

Land Rich Duty Changes Again

Background

The Duties Amendment (Land Rich) Bill 2003 was introduced into Legislative Assembly on 14 November 2003 to rewrite the Land Rich provisions in the Duties Act 1997. It is proposed that the Bill will take effect from the date of its introduction into the Legislative Assembly (ie **14 November 2003**).

The Land Rich provisions impose the higher general conveyance rates of duty on the acquisition of a *relevant interest* in a *private corporation* instead of the lower rate of duty on the transfer of shares.

There has been a lot of concern over various changes made to the Land Rich provisions over the past few years. It seems those concerns have manifested themselves in a complete rewrite of the provisions. Unfortunately the amendments expand the net of the Land Rich provisions rather than ameliorate the effects of the changes over the past few years.

Important features of the proposed changes

- (**Landholder**) The current concept of *private corporation* is replaced with the concept of *landholder*.

Landholder includes private companies, private unit trust schemes and wholesale unit trust schemes.

Wholesale unit trust schemes is a unit trust scheme in which not less than 80% of the units are held by investors who are trustees of certain fund or trusts and in which each such investor holds less than 50% of the units, or a unit trust scheme which it is anticipated will become a wholesale unit trust scheme within 12 months.

- (**Imposition of duty**) Liability for duty arises under the proposed changes when a *relevant acquisition* is made. A relevant acquisition is made when a person acquires:
 - (a) a *significant interest* in a landholder; or
 - (b) an *interest* which, when aggregated with interests of the person or associated persons, amounts to a significant interest; or
 - (c) an interest which, when aggregated with other interests acquired by the person or other persons acting under transactions that comprise substantially one arrangement between the acquirers, amounts to a significant interest.

The proposed amendments change the test from the *majority interest* test to the *significant interest* test. Under the present provisions a person has a majority interest if he has an entitlement to more than 50% of the property of a private corporation in the event of the distribution of all of the property of the private corporation.

Under the proposed provisions a person has a *significant interest* if the person has an entitlement in the event of a distribution of all the property of the landholder to 20%

Land Rich Duty Changes Again

or more of the property in the case of a private corporation or 50% or more of the property in the case of a landholder other than a private unit trust.

Furthermore duty is triggered when a person who holds a significant interest acquires a further interest in the landholder.

- **(Threshold Test)** There are significant changes to the test of whether a landholder is land rich. A landholder now must hold land where the unencumbered value is \$2,000,000 instead of \$1,000,000. However the proportion of the total land holdings to the unencumbered value of the landholders total assets has dropped from 80% to 60%.
- **(Tracing Provisions)** The tracing provisions have also been expanded. The present provisions allow constructive ownership of land and other property to be traced through a subsidiary of a private corporation or through a discretionary trust. The proposed changes allow ownership to be traced through *linked entities*.

What amounts to a linked entity to a unit trust scheme or a private company is very broad. Generally a unit trust scheme or a private company is linked with an entity if all persons in the “chain” were wound up and the unit trust scheme or a private company (as the case may be) would be entitled to receive not less than 20% of the unencumbered value of the property of the entity.

- **(Uncompleted Agreements)** A further significant proposed change is the insertion of a new provision dealing with uncompleted agreements. There is no meaningful discussion of the proposed changes in the explanatory notes and the changes appear to be directed at closing possible avoidance avenues. In doing so, the provisions create uncertainty and give the Chief Commissioner draconian powers to grant refunds or defer payment.

Currently if at the time of acquisition of an interest by any person in a land-rich private corporation, the corporation is the vendor under an uncompleted agreement for the sale or conveyance of land and the agreement is subsequently completed, the Chief Commissioner is required to assess the situation as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the corporation.

Under the new provisions the transferor and the transferee under an uncompleted agreement for the transfer of land are taken to be separately entitled to the whole of the land. If the landholder has agreed to dispose of property other than land under an agreement that is completed the agreement is taken to be completed even though it has not. In addition, if the landholder has agreed to acquire property other than land and has not completed the agreement, the agreement is to be disregarded.

- **(Concessions and Exceptions)** Certain concessions are made for primary producers and there have been various changes to the exception of interests from the land rich provisions.

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Further information

If you require any further information or have any questions concerning the proposed changes to the land rich provisions please contact Norman Donato on + 61 2 9233 9031 or send an email to ndonato@makdap.com.au.



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This is a brief and general outline of the law on the subject matter as at 18 November 2003. No action should be taken in reliance on this note without first obtaining detailed and specific advice.