

<b>REVENUE CIRCULAR LHD002.1</b>
Calculation of Landholder Duty
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## Preamble

1. Landholder Duty is imposed under the *Duties Act 1999* (Duties Act) on certain transactions when a person (which can include a company, trustee, or an association, etc.) makes a relevant acquisition in a landholder who has an interest in land in the ACT.<sup>1</sup> 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.

<sup>1</sup> Duties Act, sections 85 and 86.

2. Landholder Duty is administered under Chapter 3 of the *Duties Act 1999* (Duties Act).
3. This Circular identifies how landholder duty in the ACT is calculated, including how relevant acquisitions are valued.

## Circular

### ***Calculating landholder duty***

4. Generally, no duty is payable until you make a ‘relevant acquisition’ in a landholder. A relevant acquisition entitles you or your associates to receive 50 per cent or more of the landholder’s property if it is wound up.
5. There are several methods for calculating landholder duty in the ACT: the single interest, aggregated interest, and further interest methods. The method of calculation depends on how a relevant acquisition/s occurred.
6. The ‘relevant period’ is the three years before the relevant acquisition. The period is inclusive of the same day of the calendar month three calendar years earlier (that is, 30 June 2021 to 30 June 2024).
7. Duty is calculated with reference to the ‘relevant rate’, that being the Taxation Administration (Amounts Payable–Duty) Determination utilising the commercial property rate that is current on the date of the relevant acquisition. These determinations are published on the ACT Legislation Register and can also be located on the ACT Revenue Office website.

### **Tax-free threshold**

8. Before 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. For acquisitions on the date of publication of this circular, no tax would be payable if the dutiable amount of the relevant acquisition in the landholder was less than or equal to \$1.8 million.<sup>2</sup>

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

Dutiable Amount	Rate of Duty
Less than or equal to \$1,800,000	Nil
More than \$1,800,000	A flat rate of \$5.00 per \$100 applied to the total dutiable amount

\* 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 can be altered at any time. Therefore, you must check if a new disallowable instrument has been issued. You can find the disallowable instruments at [www.legislation.act.gov.au/a/1999-7/](http://www.legislation.act.gov.au/a/1999-7/) under the heading ‘Regulations & Instruments’.

<sup>2</sup> *Taxation Administration (Amounts Payable – Duty) Determination 2023*, DI2023-162, section 7 (2) (table 4) (‘DI2023-162’).

## Duty Calculator

10. The 'conveyance duty calculator' located on the ACT Revenue Office website ([www.revenue.act.gov.au/duties/conveyance-duty](http://www.revenue.act.gov.au/duties/conveyance-duty)) can assist you to calculate your landholder duty liability.
  - a. For 'property type' select 'commercial' because all landholder duty is calculated with reference to the commercial duty rates.
  - b. The dutiable amount of the transaction must be calculated with reference to the relevant calculation method for that transaction: being a 'single interest', 'aggregated interests' or 'further interest' outlined below. The dutiable amount is entered into the calculator field which states 'the greater of purchase price or market value (include GST if it applies)'
  - c. The 'date of grant, transfer, or agreement to transfer (whichever is first)' is the date of the relevant acquisition.
11. The calculator is a guide only, and you still have an obligation to submit a landholder duty Acquisition Statement with the ACT Revenue Office and pay duty within 90 days of the relevant acquisition.<sup>3</sup> However, an Acquisition Statement does not need to be lodged if no duty is payable, unless you are claiming an exemption. The Acquisition Statement is available on the ACT Revenue Office website.

## Associated Persons

12. The associated person definition is relevant to applying the aggregated interest method and potentially the further interest method.
13. 'Associated person'<sup>4</sup> is a broadly defined concept, some of the included categories are:
  - a. related people looking to relationships between individuals (partners, prior partners, parent and children, sisters, brothers or brother and sister) and also extends to relationships between individuals, private companies, and trustees;<sup>5</sup>
  - b. partners in a partnership to which the *Partnership Act 1963* (ACT) applies;
  - c. private companies with shareholders with a majority interest or minority shareholders common to each company who would be a majority interest if it was aggregated;<sup>6</sup>
  - d. trustees of two trusts, if there is a beneficiary common to the trusts;
  - e. private companies and trustees if a related body corporate of the company is a beneficiary of the trust of which the trustee is a trustee;
  - f. two persons are if they have an associated person in common.<sup>7</sup>
14. A transfer of a significant interest between associated persons is ordinarily a taxable event.
15. The provisions work to deem an interest in a landholder held by a person (or other legal entity) to include the interests held by an associated person, when reviewing if a person has made a relevant acquisition in a landholder.
16. The Commissioner has discretion to determine it is not appropriate to include an interest of an associated person when assessing duty for aggregated interests if the associated

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<sup>3</sup> Duties Act, sections 87 (3), 88.

<sup>4</sup> Duties Act, section 77A.

<sup>5</sup> Duties Act, section 77A (3) 'related person'. The list of related persons identified in paragraph 12 (a) is not exhaustive and further related persons are identified in section 77A (3) of the Duties Act.

<sup>6</sup> Duties Act, section 77A (3).

<sup>7</sup> Duties Act, section 77A (2).

person acquired their interest independently and for no common purpose.<sup>8</sup>

### **Duty reductions**

17. Duty reductions may occur when an interest acquired within the three-year relevant period is included in duty calculations and a person has already paid duty or is liable to pay duty on that interest.<sup>9</sup>
18. Landholder duty cannot be reduced by landholder duty previously paid that is outside the relevant period of the current relevant acquisition because those amounts are not utilised in the calculation of duty.
19. Landholder duty cannot be reduced by conveyance duty previously paid when the landholder purchased the property.<sup>10</sup>

### **Determining which calculation method to use**

20. Landholder duty calculations utilise either: single interest, aggregated interests, or further interest methods.
21. The 'single interest' method for calculating duty under section 90 is utilised when a person makes a relevant acquisition that is of itself a significant interest in the landholder.<sup>11</sup>
22. The 'aggregated interests' method for calculating duty under section 90A is utilised when a person makes a relevant acquisition involving acquisitions by the person, associates of the person or other person in an associated transaction, that cumulatively results in the person acquiring a significant interest in the landholder.<sup>12</sup>
23. The 'further interest' method for calculating duty under section 90B is utilised when a person who already holds a significant interest in the landholder acquires another interest making another relevant acquisition.<sup>13</sup> The calculation will include elements of the calculation method for either a single interest or an aggregated interest.

### ***Single interest***

24. Landholder duty is calculated with reference to section 90 for the acquisition of a single interest in a relevant period<sup>14</sup> if a person acquires:
  - a. a significant interest (50 per cent or more) in a landholder in a single acquisition;<sup>15</sup> and
  - b. no other interests in the landholder were acquired in the three-year relevant period of the acquisition of the single interest, by either:
    - (i) the person; or
    - (ii) an associated person;
    - (iii) or any other person in an associated transaction.<sup>16</sup>

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<sup>8</sup> Duties Act, section 90A (4).

<sup>9</sup> Duties Act, section 90A (2) (e) and section 90B (2) (v).

<sup>10</sup> Duties Act, section 90A (2) (e) and section 90B (2) (v) refer to reducing duty 'paid or payable under this division', which limits the duty reduction to landholder duty.

<sup>11</sup> Duties Act, section 86 (1) (a) (i).

<sup>12</sup> Duties Act, sections 86 (1) (a) (ii) or (iii).

<sup>13</sup> Duties Act, section 86 (1) (b).

<sup>14</sup> Duties Act, section 78 'relevant period'.

<sup>15</sup> Duties Act, sections 90 (1) (a) – (b).

<sup>16</sup> Duties Act, section 90 (1) (c).

25. The interest acquired in the landholder is defined as a relevant interest and is the percentage interest acquired in the landholder.<sup>17</sup>
26. Landholder duty payable is calculated with reference to the dutiable amount.
27. To determine the dutiable amount of the transaction, the relevant interest is multiplied by the value (on the day of the acquisition) of the landholder's interest in land in the ACT.
- a. The method to determine the value, known legislatively as the 'UVL' (unencumbered value of land), of the property is dependent upon the calculation method used.<sup>18</sup>
28. The dutiable amount is multiplied by the relevant rate on the date of the relevant acquisition to calculate the duty payable:

$$\text{Dutiable amount} = \text{Relevant interest} \times \text{UVL}$$

**Example 1 – A person acquires a significant interest of 50 per cent or more in a landholder in a single acquisition<sup>19</sup>**

On 1 October 2023, Company A acquired a 50 per cent interest in Landholder H. Company A has acquired a significant interest in Landholder H and made a relevant acquisition.<sup>20</sup> Company A is liable for duty calculated under the single interest method, as a significant interest was acquired, and no other interests were acquired during the relevant period by Company A, nor was their acquisitions by associated persons or in an associated transaction. To calculate the duty payable, it is necessary to determine the UVL of Landholder H on 1 October 2023. Company A provided a valuation report from an accredited valuer to provide evidence of the unencumbered value of Landholder H's interest in land in the ACT on 1 October 2023 of \$5 million.<sup>21</sup>

The valuation report identified that Landholder H beneficially owns two leasehold properties in the ACT with a total unencumbered value of \$4 million. Landholder H has a 50 per cent interest (tenants in common) in a third property with an unencumbered value of \$2 million. The value of the third property for duty purposes for Landholder H is \$1 million. Landholder H's interest in land in the ACT has a total unencumbered value of \$5 million.

- Company A has a relevant interest of 50 per cent in Landholder H.
- The UVL of Landholder H on 1 October 2023 is \$5 million.
- The determined rate on 1 October 2023 is governed by section 7 (2) of the *Taxation Administration (Amounts Payable—Duty) Determination 2023*, (DI2023-162).

The calculation for landholder duty for a relevant acquisition through a single interest<sup>22</sup> applies as follows:

<sup>17</sup> Duties Act, section 90 (3) 'relevant interest'.

<sup>18</sup> The definition for UVL references the definition of 'landholding', which is contained from sections 80 – 82 of the Duties Act and includes land constructively held by others.

<sup>19</sup> Based on extract from Revenue Legislation Amendment Bill 2022, Explanatory Statement.

<sup>20</sup> Duties Act, section 86 (1) (a) (i).

<sup>21</sup> Duties Act, sections 87 (4) (e) – (f).

<sup>22</sup> Duties Act, section 90 (2).

Dutiable amount	= UVL (\$5,000,000) × relevant interest (50 per cent)
	= \$2,500,000
Duty	= \$2,500,000 × (\$5/\$100) the relevant rate on 1 October 2023
	= \$125,000

Note, Landholder H is jointly and severally liable to pay the landholder duty liability incurred by Company A.<sup>23</sup>

### ***Aggregated Interests***

29. Landholder duty is calculated with reference to the aggregated interests method under section 90A when more than one acquisition is aggregated if a person acquires:

- a. an interest in a landholder;
- b. the interest is aggregated with at least one other interest in the landholder, which results in a relevant acquisition.<sup>24</sup>

30. However, duty will not be imposed in relation to an 'other interest' if it was acquired outside of the three-year relevant period of the acquisition of the 'relevant interest'.<sup>25</sup>

31. Calculating the dutiable amount requires several calculations to be undertaken to determine the amount of the relevant acquisition and 'another acquisition'.<sup>26</sup> Duty is calculated on the dutiable amount with reference to the relevant rate on the day of the relevant acquisition and reduced by any duty paid or payable.<sup>27</sup>

32. The relevant acquisition is the amount calculated by multiplying the UVL by the relevant interest.

- a. The relevant interest, in this instance, is the most recently acquired interest in the landholder expressed as a percentage of the total interest in the landholder.<sup>28</sup>
- b. The UVL for the relevant acquisition is the unencumbered value of the landholder's interest in ACT land on the day of the relevant acquisition.<sup>29</sup>

33. Another acquisition is the amount calculated by multiplying the UVL by the 'other interest'.

- a. The other interest is each interest acquired in the landholder (expressed as a percentage) during the relevant period that was not the 'relevant interest', which will be the interests previously acquired by the person, an associated person, or in an associated transaction.<sup>30</sup>
- b. The UVL is the unencumbered value of the landholder's interest in ACT land on the day of the relevant acquisition (identical to the relevant interest) unless the Commissioner makes an unencumbered value determination.
- c. The calculation for determining the amount of another acquisition may need to be repeated several times if there was more than one 'other interest' acquired within the relevant period of the relevant acquisition.

<sup>23</sup> Duties Act, sections 89 (1) (a) – (b).

<sup>24</sup> Duties Act, section 90A (1) references section 86 (1) (a) (ii) or (iii).

<sup>25</sup> Duties Act, section 90A (2) (b).

<sup>26</sup> Duties Act, sections 90A (2) (a) – (c).

<sup>27</sup> Duties Act, sections 90A (2) (d) – (e), 90A (3) 'relevant rate'.

<sup>28</sup> Duties Act, sections 90A (5) 'relevant interest'; 90 (3) 'relevant interest'.

<sup>29</sup> Duties Act, section 90A (5) 'UVL' (a).

<sup>30</sup> Duties Act, section 90A (5) 'other interest' and section 90A (1) (b).

34. The Commissioner may make an unencumbered value determination for the unencumbered value of the landholder's interest in ACT land on the day of another acquisition, if the value is supported by either:

- a. a valuation report prepared by an accredited valuer not more than 12 months after the day of the other acquisition; or
- b. other evidence.<sup>31</sup>

35. The dutiable amount is calculated by adding or aggregating the sum of the amount determined by multiplying the relevant UVL by the 'relevant interest' and the 'other interest'.

$$\text{Dutiable amount} = (\text{UVL} \times \text{relevant interest}) + (\text{UVL} \times \text{other interest})$$

36. Duty is calculated with reference to the dutiable amount using the relevant rate as of the date of the relevant acquisition, which is the most recently acquired interest.

***Example 2 – A person acquires an interest that is aggregated with interests held by an associated person in the same landholder in the relevant period<sup>32</sup>***

On 20 July 2023, Person Y purchased 40 per cent of the ordinary shares in Landholder X (private company with only ordinary shares on issue). Person Y's interest in Landholder X is 40 per cent, which is not a significant interest therefore they did not make a relevant acquisition. Person Y is not required to submit an Acquisition Statement to the ACT Revenue Office or pay duty on the acquisition at this time.

On 30 December 2023, Person B purchased 30 per cent of the ordinary shares in Landholder X. As Person Y and Person B are siblings, they are related persons, and related persons are associated persons. The interests are therefore aggregated to deem that Person B made a relevant acquisition with an aggregated interest of 70 per cent in Landholder X.

The Commissioner may decide to exclude the interest of Person Y from the duty calculation, if the Commissioner is satisfied that the Person B acquired the interest independently and for no common purpose. Person B purchased the interest to participate in a profitable business with their sibling, Person Y, and they would now jointly have majority control and ownership of Landholder X. As a result, the Commissioner would not exercise their discretion to exclude as the interests were acquired for a common purpose.

Person B provided a valuation report prepared by an accredited valuer with a valuation date of 30 December 2023, which stated that Landholder X's interest in land in the ACT had an unencumbered value of \$10 million.

The steps for calculating duty on aggregated interests is outlined below.

***Step 1 – Calculating the amount – Relevant acquisition***

The amount for a relevant acquisition is calculated by multiplying the UVL of the relevant interest. The relevant interest was Person B's 30 per cent interest acquired on 30 December 2023 in Landholder X.

The UVL is the unencumbered value of Landholder X's interest in ACT land on

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<sup>31</sup> Duties Act, section 90C (3).

<sup>32</sup> Based on extract from Revenue Legislation Amendment Bill 2022, Explanatory Statement.

30 December 2023, being \$10 million on the day of the relevant acquisition.

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$10 \text{ million}) \times \text{relevant interest (30 per cent)} \\ &= \$3,000,000\end{aligned}$$

*Step 2 – Calculating the amount – Another acquisition*

The amount for another acquisition is to be calculated by multiplying the UVL by the other interest. The other interest is the proportion of the interest in Landholder X acquired by Person Y on 20 July 2023 of 40 per cent.

The UVL for Person Y's acquisition is deemed to be the unencumbered value as of 30 December 2023 (the date of the acquisition by Person B) unless the Commissioner makes an unencumbered value determination.<sup>33</sup>

The Commissioner will be more likely to make an unencumbered value determination to allow the UVL of another acquisition to be determined on 20 July 2023 if Person B provides a valuation report prepared by an accredited valuer as required in their Acquisition Statement.

Person B did not provide a valuation report for the unencumbered value of Landholder X's interest in ACT land on 20 July 2023. Person B provided a valuation from an accredited valuer with a valuation date of 20 December 2023, which is within 12 months of the acquisition and would likely satisfy the requirements. If there was no evidence of a change in circumstances that would affect the unencumbered value of Landholder X's interest in ACT land, the Commissioner would exercise their discretion to make an unencumbered value determination to determine that the unencumbered value of Landholder X's interest in ACT land on 20 July 2023 was \$10 million.

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$10 \text{ million}) \times \text{other interest (40 per cent)} \\ &= \$4,000,000\end{aligned}$$

*Step 3 – Calculate the dutiable amount*

The amounts calculated above should be added together to calculate the dutiable amount.

$$\begin{aligned}\text{Dutiable amount} &= \$3,000,000 \text{ (step 1)} + \$4,000,000 \text{ (step 2)} \\ &= \$7,000,000\end{aligned}$$

*Step 4 – Apply duty rate on the dutiable amount*

Duty will then be determined using the dutiable amount calculated in step 3 multiplied by the determined rate in force on the day of the relevant acquisition.

$$\begin{aligned}\text{Duty} &= \$7,000,000 \times (\$5/100) \text{ the relevant rate on 30 December 2023}^{34} \\ &= \$350,000\end{aligned}$$

*Step 5 – Subtract any duty previously paid or payable*

Duty paid or payable can be reduced by each other acquisition from the amount calculated under step 4. Step 5 will not apply to Example 2, as neither Person Y or Person B has previously paid or been liable for landholder duty.

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<sup>33</sup> Duties Act, section 90C (2).

<sup>34</sup> Relevant rate is presumed to still be contained in DI2023-162.



Person B is liable to pay landholder duty on the relevant acquisition. While Person Y is jointly and severally liable to pay duty as the relevant acquisition results from an aggregation of their interest with Person B.<sup>35</sup> Similarly, Landholder X is also jointly and severally liable to pay duty.<sup>36</sup>

***Example 3 – Person acquires multiple interests in the landholder over a two-year period***

On 18 April 2021, Zane purchased 20 per cent of the units on issue in Landholder Teal, a private unit trust scheme. Landholder Teal had an interest in ACT land on 18 April 2021. Zane was pleased with the returns he received from Landholder Teal. On 11 November 2023, Zane purchased 30 per cent of the units on issue, increasing his total unit holdings in Landholder Teal to 50 per cent. By 11 November 2023, Landholder Teal had purchased additional properties and their interest in ACT land was \$5 million as indicated by a valuation report (prepared by an accredited valuer) and supplied with the Acquisition Statement.

On 11 November 2023, Zane made a relevant acquisition in Landholder Teal. The relevant acquisition was made by aggregating Zane’s acquisition on 18 April 2021 with his acquisition on 11 November 2023, therefore, the aggregated interest calculation provision applies.

***Step 1 – Calculating the amount – Relevant acquisition***

Zane’s relevant interest in Landholder Teal is his acquisition on 11 November 2023 of 30 per cent.

The UVL is \$5 million, being the unencumbered value of the Landholder X’s interest in ACT land on the day of the relevant acquisition, which is also supported by appropriate valuation evidence.

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$5 \text{ million}) \times \text{relevant interest (30 per cent)} \\ &= \$1,500,000\end{aligned}$$

***Step 2 – Calculating the amount – Another acquisition***

Zane’s other interest in Landholder Teal is his acquisition on 18 April 2021, which is within the three-year relevant period of his acquisition on 11 November 2023.

The UVL for Zane’s acquisition on 18 April 2021 is deemed to be the unencumbered value of Landholder Teal’s interest in land in the ACT on 11 November 2023 of \$5 million (day of the relevant acquisition) unless the Commissioner makes an unencumbered value determination.<sup>37</sup>

To comply with the requirements of an Acquisition Statement, Zane was required to provide evidence of the unencumbered value of Landholder Teal’s interest in land in the ACT on the date of each interest acquired.<sup>38</sup>

Zane did not provide the Commissioner with a valuation report made within 12 months of the acquisition on 18 April 2021. Zane did not provide any evidence of the unencumbered value of Landholder Teal’s interest in land in the ACT on 18 April 2021. As a result, the Commissioner did not exercise their discretion to make an

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<sup>35</sup> Duties Act, section 89 (1) (c).

<sup>36</sup> Duties Act, section 89 (1) (b).

<sup>37</sup> Duties Act, section 90A (5) ‘UVL’ (b) (i).

<sup>38</sup> Duties Act, sections 87 (4) (e) – (f), (h).

unencumbered value determination in respect of Landholder Teal interest in ACT land on 18 April 2021.

The UVL of the acquisition on 18 April 2021, is therefore determined on the date of the relevant acquisition, that being \$5 million.

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$5 \text{ million}) \times \text{other interest (20 per cent)} \\ &= \$1,000,000\end{aligned}$$

*Step 3 – Calculate the dutiable amount*

The amounts calculated above should be added together to calculate the dutiable amount.

$$\begin{aligned}\text{Dutiable amount} &= \$1,500,000 \text{ (step 1)} + \$1,000,000 \text{ (step 2)} \\ &= \$2,500,000\end{aligned}$$

*Step 4 – Apply duty rate on the dutiable amount*

Duty will then be determined using the dutiable amount calculated in step 3 multiplied by the determined rate in force on the day of the relevant acquisition.

$$\begin{aligned}\text{Duty} &= \$2,500,000 \times (\$5/100) \text{ the relevant rate on 11 November 2023}^{39} \\ &= \$125,000\end{aligned}$$

*Step 5 – Subtract any duty previously paid or payable*

Duty paid or payable can be reduced by the relevant duty paid from each earlier acquisition from the amount calculated under step 4. Step 5 will not apply to Example 3, as Zane has never been previously liable to pay duty under this division, therefore there is no landholder duty already paid or payable to deduct.

### **Further Interests**

37. Landholder duty is calculated under the further interest method with reference to section 90B when a person:

- a. made an initial relevant acquisition in a landholder;<sup>40</sup> and
- b. either the person or an associated person makes a further acquisition in the landholder.<sup>41</sup>

38. A further acquisition occurs when a person or an associated person who has an interest of 50 per cent or more in a landholder acquires a further interest in the landholder.<sup>42</sup>

39. Any initial acquisition that is within the three-year relevant period of the further acquisition is included in the duty calculations, however a duty credit will be applied to reduce the duty payable.

40. If the initial acquisition occurred outside the three-year relevant period, then duty is calculated with reference to the further acquisition and no duty credit is applicable.<sup>43</sup>

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<sup>39</sup> Relevant rate is presumed to still be contained in DI2023-162.

<sup>40</sup> Duties Act, section 90B (1) (a).

<sup>41</sup> Duties Act, section 90B (1) (b).

<sup>42</sup> Duties Act, section 86 (1) (b).

<sup>43</sup> Duties Act, section 90B (2) (b).

**Example 4 – If the prior interests were acquired outside of the relevant period of a relevant acquisition**

On 5 March 2015, 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 with an unencumbered value of \$800,000 in the ACT. Jane lodged an Acquisition Statement with the ACT Revenue Office and paid landholder duty of \$11,650 within 90 days of the relevant acquisition.

On 27 November 2023, Jane made a relevant acquisition of a further interest when she was allotted the remaining 50 per cent of the shareholdings in Company A which now has an interest in ACT land with an unencumbered value of \$10 million. Jane would be entitled to receive all the capital of Company A on 27 November 2023 if it ceased to exist.

Jane's acquisition on 27 November 2023 was a second acquisition of a significant interest. Duty is more appropriately calculated with reference to the further interest method than the single interest method as it contemplates the initial acquisition not being within the relevant period.<sup>44</sup> However, the duty outcome would be identical.

No duty reductions apply because interests acquired outside of the relevant period are not included in the calculation of duty.<sup>45</sup>

Landholder duty will be calculated only with reference to Jane's most recently acquired interest on 27 November 2023, which was 50 per cent.

The calculation is for a relevant acquisition of a further interest when there were no prior interests in the relevant period:

*Step 1 – Calculate the amount for the further acquisition*

$$\begin{aligned}\text{Dutiable amount} &= \text{Further interest (50 per cent)} \times \text{UVL } (\$10,000,000) \\ &= \$5,000,000\end{aligned}$$

*Step 2 – Apply the duty rate on the dutiable amount*

$$\begin{aligned}\text{Duty} &= \$5,000,000 \times (\$5/\$100) \text{ the relevant rate on 27 November 2023}^{46} \\ &= \$250,000\end{aligned}$$

**Example 5 – A person acquires more than one interest in a landholder in the relevant period that amounts to a significant interest<sup>47</sup>**

On 16 October 2023, Blue Company purchased 60 per cent of the units on issue in Landholder A (private unit trust scheme). Blue Company made a relevant acquisition of a significant interest.

Blue Company provided the Commissioner with a valuation report prepared by an accredited valuer with their Acquisition Statement that stated that the unencumbered value of Landholder A's interest in ACT land on 16 October 2023 was \$7 million.

Blue Company paid \$210,000 in duty on the relevant acquisition.

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<sup>44</sup> Duties Act, section 90B (2) (b).

<sup>45</sup> Duties Act, section 90B (2) (b).

<sup>46</sup> Relevant rate is presumed to still be contained in DI2023-162.

<sup>47</sup> Based on extract from Revenue Legislation Amendment Bill 2022, Explanatory Statement.

On 22 November 2023, Blue Company purchased an additional 20 per cent of the units on issue in Landholder A, which is the acquisition of a further interest.<sup>48</sup> As a result, Blue Company made a further acquisition as they now had a total interest of 80 per cent in Landholder A.

Blue Company provided the Commissioner with a valuation report prepared by an accredited valuer with their Acquisition Statement that stated that the unencumbered value of the Landholder A's interest in ACT land on 22 November 2023 remained at \$7 million.

The steps for calculating duty for a further acquisition are outlined below.<sup>49</sup>

#### *Step 1 – Calculating the dutiable amount for the initial acquisition*

The applicable provision for calculating duty and the UVL on an initial acquisition varies depending upon whether the acquisition was of a single interest or an aggregated interest.<sup>50</sup>

If the acquisition was itself a significant interest, that is a 50 per cent interest then the amount will be calculated with reference to a single interest.<sup>51</sup>

If the initial acquisition was an aggregated interest, then the amount will be calculated with reference to the aggregated interest provisions.<sup>52</sup> In considering the UVL of initial acquisition the Commissioner may make an unencumbered value determination (if applicable).

The initial acquisition on 16 October 2023 was a relevant acquisition calculated with reference to the single interest provisions.<sup>53</sup> The UVL was determined on the day of the relevant acquisition that being 16 October 2023 at \$7 million supported by a valuation report prepared by an accredited valuer. The unencumbered value determination provisions do not apply.

Blue Company made a relevant acquisition of a 60 per cent interest therefore, the amount for the initial acquisition will be calculated for a single interest.<sup>54</sup>

The calculation for the initial acquisition is:

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$7 \text{ million}) \times \text{relevant interest (60 per cent)} \\ &= \$4,200,000\end{aligned}$$

#### *Step 2 – Calculating the dutiable amount for the further acquisition*

The amount of the further interest is to be calculated by multiplying the UVL by the further interest, being the proportion of the interest in a landholder acquired by the person in the further acquisition. The UVL is the unencumbered value of the Landholder A's interest in ACT land on the day of the further acquisition.<sup>55</sup>

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<sup>48</sup> Duties Act, section 86 (1) (b)

<sup>49</sup> Duties Act, section 90B (2) (a).

<sup>50</sup> Duties Act, sections 90B (2) (a) (i) (A) – (B).

<sup>51</sup> Duties Act, section 90 (2).

<sup>52</sup> Duties Act, section 90A (2).

<sup>53</sup> Duties Act, section 90B (2) (a) (i) (A).

<sup>54</sup> Duties Act, section 90B (2) (a) (i) (A).

<sup>55</sup> Duties Act, section 90B (3) 'UVL'.

The calculation for the further acquisition is:

$$\begin{aligned}\text{Amount} &= \text{UVL (\$7 million)} \times \text{further interest (20 per cent)} \\ &= \$1,400,000\end{aligned}$$

*Step 3 – Calculate the dutiable amount*

The amounts calculated should be added together to calculate the dutiable amount.

$$\begin{aligned}\text{Dutiable amount} &= \$4,200,000 \text{ (step 1)} + \$1,400,000 \text{ (step 2)} \\ &= \$5,600,000\end{aligned}$$

*Step 4 – Apply duty rate on the dutiable amount*

Duty will then be determined using the dutiable amount calculated in step 3 multiplied by the determined rate in force on the day of the further acquisition.

$$\begin{aligned}\text{Duty} &= \$5,600,000 \times (\$5/100) \text{ the relevant rate on 22 November 2023}^{56} \\ &= \$280,000\end{aligned}$$

*Step 5 – Duty reduction*

Any duty paid or payable on the initial acquisition will be subtracted from the duty payable in step 4.

Duty of \$280,000 will be reduced by \$210,000, being the amount of duty previously paid by Blue Company on the acquisition on 16 October 2023.

Duty payable on the relevant acquisition of 22 November 2023:

$$\begin{aligned}&= \$280,000 - \$210,000 \\ &= \$70,000\end{aligned}$$

*Example 6 – A person makes a relevant acquisition in a landholder, then their interest decreases, and subsequently, they make another relevant acquisition*

The same facts as in Example 5, except on 1 January 2024 Blue Company sold 20 per cent of their unit holdings in Landholder A, which was the unitholding they had acquired on 22 November 2023.

Blue Company has disposed of an interest rather than acquired an interest. Therefore, Blue Company has not made a relevant acquisition despite continuing to hold a 60 per cent interest in Landholder A.

On 1 March 2024, Blue Company bought out the remaining unitholders in Landholder A and made a relevant acquisition of 40 per cent. Blue Company lodged an Acquisition Statement with the ACT Revenue Office with a letter from an accredited valuer stating that the unencumbered value of Landholder A's interest in ACT land had remained at \$7 million on 1 March 2024.

Blue Company made a relevant acquisition of a further interest as the interest they held prior to making the relevant acquisition was itself a relevant acquisition.<sup>57</sup> If Blue Company had held an interest in Landholder A that was less than 50 per cent prior to acquiring the interest on 1 March 2024, then duty would be calculated with reference to the aggregated interest method with a duty credit applied in respect of any

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<sup>56</sup> Relevant rate is presumed to still be contained in DI2023-162.

<sup>57</sup> Duties Act, section 90B (1) (a).

landholder duty previously paid or payable.<sup>58</sup>

*Step 1 – Calculating the dutiable amount for the initial acquisition*

Company Blue made a relevant acquisition of 60 per cent on 16 October 2023, therefore, the initial acquisition as outlined in Example 5 is for a single interest.

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$7 \text{ million}) \times \text{relevant interest (60 per cent)} \\ &= \$4,200,000\end{aligned}$$

*Step 2 – Calculating the dutiable amount for the further acquisition*

The further interest acquired on 1 March 2024 was 40 per cent. The UVL is the unencumbered value of Landholder A's interest in ACT land on 1 March 2024, which was \$7 million.

The calculation for the further acquisition is:

$$\begin{aligned}\text{Amount} &= \text{UVL } (\$7 \text{ million}) \times \text{further interest (40 per cent)} \\ &= \$2,800,000\end{aligned}$$

*Step 3 – Calculate the dutiable amount*

The amounts calculated should be added together to calculate the dutiable amount.

$$\begin{aligned}\text{Dutiable amount} &= \$4,200,000 \text{ (step 1)} + \$2,800,000 \text{ (step 2)} \\ &= \$7,000,000\end{aligned}$$

*Step 4 – Apply duty rate on the dutiable amount*

Duty will then be determined using the dutiable amount calculated in step 3 multiplied by the determined rate in force on the day of the further acquisition.

$$\begin{aligned}\text{Duty} &= \$7,000,000 \times (\$5/100) \text{ the relevant rate on 1 March 2024}^{59} \\ &= \$350,000\end{aligned}$$

*Step 5 – Duty reduction*

Any duty paid or payable on the initial acquisition will be subtracted from the duty payable in step 4.

Duty of \$350,000 will be reduced by the duty previously paid by Blue Company on the acquisitions on 16 October 2023 and 22 November 2023.

Duty payable on the relevant acquisition of 1 March 2024:

$$\begin{aligned}&= \$350,000 - \$210,000 - \$70,000 \\ &= \$70,000\end{aligned}$$

## **Penalties and interest**

41. Penalty tax and interest are imposed on underpaid duty under section 30 and section 25 of the *Taxation Administration Act 1999*, respectively.

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<sup>58</sup> Duties Act, sections 90A (1), 90A (2) (e).

<sup>59</sup> Relevant rate is presumed to still be contained in DI2023-162.

42. A tax default occurs if duty is not paid within 90 days after the relevant acquisition.<sup>60</sup> 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.
43. Interest is imposed on any unpaid duty. Interest is calculated daily and is backdated to the day after the original duty was due.

SIGNED

Kim Salisbury  
Commissioner for ACT Revenue  
21 September 2023

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<sup>60</sup> Duties Act, section 88.