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Practice Direction Duties Act:

LANDHOLDER DUTY—RELATED PERSON— COMMISSIONER'S SATISFACTION REGARDING INTERESTS

A practice direction, 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 practice direction, the change in the law overrides the practice direction—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 direction is about

1. This practice direction sets out how the Commissioner will be satisfied about a person's interests under s.164(3) of the *Duties Act 2001* (Duties Act).
2. Section 157(1) of the Duties Act imposes landholder duty on a relevant acquisition¹. For a relevant acquisition in a private landholder², landholder duty is imposed on the dutiable value of the relevant acquisition.³ For a relevant acquisition in a public landholder⁴, 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.⁵
3. Under s.158 of the Duties Act a person makes a relevant acquisition if:
 - (a) the person acquires a significant interest⁶ in a landholder⁷or

¹ Defined in s.158 of the Duties Act

² Defined in s.165A(1) of the Duties Act

³ Section 157(2)(a) of the Duties Act

⁴ Defined in s.165A(2) of the Duties Act

⁵ Sections 157(2)(b) and 179A of the Duties Act. Section 179B of the Duties Act provides that, for s.179A of the Duties Act, 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.

⁶ Section 159(2) of the Duties Act

⁷ Section 165 of the Duties Act

- (b) the person acquires an interest⁸ in a landholder and a significant interest in a landholder results when the following are aggregated
 - (i) interests held by the person in the landholder
 - (ii) interests acquired or held by related persons of the person in the landholder

or

- (c) having acquired a significant interest in a landholder under paragraph (a) or (b) for which acquisition landholder duty was imposed, the person's interest in the landholder increases.
4. The term 'related person' is broadly defined in s.164(1) of the Duties Act. Section 164(2) expands the definition of related person to include persons who acquire interests in a landholder under essentially one arrangement.
 5. However, s.164(3) of the Duties Act provides the Commissioner with the discretion not to treat persons identified in s.164(1), other than subsection (1)(d), as related persons of another person in certain circumstances.
 6. The discretion does not apply to persons who are related under the expanded definition in s.164(2) of the Duties Act.

Direction and explanation

7. The Commissioner will exercise the discretion under s.164(3) when satisfied that the interests of the persons:
 - (a) were acquired, and will be used, independently
 - (b) were not acquired, and will not be used, for a common purpose.
8. To assist the Commissioner in determining the matters above, the following must be lodged:
 - (a) a statutory declaration by each of the persons, declaring that
 - (i) there is no arrangement, understanding or agreement, whether in writing or orally, between any of the persons, under which the interests are acquired, or the interests held are to be used inter-dependently and for a common purpose
 - (ii) none of the persons required as a condition of any arrangement, understanding or agreement to acquire the interests, whether in writing or orally, the making or completing of any other arrangements, understandings or agreements to acquire the interests
 - (iii) all the arrangements, understandings or agreements to acquire the interests—whether in writing or orally—were made independently of each other

⁸ Section 159(1) of the Duties Act

- (b) all written arrangements, understandings or agreements and any other information relevant to the acquisition.

Date of effect

9. This practice direction takes effect from 8 April 2024.

Simon McKee
Commissioner of State Revenue
Date of issue: 3 April 2024

References

| Practice Direction | Issued | Dates of effect | |
|---------------------------------------|--------------|-----------------|--------------|
| | | From | To |
| DA164.1.1 | 3 April 2024 | 8 April 2024 | Current |
| Supersedes Public Ruling DA164.2.2 | 30 June 2011 | 1 July 2011 | 7 April 2024 |