

TAX BULLETIN

An update publication for our clients

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New Victorian Landholder Duty Model

The Victorian Government has commenced consultation on the proposed model for the new landholder duty, which will replace land rich duty with effect from 1 July 2012. Pitcher Partners has been invited to consult with the State Revenue Office on the proposed model and has obtained an advance copy of the consultation paper that will be publicly released later today.

The move to landholder duty will expand the circumstances where duty is payable on the acquisition of shares in private companies or units in private unit trusts. The Government is targeting an additional \$51 million of revenue from these transactions in the first financial year following the change.

Current land rich duty regime

Stamp duty is currently imposed on a significant change of shareholding or unitholding in 'land rich' entities. Under the existing rules, entities are land rich if they hold land in Victoria with an unencumbered value of at least \$1 million and their land holdings anywhere represent 60% or more of their total assets. Duty is imposed where, over a 3 year period, a person acquires an interest of 50% or more in a land rich private company or 20% or more in a land rich private unit trust.

Proposed landholder duty model

The key difference between the existing land rich duty regime and the new landholder duty regime is that, under the landholder duty regime, the 60% threshold test will no longer exist. A landholding entity will potentially be subject to the new regime if the unencumbered value of its land in Victoria exceeds a certain threshold, irrespective of how significant its landholdings are as a percentage of its total assets.

The Government is proposing to retain the existing land value threshold of \$1 million. This is lower than the \$2 million threshold which applies in New South Wales, Queensland and Western Australia.

The existing acquisition thresholds of 20% or more in a private unit trust scheme and 50% or more in a private company will be retained.

Liability for landholder duty will also extend to acquisitions of shares in listed companies or units in listed unit trusts, but only where the acquisition is of 90% or more of the shares or units.

There will be a new definition of "interest" under landholder duty that will be the greater of the following direct and indirect entitlements:

1. A percentage representing the entitlement on winding up;
2. A percentage representing the proportion of votes that a person could control at a general meeting of shareholders or unitholders assuming that all shareholders or unitholders exercised their voting rights; and



3. A percentage representing the extent to which a person is entitled to the economic interests of the landholder, including dividends or distributions of income.

The proposed model will continue to calculate the value of an entity's landholdings by tracing indirect entitlements that the entity holds through shareholdings or unitholdings.

Interests that are acquired by the same person or by associated persons will be aggregated, generally regardless of when those acquisitions were made, except for acquisitions made before the entity acquired land in Victoria.

The current exemptions that apply to land rich duty will continue to apply to landholder duty, with the exception of the discretion that is currently available to the Commissioner to grant an exemption from duty where it is just and reasonable to do so. That exemption will no longer be available.

The amount of landholder duty will be calculated by applying the standard duty rates to the value of the interest acquired, with the relevant percentage applied to the unencumbered market value of Victorian land held by the company or unit trust.

However, a concession will apply to the acquisition of shares in a listed company or units in a listed unit trust. The duty payable will be limited to 10% of the duty that would otherwise have applied.

The Government is seeking submissions on the model proposed in the consultation paper. The closing date for submissions is 30 September.

