

REVENUE CIRCULAR LHD001

Calculation of Landholder Duty

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Previous Circular: N/A

Introduction

1. Landholder duty is imposed on certain transactions when a person (which can include a company, trustee, or an association) makes a relevant acquisition in a landholder who has an interest in land in the ACT.¹ The method for calculating landholder duty varies depending upon how the person acquired the interest in the landholder. Information on landholder duty can be found on the ACT Revenue Office website:
<https://www.revenue.act.gov.au/duties/land-holder-duty>
2. Landholder duty is administered under Chapter 3 of the *Duties Act 1999* (Duties Act).

Purpose

3. The circular will identify how landholder duty in the ACT is calculated, including how relevant acquisitions are valued.

Calculating landholder duty

4. There are two primary methods for calculating landholder duty in the ACT: the 'single interest' or 'multiple interest' method.
5. Duty is calculated by utilising the determined commercial property rate on the date of the relevant acquisition.
6. Interests acquired in landholders before they acquired an ACT landholding must be included in duty calculations if they were acquired in the relevant period of the relevant acquisition.
7. The *relevant period* is the 3-year period before the relevant acquisition.

¹ Duties Act, sections 85 and 86.

8. Prior to 6 June 2018, duty was imposed on every relevant acquisition in a landholder regardless of the dutiable amount of the landholding.
9. From 6 June 2018, a tax-free threshold was introduced. At the date of publication, no tax would be payable if the dutiable amount of the relevant acquisition in the landholder was less than or equal to \$1.6 million.²

Table 1 – Determined Rate as at the date of Circular (check latest rate)

Dutiable Amount	Rate of Duty
Less than or equal to \$1,600,000	Nil
More than \$1,600,000	A flat rate of \$5.00 per \$100 applied to the total dutiable amount

10. Note – Disallowable Instruments issued under section 139 of the *Taxation Administration Act 1999* identify the current rate of duty payable for landholder duty transactions. The rates of duty could be altered at any time, therefore you must check if a new disallowable instrument has been issued.
11. The ‘conveyance duty calculator’ located on the ACT Revenue Office website can assist you to calculate your landholder duty liability.
 - For Landholder duty – select ‘commercial’ for the ‘property type’.
 - The dutiable amount of the transaction must be calculated with reference to either single interest or multiple interests methods outlined below. The dutiable amount is then entered into the field ‘the greater of purchase price or market value (include GST if it applies)’.
 - The ‘date of grant, transfer or agreement to transfer (whichever is first)’ is the date of the relevant acquisition.

Single Interest Method

12. Landholder duty is calculated with reference to the single interest method³ if a person acquires:
 - (a) a significant interest of 50 per cent or more in a landholder in a single acquisition; or
 - (b) a further interest that increases their total interest in a landholder above 50 per cent, if the prior interests were acquired outside of the relevant period.
13. Interests acquired by associated persons outside of the relevant period of the relevant acquisition will not be included in duty calculations under paragraph 12(b).
14. However, prior interests acquired outside of the relevant period are aggregated to determine if a person has a significant interest in a landholder.
15. The single interest acquired in the landholder is multiplied by the unencumbered value of the landholdings held in the ACT to calculate the dutiable amount of the relevant acquisition.

² *Taxation Administration (Amounts Payable – Duty) Determination 2021*, section 7 (table 2).

³ Duties Act, subsection 90(1).

16. The dutiable amount is then multiplied by the determined rate on the date of the relevant acquisition to calculate the duty payable on the relevant acquisition:

- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT

Example 1 – A person acquires a significant interest of 50 per cent or more in a landholder in a single acquisition

17. On 1 January 2020, Jane made a relevant acquisition when she acquired 100 per cent of the shareholdings in the landholder Company A Pty Ltd ('Company A') who owned land valued at \$1.8 million in the ACT.

18. Jane made a relevant acquisition in an ACT landholder when she acquired an interest of 50 per cent or more in a single transaction. If Company A was wound up on 1 January 2020, Jane would receive 100 per cent of their property.

19. Jane acquired a significant interest in Company A in a single transaction in the relevant period, therefore, the single interest calculation method would be used to calculate landholder duty.

20. Duty Calculation

- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
- Dutiable amount = 100% x \$1.8 million
- Dutiable amount = \$1.8 million
- Duty = \$1.8 million x determined rate at 1 January 2020⁴
- Duty payable = \$90,000

Example 2 – If the prior interests were acquired outside of the relevant period of a relevant acquisition

21. On 5 March 2010, Jane made a relevant acquisition when she acquired 50 per cent of the shareholdings in the landholder Company A Pty Ltd ('Company A') that owned land valued at \$800,000 in the ACT. Jane lodged an acquisition statement with the ACT Revenue Office and paid landholder duty on the transaction.

22. On 7 June 2020, Jane made a relevant acquisition of a further interest when she was allotted an additional 25 per cent of the shareholdings in Company A that now owns land valued at \$10 million in the ACT. If Company A was to be wound up on 7 June 2020, Jane would receive 75 per cent of their property.

23. Although Jane acquired her interest in Company A in two acquisitions, the single calculation method would be used in this instance because the interest Jane acquired on 5 March 2010 is outside of the relevant period of her acquisition on 7 June 2020. As a result, there is no need to calculate any duty reduction when the single interest calculation method is used as prior interests are not included in the calculation of duty.

⁴ Taxation Administration (Amounts Payable – Duty) Determination 2019 (No 2), section 7 (table 2).

24. Landholder duty will be calculated only with reference to Jane's most recently acquired interest on 7 June 2020, that is 25 per cent.
25. Duty Calculation
- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
 - Dutiable amount = 25% × \$10 million
 - Dutiable amount = \$2.5 million
 - Duty = \$2.5 million × determined rate on 7 June 2020⁵
 - Duty payable = \$125,000

Multiple Interests Method

26. Landholder duty is calculated with reference to multiple interests⁶ if a person acquires:
- (a) more than one interest (or a further interest) in a landholder in the relevant period that amounts to a significant interest; or
 - (b) an interest that when aggregated with interests held by an associated person in the same landholder in the relevant period is significant.
27. The multiple interests acquired during the relevant period are aggregated together, and duty is calculated with reference to the new total.
28. The aggregated interest is then multiplied by the unencumbered value of the landholdings on the date of the relevant acquisition to calculate the dutiable amount. The date of the relevant acquisition is the date that the last interest was acquired. The dutiable amount is then multiplied by the determined rate on the date of the relevant acquisition to calculate the duty payable on the relevant acquisition:
- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT

Example 3 – A person acquires more than one interest in a landholder in the relevant period that amounts to a significant interest

29. On 5 March 2010, Bob acquires an interest in a landholder when he purchases 40 per cent of the shareholdings in Company Z Pty Ltd ('Company Z') who owns land in the ACT valued at \$1.6 million.
30. On 10 October 2010, Bob purchases an additional 20 per cent of the shareholdings in Company Z who still owns land in the ACT valued at \$1.6 million.
31. Bob now owns 60 per cent of the shareholdings in Company Z. If Company Z was wound up on 10 October 2010, Bob would receive 60 per cent of their property. Bob made a relevant acquisition on 10 October 2010 when he became entitled to more than 50 per cent of Company Z's property. Duty would be calculated with reference to the multiple interests' calculation method because Bob's initial interest acquired on 5 March 2010 is within the relevant period of his acquisition on 10 October 2010.

⁵ *Taxation Administration (Amounts Payable – Duty) Determination 2019 (No 2)*, section 7 (table 2).

⁶ Duties Act, subsection 90(2).

32. Landholder duty is calculated with reference to Bob's 60 per cent interest that being the aggregated total of 40 per cent plus 20 per cent of Bob's interest in Company Z. The unencumbered value of Company Z's landholdings is \$1.6 million on 10 October 2020.
33. Duty Calculation
- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
 - Dutiable amount = 60% (i.e. 40% + 20%) x \$1.6 million
 - Dutiable amount = \$960,000
 - Duty = \$960,000 x determined rate at 10 October 2010⁷
 - Duty payable = \$39,610

Example 4 – A person acquires an interest that is aggregated with interests held by an associated person in the same landholder in the relevant period

34. On 16 February 2015, Laura acquires an interest in landholder when she purchases 30 per cent of the units in the XYZ Unit Trust (fixed private unit trust) who owns land in the ACT valued at \$1 million. Laura's sister Jane previously purchased 30 per cent of the units in the XYZ Unit Trust on 25 November 2014.
35. Laura's interest is aggregated with that held by Jane as they are associated persons because they are siblings. If the XYZ Unit Trust was wound up on 16 February 2015, Laura and Jane would together receive 60 per cent of XYZ Unit Trust's property.
36. Duty is calculated with reference to the multiple interests' calculation method, as the 30 per cent interest that Jane acquired on 25 November 2014 is within the relevant period of Laura's acquisition on 16 February 2015.
37. Landholder duty is calculated with reference to 60 per cent being the aggregated total of 30 per cent plus 30 per cent. The unencumbered value of the XYZ Unit Trust's landholdings is accepted to be \$1 million on 16 February 2015.
38. Duty Calculation
- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
 - Dutiable amount = 60% (i.e. 30% + 30%) x \$1 million
 - Dutiable amount = \$600,000
 - Duty = \$600,000 x determined rate at 16 February 2015⁸
 - Duty payable = \$20,800

Duty reductions

39. Duty reductions occur when a person acquires a further interest in a landholder and landholder duty was previously imposed on an interest acquired during the relevant period.⁹
40. Ordinarily this will occur when a person who already has a significant interest in a landholder acquires a further interest, in which case the duty payable on the acquisition will be reduced by any landholder duty previously paid in respect of the earlier acquisition.

⁷ Taxation Administration (Amounts Payable – Duty) Determination 2008 (No 1), section 4 (table 1).

⁸ Taxation Administration (Amounts Payable – Duty) Determination 2014 (No 2), section 4 (table 1).

⁹ Duties Act, subsection 90(3).

41. Landholder duty cannot be reduced by landholder duty previously paid that is outside the relevant period of the current acquisition because it is not utilised in the calculation of duty.
42. Landholder duty cannot be reduced by conveyance duty previously paid when the landholder purchased the property.¹⁰

Example 5 – Further interest acquired, landholder duty was paid on first relevant acquisition

43. On 18 August 2012, Julie made a relevant acquisition when she purchased 50 per cent of the shareholdings in Company K Pty Ltd ('Company K') who owns land in the ACT valued at \$1 million. Julie lodged an acquisition statement and paid \$18,050 in landholder duty.
44. On 1 July 2013, Julie made another relevant acquisition in Company K when she purchased an additional 25 per cent of their shareholdings. The value of the land remained at \$1 million. If Company K was wound up on 1 July 2013, Julie would receive 75 per cent of their property.
45. Duty is calculated with reference to the multiple interests' calculation method, as the 50 per cent interest that Julie acquired on 18 August 2012 is within the relevant period of her acquisition on 1 July 2013. Therefore, duty is calculated on 75 per cent that being Julie's aggregated total interest in Company K.
46. Duty is calculated in two steps. First, duty is calculated on the aggregated total interest of 75 per cent, which totals \$29,600.
47. The second step is to reduce the duty payable by the duty that Julie previously paid on her 50 per cent interest acquired on 18 August 2012, which was \$18,050. The balance is the amount of duty payable on Julie's acquisition on 1 July 2013, which is \$11,550.
48. Duty Calculation
 - Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
 - Dutiable amount = 75% (i.e. 50% + 25%) x \$1 million
 - Dutiable amount = \$750,000
 - Duty = \$750,000 x determined rate at 1 July 2013¹¹
 - Duty = \$29,600
 - Duty reduction = \$29,600 - \$18,050 (duty previously paid)
 - Duty payable on 1 July 2013 acquisition = \$11,550

Example 6 – Further interest acquired, and landholdings increased in value

49. On 1 July 2020, Tom made a relevant acquisition when he acquired 50 per cent of the shareholdings in Company B Pty Ltd ('Company B') who owns land in the ACT valued at \$3.2 million. Tom lodged an acquisition statement and paid \$80,000 in landholder duty.
50. On 9 December 2020, Company B purchased an additional parcel of land in the ACT, increasing the value of their landholdings to \$4 million.

¹⁰ Duties Act, subsection 90(3). The sub-section specifically refers to reducing duty 'only in proportion to the extent to which duty paid or payable is attributable to the amount of the duty payable under this section'. The reference to 'this section' limits the duty reduction to duty payable under section 90, that is landholder duty.

¹¹ *Taxation Administration (Amounts Payable—Duty) Determination 2013 (No 2)*, section 6 (table 1).

51. On 10 January 2021, Tom made a further acquisition in Company B, when he purchased 5 per cent of their shareholdings. If Company B was wound up on 10 January 2021, Tom would receive 55 per cent of their property.
52. Duty is calculated with reference to the multiple interests' calculation method on the aggregated total of 55 per cent, as the 50 per cent interest that Tom acquired on 1 July 2020 is within the relevant period of his acquisition on 10 January 2021.
53. Duty is calculated in two steps. First, duty is calculated under subsection 90(2) on the aggregated total interest of 55 per cent and the unencumbered value of the landholdings at the date of the relevant acquisition will be used for the duty calculation, that is \$4 million. The duty payable was \$110,000.
54. The second step is to reduce the duty payable by the duty that Tom previously paid on his 50 per cent interest, which was \$80,000. The balance is the amount of duty payable on Tom's acquisition on 10 January 2021, which is \$30,000.
55. Duty Calculation
 - Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
 - Dutiable amount = 55% (i.e. 50% + 5%) x \$4 million
 - Dutiable amount = \$2,200,000
 - Duty = \$2,200,000 x determined rate at 10 January 2021¹²
 - Duty = \$110,000
 - Duty reduction = \$110,000 - \$80,000 (duty previously paid)
 - Duty payable on 10 January 2021 acquisition = \$30,000

Penalties and interest

56. Penalty tax and interest are imposed on underpaid duty under section 30 and section 25 of the *Taxation Administration Act 1999*, respectively.
57. A tax default occurs if duty is not paid within 90 days after the relevant acquisition.¹³ Where landholder duty has not been paid within 90 days of a relevant acquisition, the unpaid duty will be payable along with any applicable penalty tax and interest.
58. Interest is imposed on any unpaid duty. Interest is calculated daily and is backdated to the day after the original duty was due.

Signed

Lisa Holmes
A/g Commissioner for ACT Revenue
29 July 2021

¹² *Taxation Administration (Amounts Payable – Duty) Determination 2021*, section 7 (table 2).

¹³ Duties Act, section 88.