events which the person and any associated persons had no control over, and

- ▶ the person and any associated persons didn't receive any consideration or benefit as a result of the disposal, and
- ▶ the disposal did not form part of an arrangement to avoid the payment of duty.

For information on other exempt transactions, contact OSR.

How are land holdings valued?

Where, as a consequence of a relevant disposal being made, a relevant acquisition is made by another person, the unencumbered value of a landholding at that date will be determined for both acquisition duty and disposal duty by reference to the same valuation, being a formal valuation or any other document the Chief Commissioner considers to be appropriate (such as a stamped agreement for sale of land).

The same general valuation principles will apply if a concession is being claimed for land holdings that have not significantly increased in value.

In any other case, for the purpose of determining the duty chargeable on a relevant disposal, the unencumbered value of all land holdings of a landholder in NSW can be determined by any of the following documents, provided the document has been prepared within 12 months before the date a liability for duty arises:

- an independent valuation of the land holdings of the landholder,
- property valuations used by the landholder in preparing an annual return to be lodged under the *Corporations Act 2001* of the Commonwealth,
- a financial report of the landholder, certified by an independent auditor as presenting a true and fair view of a landholder's financial position,
- another document the Chief Commissioner considers to be appropriate for calculating the value of the land holdings of the landholder.

If there is more than one relevant document, the most recently prepared document is to be used for the purpose of determining the value of the landholder's land holdings.

Registration of wholesale unit trust schemes

The responsible entity of a unit trust scheme may apply to the Chief Commissioner for registration of the scheme as a wholesale unit trust scheme (applicants should complete OSR form ODA 045 – Application for registration of a unit trust scheme).

The criteria for registration as a wholesale unit trust scheme are that:

- a) not less than 80 per cent of the units in the unit trust scheme are held by qualifying investors (defined in Section 163ZU of the *Duties Act 1997*), and
- b) each qualifying investor holds less than 50 per cent of the units in the unit trust scheme or, if a qualifying investor holds units in the unit trust scheme in more than one capacity, the qualifying investor holds less than 50 per cent of the units in each capacity.

In the absence of registration, the unit trust scheme will be treated as a private unit trust scheme for the purposes of disposal duty. That is, significant interests will be 20 per cent or more, rather than 50 per cent or more.

You can inspect the register of wholesale unit trusts at www.osr.nsw.gov.au.