

DUTIES Landholder Duty – Meaning of Entitlement

Introduction

1. An acquisition of an interest in an entity that is a landholder is subject to landholder duty under Chapter 3 of the Duties Act 2008 (Duties Act) if it is a relevant acquisition.
2. This ruling:
 - (a) outlines the Commissioner's interpretation of the word 'entitlement' for the purposes of section 153 of the Duties Act and
 - (b) clarifies the treatment of relevant acquisitions by trustees and custodians.

Background

Relevant acquisitions

3. An acquisition of an interest in an entity that is a landholder will generally be a relevant acquisition² if the acquirer or aggregated group³ acquires a

Custodian and bare trustees

7. Some trustees have the power to appoint custodian trustees of part or all of the trust fund for the more effective management of the trust property.⁸ A custodian trustee's duties will depend on the terms of the contract or legislation by which it is appointed and will be

owner of the shares to readily become the full owner of the shares gave them an entitlement to a distribution on winding up of the corporation.

13. The Commissioner interprets the word 'entitlement' in section 153 of the Duties Act in accordance with the decision in Commissioner for ACT Revenue v Francey as it is consistent with the definition of entitled in section 3 of the Duties Act. This interpretation is also consistent with section 154 of the Duties Act which calculates an interest in a landholder on the basis that all powers and discretions have been exercised.

Interests held by custodians and bare trustees

14. A bare trustee does not have an entitlement for the purposes of section 153 of the Duties Act because it is entitled for the purposes of the trust only to the extent of the legal interest in the property.
15. The Commissioner will usually treat a custodian as a bare trustee because it is only entitled to the legal interest in the property and carries out all its duties on direction from the managing trustees.
16. Where an interest in an entity is held or acquired by a custodian or bare trustee, the person who has the entitlement under section 153 of the Duties Act is:
 - (a) for a custodian – the managing trustee that appointed the custodian (for example, unit trustee or superannuation fund trustee) and
 - (b) for a bare trustee – the beneficiary of the trust.
17. If a person submits that a custodian or bare trustee has an entitlement for the purposes of section 153 of the Duties Act, they must satisfy the Commissioner in this regard, for example, by reference to the specific terms of the trust deed or relevant legislation under which the trustee is appointed.

Interests held by trustees (excluding custodians and bare trustees)

18. A person has an interest in an entity as a trustee when the person has an entitlement to the surplus property of the entity if it were to be wound up and that entitlement is held by the person for the purposes of a scheme or trust.
19. A person that holds or acquires interests in an entity on behalf of different trusts is considered a separate person in relation to each trust. On that basis, interests held by a person or acquired on behalf of different trusts will be treated as if they were held or acquired by separate persons.
20. An interest held or acquired by a trustee for separate trusts will not be aggregated to determine if there has been a relevant acquisition unless section 162(1) of the Duties Act applies to the trustee in its separate capacities, such as where:
 - (a) the trusts have common beneficiaries or
 - (b) the interests held or acquired on behalf of each trust were acquired by acquisitions that together form, evidence, give effect to or arise from what is substantially one arrangement.

Example

Family Pty Ltd acquires a 25 per cent interest in a landholder as trustee for the Smith Trust and a 25 per cent interest in a landholder as trustee for the Jones Trust. Family Pty Ltd is treated as a separate acquirer in relation to each trust.

If Family Pty Ltd T/F Smith Trust and Family Pty Ltd T/F Jones Trust are not related under section 162(1) of the Duties Act, the interests will not be aggregated to determine if there has been a relevant acquisition in the landholder.

If Family Pty Ltd T/F Smith Trust and Family Pty Ltd T/F Jones Trust are related persons, the Commissioner can determine that they are not related unless:

- x the interests in the landholder were acquired as part of substantially one arrangement or
- x Family Pty Ltd in its capacity as trustee for the Smith Trust was acting in concert with Family Pty Ltd in its capacity as trustee for the Jones Trust.

If related, the interests will be aggregated. This means there is a relevant acquisition in a landholder.

21. Further information about related persons is provided in Commissioner's Practice [DA 2 'Landholder Duty – Related Persons and Commissioner's Discretion'](#) which is available from the website at WA.gov.au

Ruling History

Revenue Ruling	Issued	Effective Date	
		From	To