



26 June 2021

By email: cindy.zhang@fianance.wa.gov.au

Commissioner of State Revenue
Revenue WA
Level 3
200 St George's Terrace
PERTH WA 6000

Attention: Cindy Zhang, Assistant Director, Legislation Services

Dear Commissioner

DRAFT REVENUE RULING DA 25.0: SUBSTANTIALLY ONE ARRANGEMENT

UDIA WA and the Property Council thank you for the opportunity to provide comment on Draft Revenue Ruling DA 25 ("the Draft"). Together our members represent all aspects of the property and development industries. We were delighted that in response to COVID-19 the State Government recognised the importance of our industries to WA economy and adopted stimulus measures to support jobs in the housing and construction sectors. This support has enabled WA's economy to outperform other states and created an employment pipeline that will support jobs and the economy well into 2022.

Despite the recent construction activity, our industry has suffered from a long-term decline in property investment, which coupled with a modest increase in population over the past 12 months has led to a severe housing supply shortage with the rental vacancy rate falling below 1%. However, housing demand has been subdued while international borders remain closed. This together with the effective handling of the virus by both the Federal and State Government is likely to mean that WA will experience significant net overseas migration as the international borders reopen placing significant further demand pressures on our housing market.

Against this backdrop it is vital that our members are able to provide a sufficient supply of homes to meet our needs, and avoid housing affordability pressures that are detrimental to our communities and undermine the competitiveness of our economy. To support industry to achieve this, it is imperative that property investment remains an attractive investment proposition.

Given this, we are concerned about the potential for further duties to arise if a capital raising by a company or unit trust (after the company or unit trust owns or has contracted to acquire land) is treated as 'substantially one' arrangement.

1. Acknowledgement of primary focus in analysis of transactions

As set out in the Draft, transactions are aggregated if there is some essential unity, oneness, or unifying factor between the transactions.

A common thread in relevant case law is the analysis of the transactions from the perspective of the purchaser or transferee¹.

The Draft should include an acknowledgement that the primary focus of the analysis of the transactions should be on the objectives, actions or conduct of the transferees/acquirors.

2. Enhancement of examples in Annexure 1

To provide greater guidance and reduce ambiguity for taxpayers the following two further examples should be included in Annexure 1.

Capital raisings by unlisted landholders

An example dealing with the raising of funds by an information memorandum/offer document where investors who are otherwise unrelated provide funds to a land-owning corporation or unit trust in return for an interest in the corporation or unit trust.

We submit that in this example, the existence of the information memorandum/offer document should not result in the multiple acquisitions being substantially one arrangement and aggregated as, from the objectives, actions and conduct of the investors there would be no common purpose, unity, oneness or unifying factor for the individual investments².

If the existence of the information memorandum/offer document is sufficient to unify the investors, duty would be payable on both the acquisition of the land and on the raising of the capital (if the capital raising occurs after acquisition or the contract for the acquisition of the land).

This duty on the capital raising would be an additional cost of the land development or landholding. Typically, these additional costs would be (indirectly) passed on by the landholder to the end user of the land (in the form of higher rent) or to the end consumers in the form of a higher sale price, particularly for residential land.

Share/unit buyback or redemption

An example dealing with acquisitions that arise where shares or units in a landholder held by a single investor are redeemed or bought back and each existing and ongoing share or unit holder merely independently approves or rejects the buyback or redemption proposal.

¹ Refer Rawlings & Ors v Commissioner of State Revenue [2015] QCAT 10

² We note further that given acquisitions of apartments by otherwise unrelated purchasers (under pre-sales contracts that are conditional on threshold sales being met) are not aggregated when assessing duty, it would be consistent for acquisitions of interests in a landholder in response to an information memorandum / offer document to also not be subject to duty.

When such a redemption or buyback occurs, under the Landholder provisions of the *Duties Act*, every existing and ongoing share or unit holder individually makes an acquisition in the landholding. Each of these acquisitions will occur from the single redemption or buyback (arguably one arrangement).

In circumstances where sufficient ongoing share or unit holders approve the redemption or buyback, each ongoing share or unit holders that independently rejected the redemption or buyback still makes an acquisition in the landholding.

Persons or entities that acquire interests by virtue of acquisitions that together form, evidence, give effect to or arise from what is, substantially one arrangement are related persons.

It is not clear if all existing and ongoing share or unit holders be related persons resulting in duty payable on the redemption or buyback.

This example will particularly assist members who operate unit trusts that do not allow transfer of units but do allow redemption and issue units of units.

Closing

We would welcome the opportunity to discuss these issues in further detail with you and/or the opportunity to provide further comment any further amendments to the draft. Should the Department require any assistance or further information regarding this matter please contact Chris Green, Director Policy and Research at or 9215 3400.

Yours sincerely



Tanya Steinbeck
Chief Executive Officer
UDIA WA

Yours sincerely



Sandra Brewer
WA Executive Director
Property Council of Australia