

REVENUE CIRCULAR LHD002

Calculation of Landholder Duty

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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. This Circular will identify how landholder duty in the ACT is calculated, including how relevant acquisitions are valued.

Calculating landholder duty

4. There is no duty payable until an acquisition results in ownership in a landholder of 50 per cent or more.
5. There are two primary methods for calculating landholder duty in the ACT the method used depends upon if there is a single acquisition in a relevant period or multiple acquisitions in a relevant period.
6. Duty is calculated with reference to the latest Taxation Administration (Amounts Payable-Duty) Determination utilising the commercial property rate on the date of the relevant acquisition. These determinations are published on: www.legislation.act.gov.au
7. The *relevant period* is the three-year period before the relevant acquisition. A three-year period is inclusive of the same day of the calendar month three calendar years earlier (ie. 30 June 2018 to 30 June 2021).

¹ Duties Act, sections 85 and 86.

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. At the date of publication, no tax would be payable on a relevant acquisition from 1 July 2021 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 the 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 can be altered at any time. Therefore you must check if a new disallowable instrument has been issued. You can find the disallowable instrument at <https://www.legislation.act.gov.au/a/1999-7/> under the heading ‘Regulations & Instruments’.
11. The ‘conveyance duty calculator’ located on the ACT Revenue Office website can assist you to calculate your landholder duty liability.
 - Select ‘commercial’ for the ‘property type’.
 - The dutiable amount of the transaction must be calculated with reference to either a single acquisition in a relevant period or multiple interests in a relevant period method 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 Acquisition in a Relevant Period

12. Landholder duty is calculated with reference to the single acquisition in a relevant period 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 (or upon incorporation).
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, all interests acquired, including those 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, at the date of the acquisition, 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 (at the date the interest was acquired)

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 as 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 Jane would use the single acquisition in a relevant period method 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 (as at the date of that acquisition)
 - Dutiable amount = 100 per cent 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. Immediately following this transaction, Jane lodged an acquisition statement with the ACT Revenue Office and paid landholder duty.
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 its property.
23. Although Jane acquired her interest in Company A in two acquisitions, the single acquisition in a relevant period 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 acquisition calculation method is used as prior interests are not included in the calculation of duty.
24. Landholder duty will be calculated only with reference to Jane's most recently acquired interest on 7 June 2020, which was 25 per cent.

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

25. Duty Calculation

- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT (as at the date of that acquisition)
- Dutiable amount = 25 per cent x \$10 million
- Dutiable amount = \$2.5 million.
- Duty = \$2.5 million x determined rate on 7 June 2020⁵
- Duty payable = \$125,000

Multiple Acquisitions in a Relevant Period Method

26. Landholder duty is calculated with reference to multiple acquisitions in a relevant period method⁶ 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. Each interest acquired during a relevant period is multiplied by the unencumbered value of the landholding to determine a dutiable amount for each acquisition.

- Dutiable amount for each acquisition = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT as at the date of that acquisition

These dutiable amounts are then aggregated together, and duty is calculated with reference to the aggregated dutiable amount using the applicable rate as at the date of the relevant acquisition.

28. The date of the relevant acquisition is when the last interest (above 50 per cent) in a landholder was acquired.

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

29. On 30 June 2018, Bob acquires an interest in a landholder when he purchased 40 per cent of the shareholdings in Company Z Pty Ltd ('Company Z') who owns land in the ACT valued at \$3.4 million.

30. On 30 June 2021, Bob purchased an additional 20 per cent of the shareholdings in Company Z, at this date Company Z's land in the ACT is valued at \$3.6 million.

31. Bob now owns 60 per cent of the shareholdings in Company Z. If Company Z was wound up on 30 June 2021, Bob would receive 60 per cent of Company Z's property. Bob made a relevant acquisition on 30 June 2021 when he became entitled to more than 50 per cent of Company Z's property. Duty would be calculated with reference to the multiple acquisitions in a relevant period method because Bob's initial interest acquired on 30 June 2018 is within the relevant period of his acquisition on 30 June 2021.

32. Landholder duty is calculated with reference to two acquisitions of Bob's being the 40 per cent and 20 per cent that Bob acquired in Company Z. The unencumbered value of

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

⁶ Duties Act, subsection 90(2).

Company Z's landholdings in ACT was \$3.4 million on 30 June 2018 and \$3.6 million on 30 June 2021.

33. Duty Calculation

- Dutiable amount for each acquisition = Interest acquired in the landholder as a percentage × Unencumbered value of landholdings in the ACT
- Dutiable amount – 30 June 2018
 - = 40 per cent × \$3.4 million
 - = \$1,360,000
- Dutiable amount – 30 June 2021
 - = 20 per cent × \$3.6 million
 - = \$720,000
- Aggregated dutiable amounts – 30 June 2021
 - = \$1,360,000 + 720,000
 - = \$2,080,000. The dutiable amount is above the tax-free threshold of \$1.5 million that was in effect at the time.
- Duty = \$2,080,000 × determined rate at 30 June 2021⁷
- Duty payable = \$104,000

Associated Persons

34. Associated Persons is a broadly defined concept and includes family members, partners in a partnership, private companies with common shareholders or shareholders with a significant interest. Trustees of two trusts are associated people if there is a beneficiary common to the trusts. Private companies and trustees are associated people if a related body corporate of the company is a beneficiary of the trust of which the trustee is a trustee.⁸
35. A transfer of a significant interest between associated persons remains ordinarily a dutiable event.
36. The provisions work to deem the holdings of a person (or other legal entity) to include the interests held by an associate, when reviewing if a person has made a relevant acquisition in a landholder. The Duties Act is drafted to give the Commissioner discretion to determine if it appropriate to use aggregation provisions.⁹

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

37. On 16 February 2015, Laura acquires an interest in landholder when she purchased 30 per cent of the units in the XYZ Unit Trust (fixed private unit trust). Laura's sister Jane previously purchased 30 per cent of the units in the XYZ Unit Trust on 25 November 2014. A valuation report identified the XYZ Unit Trust held land in the ACT worth \$1 million on both 25 November 2014 and 16 February 2015.
38. As siblings, and therefore associated persons, Laura's interest is aggregated with that held by Jane. If 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.
39. Duty is calculated with reference to the multiple acquisitions in a relevant period 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.

⁷ Taxation Administration (Amounts Payable – Duty) Determination 2021 (No 2), section 7 (Table 2).

⁸ Duties Act, dictionary 'associated person'.

⁹ Duties Act, subsection 90(4).

40. Landholder duty is calculated with reference to the dutiable amount of both acquisitions.
41. Duty Calculation
- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
 - Dutiable amount – 25 November 2014 = \$300,000 (30 per cent x \$1 million)
 - Dutiable amount – 16 February 2015 = \$300,000 (30 per cent x \$1 million)
 - Aggregated dutiable amounts = \$600,000
 - Duty = \$600,000 x determined rate at 16 February 2015¹⁰
 - Duty payable = \$20,800
42. If duty is payable because of aggregating interests held by associated persons then both the person who made the relevant acquisition, Laura, and the associated person (her sister Jane) are jointly and severally liable to pay the \$20,800 in duty.¹¹

Duty reductions

43. 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.¹²
44. 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.
45. Landholder duty cannot be reduced by landholder duty previously paid that is outside the relevant period of the current acquisition because those amounts are not utilised in the calculation of duty.
46. Landholder duty cannot be reduced by conveyance duty previously paid when the landholder purchased the property.¹³

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

47. 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.
48. 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.
49. Duty is calculated with reference to the Multiple Acquisitions in the Relevant Period 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 two dutiable amounts being which are then aggregated to determine duty.

¹⁰ *Taxation Administration (Amounts Payable – Duty) Determination 2014 (No 2)*, section 4 (table 1).

¹¹ Duties Act, subsection 89(2).

¹² Duties Act, subsection 90(3).

¹³ 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.

50. Duty is calculated in three steps:
- Firstly, the dutiable amount is calculated on the two acquisitions of 50 per cent and 25 per cent;
 - Secondly, duty is calculated using the determined rate on 1 July 2013, date of the last relevant acquisition which totals \$29,600.
 - The third 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 of \$11,550 is the amount of duty payable on Julie's acquisition on 1 July 2013.

51. Duty Calculation

- Dutiable amount = Interest acquired in the landholder as a percentage x Unencumbered value of landholdings in the ACT
- Dutiable amount – 18 August 2012
 - = 50 per cent x \$1 million
 - = \$500,000
- Dutiable amount – 1 July 2013
 - = 25 per cent x \$1 million
 - = \$250,000
- Aggregated dutiable amounts - 1 July 2013
 - = \$500,000 + \$250,000
 - = \$750,000
- Duty = \$750,000 x determined rate at 1 July 2013¹⁴
- Duty = \$29,600
- Duty reduction = \$29,600 - \$18,050 (duty previously paid)
- Duty payable on 1 July 2013 acquisition = \$11,550

Example 6 – Multiple Acquisitions and Sales in a Relevant Period

52. On 1 July 2020, Tom made a relevant acquisition when he acquired 80 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 \$128,000 in landholder duty.
53. On 9 December 2020, Company B purchased an additional parcel of land in the ACT, increasing the value of their landholdings to \$4.0 million. At the same time, Company B issued new equity to third parties. Tom's interest in Company B dropped to 40 per cent.
54. On 10 January 2021, Tom made a further acquisition in Company B, when he purchased 45 per cent of their shareholdings. If Company B was wound up on 10 January 2021, Tom would receive 85 per cent of their property.
55. Duty is calculated in two steps. First, the aggregated dutiable amount is calculated by the addition of: 80 per cent multiplied by the unencumbered value of the landholdings at the date of the first acquisition (\$3.20M); 45 per cent multiplied it by the unencumbered value at the time of the second acquisition (\$4.00M).
56. It should be noted that for the existing holder, sales (or reductions) of interests has no impact upon Landholder Duty calculations.
57. The second step is to reduce the duty payable by the duty that Tom previously paid on all prior acquisitions in the relevant period – in this case the 80 per cent interest purchased on 1 July 2020, which was \$128,000.

¹⁴ *Taxation Administration (Amounts Payable—Duty) Determination 2013 (No 2)*, section 6 (table 1).

58. Duty Calculation

- Dutiable amount for all acquisitions in a relevant period = Interest acquired in the landholder as a percentage × Unencumbered value of landholdings in the ACT at the time of each acquisition.
- Dutiable amount = (80 per cent × \$3.2 million) + (45 per cent × \$4.0 million)
- Dutiable amount = \$4,360,000
- Duty = \$4,360,000 × determined rate at 10 January 2021¹⁵
- Duty = \$218,000
- Duty reduction = \$218,000 - \$128,000 (duty previously paid)
- Duty payable on 10 January 2021 acquisition = \$90,000

Penalties and interest

59. Penalty tax and interest are imposed on underpaid duty under section 30 and section 25 of the *Taxation Administration Act 1999*, respectively.
60. A tax default occurs if duty is not paid within 90 days after the relevant acquisition.¹⁶ 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.
61. 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
2 December 2021

¹⁵ *Taxation Administration (Amounts Payable – Duty) Determination 2021*, section 7 (table 2).

¹⁶ Duties Act, section 88.