



Landholder Duty

The landholder provisions commenced on 1 July 2009 to charge duty on certain acquisitions of interests in landholders at the same rate as for a transfer of land. Amendments effective from 1 December 2009 have been made.

A landholder includes any of the following:

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

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

The provisions apply where a landholder has land holdings in NSW with an unencumbered value of \$2 million or more.

From 1 December 2009, if a land holding consists of an estate in fee simple in land, the land value of the land (as determined under the *Valuation of Land Act 1916*), rather than the unencumbered value of the land, is used to determine whether the \$2 million threshold is met.

However, once a liability arises, duty will be calculated with reference to the unencumbered value of the land holdings in NSW. Duty will also be payable on the relevant portion of the unencumbered value of the goods of the landholder.

Private landholders

A private landholder is:

- a private unit trust scheme
- a private company

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

Tracing of property – linked entity

The property of any **linked entity** is deemed to be the property of the landholder.

A private unit trust scheme or a private company (the principal entity) is also considered to hold an interest in land or other property held by a linked entity, that is a person who is part of a chain of persons:

- which includes the principal entity
- which is comprised of one or more links



- which a link exists if a person would be entitled to receive not less than 50 per cent of the unencumbered value of the property of another person in the event of a distribution of all the property of the person, and
- which does not include in any of the links between the person and the principal entity a public unit trust scheme or a listed company.

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

When does a liability arise?

A liability arises when a person makes a relevant acquisition.

A person makes a relevant acquisition if the person:

- a) acquires an interest in a landholder:
 - i) that is of itself a significant interest in the landholder; or
 - ii) that, when aggregated with other interests in the landholder held by the person or an associated person, results in an aggregation that amounts to a significant interest in the landholder; or
 - iii) that, when aggregated with other interests in the landholder acquired by the person or other persons under transactions that form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers, results in an aggregation that amounts to a significant interest in the landholder; or
- b) has a significant interest, or an interest described in paragraph (a)(ii) above, in a landholder, and acquires a further interest in the landholder.

You have an interest in a landholder if, in the event of a distribution of all the property of the landholder, you would be entitled to any of the property distributed.

You have a significant interest in a private landholder if, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, you would be entitled to 50 per cent or more of the property distributed.

Note: an entitlement that arises merely because a person has a debt interest (within the meaning of Division 974 of the *Income Tax Assessment Act 1997*) in a landholder or an interest that would be a debt interest if the landholder were a company for the purposes of that Division, is not an interest in a landholder. Applies from 1 December 2009.

Acquiring an interest

You acquire an interest in a landholder if you obtain an interest, or your interest in the landholder increases, regardless of how it is obtained or increased (for example by a purchase of shares or units).

A change in the capacity in which a person holds an interest in a landholder is regarded as an acquisition of an interest in the landholder. For example, if a person who holds a share or unit in a landholder declares a trust in respect of the share or unit.

If an interest in a landholder is acquired or held by a person as bare trustee for another person, the interest is taken to have been acquired by, or to be held by, the ultimate beneficial owner of the interest. The ultimate beneficial owner of an interest is a beneficial owner of an interest who does not hold the interest as bare trustee for another person (so that, if there is a chain

of bare trustees, the ultimate beneficial owner is the last beneficial owner in that chain). Applies to acquisitions made on or after 1 December 2009. Transitional provisions apply.

If you have made a relevant acquisition, you must lodge the 'Acquisition Statement: Acquisition of an Interest in a Landholder' (ODA 043) form with the Chief Commissioner.

How is duty calculated?

a) Where an acquisition statement does not disclose any acquisitions during the three years preceding the relevant acquisition

Duty is chargeable at the transfer of land rate (1.25 – 5.5 per cent) on the amount calculated by multiplying the unencumbered value of all land holdings and goods of the landholder in NSW (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

b) Where an acquisition statement discloses one or more acquisitions during the three years preceding the relevant acquisition, (including any interests acquired by associated persons on the same date)

Duty is chargeable at the transfer of land rate on the aggregate of the amounts severally calculated using the method described above for each interest required to be disclosed in the statement.

Credit to prevent double duty

To prevent the payment of double duty in respect of a relevant acquisition, the duty payable on the acquisition statement will be reduced by:

- any duty paid previously in respect of any earlier acquisition which must be disclosed on the current statement, and
- a proportion of the duty payable on the share or unit transfer.

Note: See Section 155 of the *Duties Act 1997* for more information.

When must duty be paid?

You must pay duty within three months of when you make the relevant acquisition.

Who is responsible for paying duty?

Duty is payable by a person who makes a relevant acquisition in a landholder.

If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

The term 'associated person' is defined in the dictionary of the *Duties Act 1997*.

What evidence of value is required?

Once a liability arises, you must lodge a formal valuation or any other document the Chief Commissioner considers to be appropriate (eg a stamped agreement for sale of land), of the unencumbered value of each of the landholder's land holdings and goods owned as at each acquisition date that you have disclosed in your Acquisition Statement.

What goods are not included?

For landholder duty 'goods' does not include:

- goods that are stock in trade
- materials held for use in manufacture
- goods under manufacture
- goods held or used in connection with land used for primary production
- livestock
- a registered motor vehicle
- a ship or vessel.

What acquisitions are exempt?

Exempt acquisitions include:

- Corporate reconstructions –
Certain acquisitions as part of corporate reconstruction transactions (see Revenue Ruling DUT026)
- Relationship breakdown –
Certain acquisitions following the breakdown of a marriage or defacto relationship are exempt from duty.
- Deceased estates –
An acquisition is exempt if you acquired the interest in your capacity as the executor or administrator, or solely as the result of the distribution of the estate of a deceased person.

For information on other exemptions, please contact us.

Note: interests acquired under exempt acquisitions are counted as 'interests' for the purpose of determining whether a person has a significant interest.

Public landholders

Public landholders are:

- listed company
- public unit trust scheme

These terms are defined in the dictionary to the *Duties Act 1997*.

When does a liability arise?

You have a significant interest in a public landholder if, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, you would be entitled to 90 per cent or more of the property distributed.

An acquisition of a significant interest will be chargeable with duty if an acquisition is made in the public landholder on or after 1 October 2009. Acquisitions in public landholders made before 1 July 2009 are exempt from duty.

How is duty calculated?

Duty on the acquisition of a significant interest in a public landholder will be charged at the concessional rate being 10 per cent of the rate that would be charged on a transfer of all the landholdings and goods of the public landholder.

For further information on the application of the provisions to public landholders please contact us.

MORE INFORMATION



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Help in community languages is available.

Primary producers – special provisions

A primary producer is a landholder whose land holdings wholly or predominantly comprise land used for primary production, as defined in Section 274 of the *Duties Act 1997*.

If you acquire a relevant interest in a primary producer whose land holdings represent 80 per cent or more of the unencumbered value of all their property, and the landholder holds land with an unencumbered value of \$2 million or more in NSW, landholder duty is chargeable. You must lodge an acquisition statement.

Note: Where the land ratio is less than 80 per cent and at the time of the acquisition the landholder held \$2 million or more land in NSW, if, at any time within five years of the acquisition, the landholder ceases to be a primary producer, you must notify the Chief Commissioner. You will then be assessed for duty on your acquisition, with duty chargeable on the date when the landholder ceased to be a primary producer.

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