REVENUE CIRCULAR

RC-SD-001:

2006-07 Budget amendments

Land Holding Corporations and Unit Trusts

Purpose

This Circular provides information on amendments to the *Taxation (Administration) Act* (the Act) that implement the stamp duty 'land rich' measures announced by the Treasurer on 2 May 2006 as part of the 2006-07 Budget.

Summary of measures commencing 1 July 2006

The stamp duty 'land rich' provisions in Part III, Division 8A of the Act are amended from 1 July 2006 to:

a) extend their application to acquisitions of interests in unit trusts of 20 per cent or greater;

b) broaden the range of unit trusts subject to the provisions, by redefining what is a 'private unit trust scheme';

c) allow interests in 'linked entities' of 20 per cent or more to be counted for the purpose of determining the unencumbered value of land to which a corporation or unit trust is entitled;

d) prevent the avoidance of stamp duty through the listing of shares in a corporation, and units in a unit trust scheme, on a recognised financial market;

e) clarify the scope of an exception to the provisions so that it more consistently applies in circumstances where a direct conveyance of land would be exempt from duty under a law of the Territory;

f) align the time in which a stamp duty land rich statement is required to be lodged and any stamp duty paid with the existing 60-day period that applies for other instruments assessed by the Commissioner of Taxes under the Act;

g) make consequential amendments arising from the abolition of stamp duty on conveyances of marketable securities; and

h) provide appropriate transitional provisions for interests acquired prior to 1 July 2006, and for interests acquired after 1 July 2006, but before 1 January 2007, as a result of an agreement entered into before 2 May 2006.

'Significant interests' and 'Relevant acquisitions'

From 1 July 2006, the definition of 'relevant acquisition' will be amended to refer to the acquisition by a person of an interest, that alone or together with interests held by the person and related persons, comprises or increases a 'significant interest' in a corporation or unit trust scheme.

The term ‘significant interest’ replaces the term ‘majority interest’, and means:

- for a unit trust scheme, an interest of 20 per cent or more; and
- for a corporation, an interest of 50 per cent or more (the same as comprised a majority interest prior to 1 July 2006).

Consequently, from 1 July 2006, the acquisition of an interest in a unit trust scheme that results in a person, whether alone or together with related persons, holding an interest of 20 per cent or greater will constitute a relevant acquisition in that trust for the purposes of the Act.

A transitional provision has been inserted so that an interest acquired in a unit trust scheme before 1 July 2006 will not be subject to duty in circumstances where the total interests in the trust held by the acquirer and related persons are less than 50 per cent. From 1 July 2006, where the interests held in a unit trust scheme by an acquirer and related persons is 20 per cent or more, but are less than 50 per cent, duty will be payable only on acquisitions made by the acquirer and related persons after 1 July 2006, but within the ‘relevant period’ relating to the latest acquisition. However, as soon as these interests exceed 50 per cent, interests acquired before 1 July 2006, but within the ‘relevant period’ of the latest acquisition, will also become dutiable.

The ‘relevant period’ is generally the period of 3 years ending on the date that the interest was acquired.

Private unit trust schemes

The stamp duty land rich provisions apply to, among other entities, unit trust schemes that are a ‘private unit trust scheme’.

From 1 July 2006, the definition of ‘private unit trust scheme’ will be amended to apply to a unit trust scheme that:

- was not a registered managed investment scheme; or
- was a registered managed investment scheme, but where at least one of the following criteria are met:
    - there are fewer than 300 members who are entitled to units under the scheme;
    - a person, whether alone or together with related persons, is entitled to 20 per cent or more of the issued units in the scheme; or
    - no units in the scheme have been offered to the public under a prospectus or product disclosure statement that has been lodged with the Australian Securities and Investments Commission.

For unit trust schemes that were not a ‘private unit trust scheme’ before 1 July 2006, but become one as a consequence of the changes to the definition of that term, no duty will be payable on interests acquired in the trust scheme when, at the time the interest was acquired, the unit trust was not a private unit trust scheme.

Replacement of subsidiaries with 'linked entities'

From 1 July 2006, in determining the value of land to which a corporation or unit trust is entitled, it will be necessary to consider the land holdings of all the 'linked entities' of the corporation or unit trust scheme.

A 'linked entity' of a corporation or unit trust scheme is a person who is part of a chain of persons:

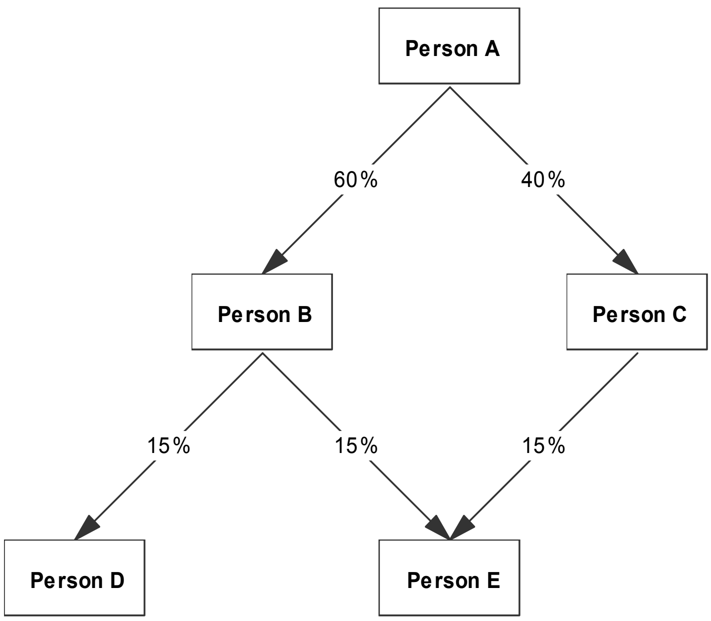
- that includes the corporation or unit trust; and
- that is comprised of one or more links; and
- in which a link exists if a person, whether alone or together with other linked entities, would be entitled to receive at least 20 per cent of the unencumbered value of the property of another person in the chain (the 'property-holder').

A person's entitlement to the property of a 'property-holder' is determined:

if the property-holder is a corporation – as an entitlement to participate as a shareholder in the distribution of the property on a winding-up of the corporation; and

if the property-holder is a trustee of a trust – as an entitlement on the distribution of the trust.

The nature of these relationships, and when they will result in entities being 'linked entities', is illustrated by the following example.



A and B are linked entities, as A is entitled to 60 per cent of B's property.

A and C are linked entities, as A is entitled to 40 per cent of C's property.

B and C are linked entities, as they are both linked entities of A.

D is not a linked entity of B, as B is only entitled to 15 per cent of D's property.

E is a linked entity of B and C, as B and C are linked entities of A, and together they are entitled to 30 per cent of E's property.

Quotation of shares and units on a recognised financial market

From 1 July 2006, a stamp duty land rich statement is not required to be lodged for a relevant acquisition in a corporation or unit trust scheme whose shares or units are quoted on a recognised financial market, such as the Australian Stock Exchange, unless the quotation of the shares or units was a tax avoidance scheme or part of a tax avoidance scheme.

In determining whether the quotation was a tax avoidance scheme, or part of a tax avoidance scheme, Territory Revenue Management will consider all of the relevant circumstances, including:

- the length of time that the quoted entity's shares or units have been quoted on a recognised financial market;
- any conditions or exemptions that apply to the approval of the quotation of the entity's shares or units;
- who owns the quoted entity's shares or units;
- the proportion of the quoted entity's shares or units that are available to be traded on the market; and
- the turnover of the quoted entity's shares or units on the market.

Notwithstanding the above list, due to the multitude of ways in which the quotation of an entity may be affected in a manner that is a tax avoidance scheme, or part of a tax avoidance scheme, it is not possible to place emphasis on any one factor as being decisive of the issue. However, consideration will be given as to whether the quotation of an entity in a particular case would have the effect of defeating the object of the stamp duty land rich provisions.

Exception where land could have been conveyed directly without duty

From 1 July 2006, the provision that removes duty on a stamp duty land rich transaction where a direct conveyance of all of the land, which is the subject of the transaction, would not have been dutiable if it were conveyed directly to the person acquiring the interest, will be amended.

This provision will no longer require that all of the land to which a corporation or unit trust scheme is entitled must be capable of being transferred without duty. Instead, it will provide a reduction on the duty payable on the acquisition of an interest that is in proportion to the amount of an entity's land that could have been conveyed directly to the person making the acquisition, without ad valorem stamp duty being imposed on that conveyance because of:

- a law of the Territory, other than -
    - the stamp duty corporate reconstruction provisions; or
    - where the interest was acquired by way of a declaration of trust, the addition of beneficiaries to a discretionary trust, or a change in control of a discretionary trust; or
- an exemption from duty on an order under the *Family Law Act 1975* (Cth) -
    - which relates to the marriage of the person who held the interest and the person who acquired the interest; and
    - where the person who acquired the interest is not an agent or trustee of another person.

Time for lodgement of statement and payment of duty

A stamp duty land rich statement that relates to a relevant acquisition in a corporation or unit trust scheme that occurs on or after 1 July 2006 will be required to be lodged within 60 days of the occurrence of the relevant acquisition. Further, duty will be required to be paid on that statement within 60 days after the occurrence of the relevant acquisition unless a notice of assessment is issued by the Commissioner of Taxes specifying a date for payment, in which case duty is payable on the date specified.

Abolition of duty on conveyances of marketable securities

A number of amendments have been made to the stamp duty land rich provisions with effect from 1 July 2006 as a consequence of the abolition of stamp duty on conveyances of marketable securities. These changes do not alter the effect of the provisions.

General transitional provision

A general transitional provision has been inserted that provides the stamp duty land rich provisions as in force prior to 1 July 2006 will continue to operate for interests acquired in corporations and unit trust schemes that occur:

- before 1 July 2006; or
- after 1 July 2006, but on or before 31 December 2006, where the acquisition is under an agreement entered into before 2 May 2006 (the date that the 2006-07 Budget was announced).

This approach recognises that an agreement to acquire an interest in a corporation or unit trust scheme may have been made prior to the changes being announced and that it would be unfair to apply the new rules to an acquisition that results from such an agreement. However, such acquisitions must be completed within six months after 1 July 2006.

The preservation of the law as it applied before 1 July 2006 for interests acquired after 1 July 2006 will not apply, however, where the shares or units of the corporation or unit trust scheme have been quoted on a recognised financial market and that quotation is a tax avoidance scheme or part of a tax avoidance scheme.

Of note, this general transitional provision operates in addition to the specific transitional provision applying as a result of the change from the concept of ‘majority interest’ to ‘significant interest’, which is outlined above.

Commissioner's Guideline CG-GEN-01, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular.

Refer to the *Treasury Legislation and Consequential Amendment Act 2006* and the accompanying explanatory statement for precise details of the amendments.

Craig Vukman

COMMISSIONER OF TAXES

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For further information, contact the Territory Revenue Office

GPO BOX 154
Darwin NT 0801
Email: ntrevenue.ntt@nt.gov.au
Phone: 1300 305 353
Fax: 08 8999 6395
Website: www.revenue.nt.gov.au