



2002-03 Budget Amendment Conveyance Duty and Land Rich Companies and Unit Trusts

This circular provides information on amendments as part of the 2002-03 Budget to the Land-owning Corporations and Unit Trust provisions in the Taxation (Administration) Act ("the land rich provisions"). The changes outlined in this circular commence from 20 August 2002.

Summary

In summary, the amendments rectify loopholes and anomalies in the land rich provisions by:

- (a) Ensuring that the entry into an arrangement that has the effect of reducing the value of land owned by a corporation or unit trust is to be disregarded for the purposes of the land rich provisions.
- (b) Ensuring that the acquisition of partly paid shares or units in a corporation or unit trust is not used to defeat the object of the land rich provisions.
- (c) Extending from 12 months to 3 years the period in which incremental acquisitions of shares or units will constitute a "relevant acquisition" of a majority interest in the corporation or unit trust.
- (d) Clarifying how the provisions operate where a corporation or unit trust has entered into a sale agreement in relation to land that has not been completed (ie not yet settled).
- (e) Allowing the Commissioner to exclude property owned by a corporation or unit trust where a reason for the ownership of the property is for the purpose of defeating the object of the land rich provisions.
- (f) Levying land rich duty only on the interest(s) that constitute a relevant acquisition, by ensuring that duty is only levied on interests that were acquired during the period in which the relevant acquisition occurs.

Background

Normally, stamp duty applies at the conveyance duty rate to a maximum of 5.4 per cent where ownership of land is conveyed directly between a buyer and seller. However, where a company or private unit trust holds land, it is possible to transfer ownership indirectly by transferring the shares in the company or the units in the unit trust.

Where shares in a "land rich" company (or units in a unit trust) are transferred, anti-avoidance provisions in Division 8A of Part III of the *Taxation (Administration) Act* impose stamp duty on the value of the land at the conveyance duty rates.

The provisions apply where, among other things, the following criteria are satisfied in a given case:

1. the company, or unit trust, is beneficially entitled to land in the Territory and the unencumbered value of the land is not less than \$500 000;
2. the value of all land (excluding family primary production land) to which the company, or unit trust, is entitled whether in the Territory or elsewhere is 60 per cent or more of the value of the total assets (subject to certain exclusions) of the company, or unit trust; and
3. a person acquires a shareholding in the company (or unit holding in a unit trust) entitling the person to 50 per cent or more of the value of the property distributable if the company were to be wound up.

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The first five amendments are aimed at countering stamp duty avoidance practices involving the manipulation of land-holding companies and unit trusts to gain control of the land that they own. These avoidance practices target the criteria mentioned above. The last amendment is designed to overcome an inequity that can occur where a person already holds an interest in a land-holding corporation or unit trust, and then acquires additional interest(s) that constitute a majority interest in that corporation or trust.

Arrangements to reduce the value of land

In *Commissioner of State Revenue (Vic) v Bradney Pty Ltd* 96 ATC 5,130, the Supreme Court of Victoria held that the unencumbered value of land was to be determined having regard to a long term lease. No rent was payable pursuant to this lease. The Court held that a lease was not an encumbrance for the purpose of the Victorian stamp duty legislation. By taking the lease into account the market value of the land was significantly reduced.

This amendment ensures that arrangements, such as entry into a lease, will be disregarded for the purpose of the land rich provisions. However, the Commissioner will consider not disregarding the effect of an arrangement where there are reasons for it other than to reduce the value of property held by a corporation or unit trust.

Partly paid shares or units

A person may acquire a majority shareholding in a corporation or a majority unitholding in a unit trust by acquiring partly paid shares or units. However, in *Commissioner of Stamp Duties (Qld) v MIM Holdings Ltd* 99 ATC 5,084, the Queensland Court of Appeal held that for the purposes of the land rich provisions, a majority shareholding or unitholding was not acquired when a partly paid share or unit was acquired. This was because the shares or units had no entitlement to any property if the company were to be wound up.

This amendment clarifies that, for the purpose of the land rich provisions, partly paid shares or units will be treated as fully paid when determining a persons' entitlement to participate in the distribution of the property of a corporation on a winding up or of a unit trust on a termination of the trust, unless the Commissioner determines otherwise. The amendment also provides that a person may acquire an interest, shareholding or unitholding in a corporation or trust by paying an amount owing for a share or unit.

Majority interest within 3 years

The land rich provisions apply where a person, or related persons together, acquire 50 per cent or greater interest (majority interest) in a land rich corporation or unit trust. An acquisition of a majority interest can occur where a person makes incremental purchases in the corporation or unit trust over a twelve-month period, which together constitute a majority interest.

The twelve-month period will be progressively increased to 3 years to discourage the delay of acquisitions as an avoidance scheme.

This amendment applies only to acquisitions on or after 20 August 2002, with the exception of an acquisition that is pursuant to an agreement entered into before 20 August 2002 providing this acquisition is completed before 1 January 2003.

Uncompleted land sale agreement

Fundamental to the land rich provisions is that at least 60 per cent of a corporation's or unit trust's assets must comprise land. Where a corporation or unit trust purchases or sells land, the land rich provisions do not clearly define whether the vendor or purchaser owns the land in the period between the signing of the sale agreement and the settlement of the transaction.

The amendment causes both the vendor and purchaser to be the owner of the land the subject of the sale agreement. However, where the corporation or trustee is the vendor and the contract

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settles, or where the corporation or trustee is the purchaser and the contract is rescinded, an assessment of land rich duty will be amended to reflect this. The amended assessment is conditional upon the settlement or rescission not being part of a tax avoidance scheme.

Exclusion of certain property

As mentioned above, a corporation or trustee needs to hold 60 per cent of its assets as land to be considered as a land rich corporation or unit trust. Certain types of property are excluded in calculating the 60 per cent test. In addition, the existing provisions allow for additional types of assets to be **excluded by regulation**, unless the Commissioner is satisfied that the asset is not held for the purpose of defeating the land rich provisions.

The requirement to include a class of excluded assets in the regulations causes this protection mechanism to only apply prospectively (ie. after the regulation is passed, as regulations cannot apply retrospectively). As such, the current provision does not allow the Commissioner to react to schemes immediately at hand.

The amendment removes the requirement for excluded assets to be included in the regulations, thereby enabling the Commissioner to remove certain assets for the land rich provision calculations where he is not satisfied they are held for a purpose other than defeating the object of the land rich provisions. This treatment is in line with all other States and the Australian Capital Territory.

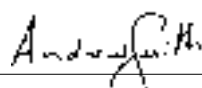
Duty on the majority interest acquired

For the purposes of the land rich provisions, when a majority interest in a land rich corporation or unit trust is acquired, stamp duty is assessed on the total proportion of the person's entitlement to the corporation's or unit trust's land holding after that acquisition. This can cause an inequitable result where the person who is acquiring the shares or units already held shares in the company or units in the trust, and these shares or units were acquired prior to the period in which a relevant acquisition occurs (currently one year, but increased to three years as per the above change). This is because the current provisions cause the full amount of the person's interests (including those acquired prior to the period in which a relevant acquisition occurred) to become subject to stamp duty.

This is an unfair outcome as duty should not be imposed on interests acquired prior to the period in which a relevant acquisition occurs. To rectify this concern, the amendments ensure that stamp duty is only levied on the interests that were acquired during period in which the relevant acquisition occurred.

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the Taxation (Administration) Amendment Act 2002 for precise details of the changes. For general information, please contact TRM on 1300 305 353.



Authorised by
the Commissioner of Taxes

17 October 2002