



2003-04 Budget amendments Land-owning corporations and unit trusts

*This circular provides information on amendments
to the Land-owning Corporations and Unit Trust provisions in the
Taxation (Administration) Act as part of the 2003-04 Budget.
The changes outlined in this circular commence from 27 May 2003.*

Summary

In summary, under the new rules —

- (a) the requirement under the existing land rich stamp duty legislation for land to comprise 60 per cent or more of all of the assets of a corporation or unit trust (the “**60 per cent test**”) is removed. Transitional provisions preserve the previous “**60 per cent**” land rich test for transactions that occurred prior to 27 May 2003;
- (b) the initial acquisition or increase of a “**majority interest**” by a person and related persons, is treated as a “**relevant acquisition**”;
- (c) stamp duty is calculated on the “**dutiable value**” of land to which a corporation or unit trust is entitled at the time an interest is acquired, where a “**majority interest**” is increased or first acquired, either through one acquisition or a series of acquisitions within a certain period of time defined as a “**relevant period**”;
- (d) “**family pastoral land**” is excluded from the land rich stamp duty provisions for transactions that would otherwise qualify for the stamp duty exemption on direct transfers of pastoral land between family members;
- (e) the treatment of acquisitions of interests in corporations and unit trusts that are quoted on a recognised financial market (such as the Australian Stock Exchange) has been clarified such that —
 - an acquisition of interests in a quoted corporation or unit trust will continue to be excluded from land rich stamp duty ; and
 - land rich stamp duty will apply to the subsequent acquisition of interests in such an entity after it becomes unquoted where a “**majority interest**” has been acquired or increased.

Background

Normally, where ownership of land is transferred directly between a buyer and a seller, stamp duty applies at the conveyance rate to a maximum of 5.4 per cent on the consideration paid or the unencumbered value of the land, whichever is the greater. Where a corporation or unit trust holds land, it is possible to transfer ownership indirectly, at a lower rate of duty (0.6 per cent), by transferring the shares in the corporation or the units in the unit trust.

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Prior to 27 May 2003, where shares in a “**land-holder**” corporation (or units in a unit trust) were acquired, anti-avoidance provisions in Division 8A of Part III of the *Taxation (Administration) Act* imposed stamp duty on the value of the land at conveyance duty rates.

The provisions applied where, among other things, the following criteria were satisfied in a given case —

- (a) the corporation, or unit trust, was a “**land-holder**”, because it was beneficially entitled to land in the Territory with an unencumbered value of not less than \$500 000 (the unencumbered value means the value of the land without taking into account any liabilities (eg. mortgages etc) that attach to the land);
- (b) the “**land-holder**” met the “**60 per cent test**”, because the value of all land (excluding family primary production land) to which it was entitled, whether in the Territory or elsewhere, was 60 per cent or more of the value of its assets (subject to certain exclusions); and
- (c) a person, or a person and related persons, acquired as a result of a “**relevant acquisition**” a shareholding in the corporation (or unit holding in a unit trust) entitling them to 50 per cent or more of the value of the property distributable if the corporation were to be wound up or the unit trust were to be terminated (“**majority interest**”).

The 60 per cent test

From 27 May 2003, the requirement for a “**land-holder**” to meet the “**60 per cent test**” is removed.

Consequently, for the purposes of the land rich provisions a corporation will be considered to be a “**land-holder**” where —

- (a) a corporation or unit trust is, after the value of “**family pastoral land**” has been deducted, beneficially entitled to land in the Territory with an unencumbered value of not less than \$500 000 (*irrespective of the other assets to which the corporation or unit trust is entitled*); and
- (b) a “**majority interest**” is increased or acquired in the “**land-holder**” by a “**relevant acquisition**”.

Note: more detail on the family pastoral land deduction is provided at page 8 of this circular.

Example 1

Askus Pty Ltd is entitled to a parcel of land in the Territory that has an unencumbered value of \$1 000 000, as well as other assets with a total value of \$4 000 000.

From 27 May 2003, Askus Pty Ltd is considered to be a “**land-holder**” because it is entitled to land in the Territory with an unencumbered value of not less than \$500 000. Although this land comprises only 20 per cent of the total assets to which it is entitled, the land rich provisions now apply on any “**relevant acquisition**” because the “**60 per cent test**” has been removed.

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Example 2

Bentknee Pty Ltd is entitled to pastoral land in the Territory with an unencumbered value of \$400 000, as well as a house in Darwin with an unencumbered value of \$250 000.

While the total land in the Territory to which Bentknee Pty Ltd is entitled has an unencumbered value of \$650 000, Bentknee Pty Ltd is not considered to be a **“land-holder”** if the pastoral land is **“family pastoral land”**. Therefore, if an interest in Bentknee Pty Ltd is acquired by a family member, for the purposes of land rich stamp duty, the value of land to which Bentknee Pty Ltd is entitled in this instance has an unencumbered value of less than \$500 000.

Note: pastoral land is considered to be **“family pastoral land”** in specific circumstances. For instance, if an interest in Bentknee Pty Ltd is not acquired from a family member, Bentknee Pty Ltd becomes a **“land-holder”** and the acquisition is liable for duty as such. (Refer to page 8 of this circular for further details.)

Relevant acquisition

As noted above, stamp duty is only payable under the land rich provisions where an interest acquired in a **“land-holder”** is a **“relevant acquisition”**.

From 27 May 2003, a **“relevant acquisition”** is the acquisition of an interest in a corporation or unit trust —

- (a) that alone constitutes a **“majority interest”** in the corporation or unit trust;
- (b) that, when aggregated with other interests in the corporation or unit trust held by the person, or the person and related persons, constitutes a **“majority interest”** in the corporation or unit trust; or
- (c) where, by the acquisition, a person who has a **“majority interest”**, or an interest referred to in paragraph (b), in the corporation or unit trust, acquires a further interest in the corporation or unit trust.

Example 3

Custer acquires a 70 per cent interest in Dizzy Pty Ltd on 1 June 2003. Custer’s acquisition in Dizzy Pty Ltd constitutes a single interest that alone constitutes a **“majority interest”**, so is considered to be a **“relevant acquisition”**. If Custer acquired another interest of 20 per cent in Dizzy Pty Ltd on 1 August 2003, that acquisition is also a **“relevant acquisition”** as it increases Custer’s **“majority interest”** to 90 per cent.

Example 4

Enth Pty Ltd acquires a 35 per cent interest in Falon Pty Ltd on 1 June 2002. Gabriella Pty Ltd, a wholly owned subsidiary of Enth Pty Ltd, is considered to be a person related to Enth Pty Ltd. Gabriella Pty Ltd acquires a 30 per cent interest in Falon Pty Ltd on 10 June 2006. Together, Enth Pty Ltd and Gabriella Pty Ltd, as related persons, hold interests in Falon Pty Ltd that constitute a **“majority interest”** of 65 per cent. Accordingly, Gabriella Pty Ltd’s acquisition in Falon Pty Ltd (the acquisition resulting in the **“majority interest”**) is a **“relevant acquisition”**.

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An acquisition of a “**majority interest**” in a corporation or unit trust that is a “**land-holder**” and is quoted on a recognised financial market (such as the Australian Stock Exchange) is considered to be a “**relevant acquisition**” for the purposes of the land rich provisions, however no duty is payable on this acquisition (see the calculation of duty section on page 6 of this circular).

Where a further acquisition is made in a corporation or unit trust that is no longer quoted on a recognised financial market, and that acquisition increases a person's ownership such that the total interests held constitute a “**majority interest**” then the further acquisition will be subject to duty provided the other land rich conditions are met.

Example 5

Hosty acquires an 80 per cent interest in Jettson Ltd on 1 February 2002, a corporation quoted on the Australian Stock Exchange. While no stamp duty was payable at the time of acquisition, under the land rich provisions in force after 27 May 2003, this acquisition is still considered to be a “**relevant acquisition**”, for the purposes of determining any future stamp duty payable on subsequent acquisitions which may increase Hosty's interests in Jettson Ltd.

From 1 July 2002, Jettson Ltd is no longer quoted on a recognised financial market. On 30 June 2003, Hosty acquires the remaining 20 per cent interest in Jettson Ltd. This is also a “**relevant acquisition**”, however, unlike the first acquisition, stamp duty is now payable because Jettson Ltd is no longer quoted on a recognised financial market.

Accordingly, from 27 May 2003, duty is only payable on Hosty's acquisition of the 20 per cent interest in Jettson Ltd (ie. while Jettson Ltd was not quoted on the Australian Stock Exchange).

Relevant period

From 27 May 2003, where a person makes a “**relevant acquisition**” in a “**land-holder**”, stamp duty is calculated on the “**dutiable value**” of all interests acquired in the “**land-holder**” by the person and related persons within the “**relevant period**” relating to that “**relevant acquisition**”.

The “**relevant period**” is generally the period of 3 years ending on the date of the “**relevant acquisition**”. However, where a person makes a “**relevant acquisition**” because the person acquires an interest by exercising an option to acquire that interest, the “**relevant period**” is the period commencing 3 years before the day on which the person or a related person acquired the right to acquire the interest and ending on the date of the “**relevant acquisition**”.

Example 6

Karlis acquires a 40 per cent interest in Livo Pty Ltd on 10 April 1996. On 1 October 1996, Karlis acquires a right to acquire a 5 per cent interest in Livo Pty Ltd that must be exercised within 10 years. Karlis acquires an 8 per cent interest in Livo Pty Ltd on 1 June 1999, bringing Karlis' total interest in Livo Pty Ltd to 48 per cent. On 10 June 2003, Karlis exercises their right to acquire a 5 per cent interest in Livo Pty Ltd, bringing Karlis' total interest in Livo Pty Ltd to 53 per cent.

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The 5 per cent acquisition in Livo Pty Ltd by Karlis on 10 June 2003 is a “**relevant acquisition**” because that interest, when aggregated with other interests held by Karlis in Livo Pty Ltd, constitutes a “**majority interest**”. Livo Pty Ltd was a “**land-holder**” at 10 June 2003. As the “**relevant acquisition**” occurred as the result of Karlis exercising a right to acquire an interest, the “**relevant period**” commences 3 years before the date on which that right was acquired. Accordingly, the “**relevant period**” in relation to Karlis’ acquisition of 10 June 2003 commences on 2 October 1993 and ends on 10 June 2003.

Example 7

Meso acquires a 25 per cent interest in Nirnia Pty Ltd on 1 June 2003. Meso acquires a further 40 per cent interest in Nirnia Pty Ltd on 1 July 2006 (3 years and 1 month later). Meso now holds interests in Nirnia Pty Ltd that together constitute a “**majority interest**” of 65 per cent. Accordingly, Meso’s acquisition of an interest in Nirnia Pty Ltd on 1 July 2006 is a “**relevant acquisition**” because it resulted in the “**majority interest**” being acquired.

As indicated above, the “**relevant period**” rules apply to relevant acquisitions. Accordingly, the “**relevant period**” in relation to Meso’s “**relevant acquisition**” in Nirnia Pty Ltd of 1 July 2006 commences on 2 July 2003 and ends on 1 July 2006. Consequently, the interest acquired by Meso in Nirnia Pty Ltd on 1 June 2003 was not acquired within the “**relevant period**” relating to Meso’s “**relevant acquisition**” in Nirnia Pty Ltd of 1 July 2006.

This means that provided Nirnia Pty Ltd is a “**land-holder**” for the purpose of the land rich provisions, land rich stamp duty could only apply to Meso’s 40 per cent interest in Nirnia Pty Ltd acquired on 1 July 2006. If Meso’s original 25 per cent interest had been acquired within the “**relevant period**” then land rich stamp duty would have been calculated on the full 65 per cent interest acquired by Meso.

Dutiable value

The “**dutiable value**” of an interest in a “**land-holder**” is the amount calculated by multiplying the percentage representing the interest in the “**land-holder**” by the unencumbered value of the land to which the “**land-holder**” is entitled (including land to which its subsidiaries are entitled, but excluding “**family pastoral land**”), at the date the interest is acquired.

The “**dutiable value**” of a “**relevant acquisition**” in a “**land-holder**” is the aggregate of the dutiable values of that interest and of each other interest acquired by the person or a related person within the “**relevant period**” in relation to that “**relevant acquisition**”.

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Example 8

Using Example 6 above, Livo Pty Ltd was entitled to no land until 1 January 1999, on which date it acquired a property near Katherine. That property had an unencumbered value of \$600 000 as at 1 June 1999. Livo Pty Ltd also acquired a commercial premises in Darwin in late 2002, which had an unencumbered value of \$1.2 million as at 10 June 2003, while the unencumbered value of the property near Katherine had declined to \$550 000 on that date.

As previously explained, the relevant period in relation to Karlis' acquisition of 10 June 2003 commences on 2 October 1993 and ends on 10 June 2003. During that time Karlis acquired interests in Livo Pty Ltd on 10 April 1996, 1 June 1999 and 10 June 2003.

Livo Pty Ltd was entitled to no land on 10 April 1996, so the "**dutiable value**" of the 40 per cent interest acquired on that date is nil. Livo Pty Ltd was entitled to land with an unencumbered value of \$600 000 on 1 June 1999, so the "**dutiable value**" of the 8 per cent interest acquired on that date is \$48 000 (8 per cent of \$600 000). Livo Pty Ltd was entitled to land with an unencumbered value of \$1 750 000 on 10 June 2003, so the "**dutiable value**" of the 5 per cent interest acquired on that date is \$87 500 (5 per cent of \$1 750 000). Accordingly, the "**dutiable value**" of Karlis' "**relevant acquisition**" of 10 June 2003 in Livo Pty Ltd is the sum of the "**dutiable value**" of these two acquisitions, \$135 500.

Lodgement of statements

Where a person makes a "**relevant acquisition**" in a "**land-holder**", that person is required to prepare and lodge a land-holder statement with Territory Revenue Management.

No land-holder statement is required to be lodged where the "**land-holder**" in which the interest was acquired was, at the time the interest was acquired, either a corporation that was quoted on a recognised financial market or a unit trust scheme that was not a private unit trust scheme.

Calculation of duty

Under the new provisions, stamp duty is calculated on the "**dutiable value**" of a "**relevant acquisition**" in a "**land-holder**" at conveyance rates, and is payable on a land-holder statement.

However, the duty payable on a land-holder statement is reduced by the sum of the following amounts —

- (a) the amount (if any) of marketable securities stamp duty paid to the Territory on interests acquired within the "**relevant period**", where those interests are counted in the "**relevant acquisition**", except where that duty:
 - (i) has been previously deducted from a land-holder statement; or
 - (ii) was paid on the acquisition of an interest referred to in paragraph (c) below;
- (b) the amount (if any) paid (but not refunded) on a previous land-holder statement that relates to the "**dutiable value**" of the acquisition of an interest in the "**land-holder**" by the person or any related persons within the "**relevant period**" in relation to the "**relevant acquisition**"; and

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- (c) the amount payable under the new provisions on the acquisition of an interest in the **“land-holder”** by the person or any related persons in any of the following circumstances —
- (i) where the interest is acquired within the **“relevant period”** for the **“relevant acquisition”** while the **“land-holder”** was a corporation whose shares, or unit trust whose units, were quoted on a recognised financial market;
 - (ii) if the **“land-holder”** is a unit trust — where the interest is acquired within the **“relevant period”** for the **“relevant acquisition”** while the **“land-holder”** was not a private unit trust scheme;
 - (iii) where the interest is acquired before 20 August 2001 (the **“first interest”**), except in circumstances where the **“relevant acquisition”** is made because of the exercise of an option to acquire an interest and that option was acquired by the person or a related person within 12 months before or 3 years after the acquisition of the first interest; and
 - (iv) where the interest is acquired before 27 May 2003 and within the **“relevant period”** for the **“relevant acquisition”** and the **“land-holder”** did not satisfy the **“60 per cent test”** at the time that interest was acquired.

Example 9

Using Example 8 above, the dutiable value of Karlis’ **“relevant acquisition”** in Livo Pty Ltd on 10 June 2003 is \$135 500. The conveyance stamp duty payable on the **“dutiable value”** of the **“relevant acquisition”** is \$4 038.90 (before deductions).

Livo Pty Ltd is a corporation incorporated in the Northern Territory. Karlis paid marketable securities stamp duty in the Territory of \$300.00, \$720.00 and \$468.00 for the interests acquired in Livo Pty Ltd on 10 April 1996, 1 June 1999 and 10 June 2003 respectively.

As at 10 April 1996, Livo Pty Ltd owned no land, so did not meet the **“60 per cent test”** at the time of that acquisition, so no marketable securities stamp duty is to be deducted for this acquisition. Similarly, no conveyance duty is to be deducted for this acquisition, as Livo Pty Ltd owned no land and as a result paid no conveyance duty. As at 1 June 1999, Livo Pty Ltd was entitled to land in the Territory with an unencumbered value of \$600 000 and other assets of \$450 000. Accordingly, Livo Pty Ltd did not meet the **“60 per cent test”** at the time of that acquisition, so the conveyance duty payable on the land-holder statement in respect of this acquisition must be deducted, while no deduction will be made for the marketable securities stamp duty of \$720.00 paid on the acquisition. The amount of the conveyance duty to be deducted in respect of the interest acquired on 1 June 1999 is the conveyance stamp duty payable on the **“dutiable value”** of that interest (ie. on \$48 000). Accordingly, the deduction is \$1 157.75.

Consequently, the stamp duty payable on the land-holder statement recording Karlis’ **“relevant acquisition”** in Livo Pty Ltd on 10 June 2003 is \$2 413.15 (being \$4 038.90 less \$468.00 and \$1 157.75).

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Family pastoral land

The Territory's stamp duty legislation provides an exemption in certain circumstances for direct changes in ownership of land used for farming purposes (ie. pastoral properties) where the parties to a transaction are "family members". See *Revenue Circular SD002* for more information.

From 27 May 2003, this concept has also been embodied in the new land rich provisions by excluding the "**family pastoral land**" to which a corporation or unit trust is entitled when determining whether that entity is a "**land-holder**", and when assessing stamp duty under the land rich stamp duty provisions.

From 27 May 2003, land will be considered to be "**family pastoral land**" when the following conditions are met:

- (a) the interest acquired in a corporation or unit trust is acquired from one or more natural persons by one or more other natural persons who are the family members of the first-mentioned persons.

The term family member has been broadly defined and includes:

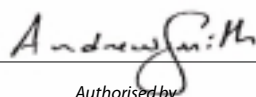
- (i) children (including adopted and step-children) and grandchildren of the person from whom the interest is acquired;
 - (ii) brothers and sisters (and their children) of the person from whom the interest is acquired; and
 - (iii) a spouse (including a de-facto partner) of the person from whom the interest is acquired or of the persons in (i) and (ii) above.
- (b) no money is given or agreed to be given for the acquisition of the interest;
 - (c) a person who acquires the interest will hold the interest both legally and beneficially;
 - (d) each of the family members acquiring the interest in the corporation or unit trust must intend that the land will be used for pastoral purposes as defined in the *Pastoral Land Act*; and
 - (e) the person from whom the interest in the corporation or unit trust is acquired:
 - (i) must not have acquired that interest within 5 years before the relevant acquisition; or
 - (ii) if that person acquired the interest within that 5 year period, the pastoral land to which the corporation or unit trust was entitled at the time the person acquired their interest did not receive concessional land-holder stamp duty treatment available to "**family pastoral land**".

Transitional

Transitional provisions ensure that the land rich provisions as in force before 27 May 2003 apply to interests acquired in a corporation or unit trust on or after 27 May 2003, but before 1 January 2004, pursuant to an agreement entered into before 27 May 2003, but not to any other interest.

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 2003* for precise details of the amendments. For general information, please contact TRM on 1300 305 353.



Authorised by
the Commissioner of Taxes
7 July 2003