



Contents	Page
What this Ruling is about	1
Ruling and explanation	2
Date of effect	3
References	3

## Public Ruling Duties Act:

### LANDHOLDER DUTY – RELATED PERSONS – SECTION 164(2) OF THE *DUTIES ACT 2001*

*A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.*

## What this Ruling is about

1. This Public Ruling outlines certain circumstances in which persons, generally, will not be considered to be related under s.164(2) of the *Duties Act 2001* (the Duties Act) for the purposes of Chapter 3 Part 1 of the Duties Act (the landholder provisions).
2. The landholder provisions apply to listed or unlisted corporations and listed trusts<sup>1</sup>.
3. Section 157(1) of the Duties Act imposes landholder duty on a relevant acquisition<sup>2</sup>. For a relevant acquisition in a private landholder<sup>3</sup>, landholder duty is imposed on the dutiable value of the relevant acquisition.<sup>4</sup> For a relevant acquisition in a public landholder<sup>5</sup>, the landholder duty imposed is 10% of the amount of transfer duty that would be imposed if all of the landholder's Queensland land-holdings were transferred at the date of the relevant acquisition.<sup>6</sup>
4. A person makes a relevant acquisition if –
  - (a) the person acquires a significant interest<sup>7</sup> in a landholder<sup>8</sup> or
  - (b) the person or related person acquires an interest in a landholder and, when aggregated with certain acquisitions, a significant interest results<sup>9</sup> or

<sup>1</sup> Defined in Schedule 6 of the Duties Act

<sup>2</sup> Defined in s.158(1) of the Duties Act

<sup>3</sup> Defined in s.165A(1) of the Duties Act

<sup>4</sup> Section 157(2)(a) of the Duties Act

<sup>5</sup> Defined in s.165A(2) of the Duties Act.

<sup>6</sup> Sections 157(2)(b) and 179A of the Duties Act. Section 179B of the Duties Act provides that, for section 179A, the dutiable value of the dutiable transaction is the unencumbered value of all Queensland land-holdings of the landholder at the time of the acquisition, reduced by the proportion of the value represented by any excluded interest.

<sup>7</sup> Defined in s.159(2) of the Duties Act

<sup>8</sup> Section 165 of the Duties Act

<sup>9</sup> Section 158(1)(b) of the Duties Act

- (c) having acquired a significant interest, the person's interest in the landholder increases<sup>10</sup>.
5. A person acquires an interest in a landholder if the person obtains an interest, or increases the person's interest, in the landholder regardless of how it is obtained or increased.<sup>11</sup> A person may acquire an interest in a landholder in a number of ways, including through an issue of shares or units.<sup>12</sup>
6. Section 164 of the Duties Act lists the persons who are related persons for the purposes of the landholder provisions.
7. Section 164(2) of the Duties Act states that a person is a related person of another person if the persons acquire interests in a landholder and the acquisitions form, evidence, give effect to or arise from what is substantially one arrangement.

## **Ruling and explanation**

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### **Subscribers acquiring shares under a public float**

8. While each transaction will be considered on its individual merits, the acquisitions of shares in a public float by persons who are not 'related' for the purposes of s.164(1) of the Duties Act, would, generally, not be considered to be acquisitions by related persons for the purposes of s.164(2).
9. Section 164(2) of the Duties Act refers to 'persons', which encompasses a wide range of relationships including, but not limited to:
- (a) partners in a partnership
  - (b) persons who, although not related under s.164(1) of the Duties Act at the time of the acquisition or acquisitions, become related within the meaning of that section soon after they acquire their respective shareholdings.
10. The Commissioner may require details of acquisitions under a public float to determine whether or not a relevant acquisition by "related persons" has occurred.

### **Transfers of shareholdings by listed corporations**

11. The situation may arise in which:
- (a) a listed corporation holds a significant interest in a landholder as defined in s.165 of the Duties Act and
  - (b) the listed corporation transfers its interest in the landholder to the shareholders of the listed corporation.

### **Example**

*ABC Co Ltd (ABC) is a listed corporation of which XYZ Co Pty Ltd (XYZ) is a wholly owned subsidiary. XYZ is a landholder. ABC transfers all shares in XYZ to the shareholders of ABC.*

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<sup>10</sup> Section 158(1)(c) of the Duties Act

<sup>11</sup> Section 162(1) of the Duties Act

<sup>12</sup> Section 162(2)(a) of the Duties Act

12. While each transaction will be considered on its individual merits, the Commissioner would, generally, consider that the acquisitions of shares by persons in the circumstances outlined in paragraph 11, where those persons are not 'related' for the purposes of s.164(1) of the Duties Act, are not acquisitions by 'related persons' for the purposes of s.164(2).
13. The Commissioner may require details relating to the acquisition of the shares to determine whether or not a relevant acquisition by 'related persons' has occurred.

## Date of effect

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14. This Public Ruling takes effect from 1 July 2011.

Tony Kulpa  
Deputy Commissioner of State Revenue  
Date of Issue 30 June 2011

## References

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Public Ruling	Issued	Dates of effect	
		From	To
DA164.1.2	30 June 2011	1 July 2011	Current
DA164.1.1	3 July 2009	3 July 2009	30 June 2011