

Tax Alert

Proposed reforms to land rich duty: Adoption of a landholder duty model

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Land rich duty in Victoria is charged on certain acquisitions in 'land rich' landholders. It is intended to create a liability for duty where there is a change in ownership or control of an entity that holds land in Victoria.

The provisions as they currently stand have been described as complex and inefficient, and are not in line with the comparative provisions in other states and territories.

In response to this, reforms to land rich duty laws were announced in the 2011-2012 Victorian State Budget. They are scheduled to commence on 1 July 2012.

These reforms are aimed at eliminating the need for complex valuations and calculations of property. Key reforms include removing the 'land ratio' test, and introducing a potential liability for duty where there is an acquisition in listed companies and public unit trust schemes.

Who is a relevant landholder?

Duty provisions currently apply where an entity has land holdings in Victoria with an unencumbered value of \$1,000,000 or more, and whose land holdings in all places, whether within or outside Australia, comprise 60% or more of the unencumbered value of all its property.

Under the reforms, the 60% land ratio test will no longer apply. The 'land value threshold' of \$1,000,000 is kept,

and duty is now phased-in for landholdings between \$1,000,000 and \$2,000,000.

When does liability arise?

Liability arises when a 'relevant acquisition' is made. Currently, a person makes a relevant acquisition if they acquire an interest alone, with an associated person or under an associated transaction in a land rich landholder.

An interest in a landholder is an entitlement (otherwise than as a creditor or other person to whom the landholder is liable), whether directly or through another person, to a distribution of property from the landholder on a winding up.

The interest acquired must be a 'significant interest'; that is, an entitlement to a distribution of 20% or more in a private unit trust scheme or 50% or more in a private company or wholesale unit trust scheme.

A relevant acquisition may also be made by acquiring control of a land rich landholder, or by acquiring an interest on the conversion of a unit trust scheme from private to public.

Under the proposed reforms these thresholds will remain in substance.

In addition, a significant interest in a public landholder will be an entitlement to a distribution of 90% or more of property on a winding up. Duty will be generally charged on acquisitions in a public landholder at the concessional rate of 10% of the usual dutiable rate.

In line with the current provisions, a relevant acquisition in a public landholder may also be made where a private company converts to a listed company.

Administrative changes

Commissioner's discretion

Currently, the Commissioner may exempt an acquisition from duty if they are satisfied that the application of the land rich provisions would not be just and reasonable.

The reforms will remove this discretion. However, the Commissioner will now be able to reduce the duty payable where there is an anomalous duty outcome.

Tracing provisions

The current laws also contain tracing provisions. As well as holding land in its own right, a landholder may also hold land indirectly through a linked entity which is not a natural person. The interest held is the proportion of property that the landholder would be entitled to receive if all the linked entities were wound up.

Any property of a linked entity is not counted as an interest held by the landholder unless at least 20% of the linked entity's property would be ultimately received by the landholder on a notional winding up.

The reforms will retain the 20% threshold, and these rules will also apply to public entities.

Aggregation of interests

Currently, only interests acquired within 3 years of the current acquisition are aggregated for determining the relevant acquisition.

The reforms will take into account all acquisitions (except those made before the landholder acquired land in Victoria) when determining whether a relevant acquisition has been made. However, once the 'significant interest' threshold is reached, duty will only be charged on acquisitions occurring within the 3 year period.

It is important to note that these aggregation rules will only apply to acquisitions in private landholders. Acquisitions in public landholders will generally attract the concessional 10% rate of duty on all dutiable property of the landholder.

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