

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

DUTIES (LANDHOLDERS) AMENDMENT BILL 2012

EXPLANATORY STATEMENT

Circulated by the authority of the Treasurer
Andrew Barr MLA

Duties (Landholders) Amendment Bill 2012

Summary

The Duties (Landholders) Amendment Bill 2012 amends the *Duties Act 1999* (the Act).

Overview

The purpose of this Bill is to improve consistency with NSW in relation to landholder provisions and reduce regulatory burden in order to continue to attract investment in the Territory. The proposed amendments to the Act will align the ACT more closely with NSW.

Where a person acquires an interest in a landholder (by any means including the issue of shares or units) they may be subject to landholder duty if it is a relevant acquisition. A relevant acquisition is one that is a significant interest, or when aggregated with other interests in the landholder held by the person or associated persons, or in associated transactions, amounts to a significant interest.

Under the NSW landholder provisions, both unit trusts and private companies are treated the same; that is, a relevant acquisition only occurs where the person would be entitled to at least 50 per cent of the landholder.

In the ACT a relevant acquisition occurs where the person acquires an interest in a private unit trust scheme that holds land in the ACT that would entitle them to 20 per cent or more of the property on a distribution, except where the unit trust scheme is a wholesale unit trust scheme.

A wholesale unit trust scheme is one where:

- at least 80 per cent of the units in the unit trust scheme are held by qualifying investors; and
- each qualifying investor holds less than 50 per cent of the units in the unit trust scheme or, if a qualifying investor holds units in the unit trust scheme in more than one capacity, the qualifying investor holds less than 50 per cent of the units in each capacity.

The trustee of a wholesale unit trust scheme may apply to register with the Commissioner for ACT Revenue and report annually on any acquisition:

- by a person of any interest in the unit trust scheme that would entitle the person, in the event of an immediate distribution of all the property of the unit trust scheme, to at least 20 per cent of the property distributed; and
- by a person of any interest in the unit trust scheme that, when aggregated with other interests the person has in the unit trust scheme, would entitle the person, in the event of an immediate distribution of all the property of the unit trust scheme, to at least 20 per cent of the property distributed.

For large wholesale trusts with a number of national and international investors this can be a significant administrative burden, and raise uncertainty for investors about their tax liability in the ACT where interests held by individual investors fluctuate.

Aligning more closely with the NSW landholder provisions will significantly reduce the administrative burden on trust companies, simplify compliance with the landholder provisions and improve the ACT's attractiveness to large wholesale investors. Unit trust schemes would be treated on an equal footing with private companies; as a result the wholesale unit trust registration and reporting provisions will no longer be required.

The ACT will not be aligning with the NSW landholder provisions which provide for a property value threshold of \$2 million. The NSW landholder provisions also apply to a company or trust listed on a stock exchange where the company or trust owns land and 90 per cent or more of the shares or units are acquired. The ACT will not be adopting this treatment of listed entities.

Commencement Date

The Bill's amendments will be effective on 1 July 2012.

Details of the Duties (Landholders) Amendment Bill 2012

Part 1 Preliminary

Clause 1 – Name of Act

This is a technical clause that provides the title of the Act. The name of the Act is the *Duties (Landholders) Amendment Act 2012*.

Clause 2 – Commencement

This Act commences on 1 July 2012.

Clause 3 – Legislation amended

This is a technical clause stating that the Act being amended is the *Duties Act 1999*.

Clause 4 – Definitions – pt 3.2

This clause omits ‘and section 86 (2)’ from Section 78 of the legislation.

Clause 5 – Meaning of entity – pt 3.2

This clause omits ‘a whole unit trust scheme’ from the definition of entity.

Clause 6 – Section 78 A, note

This clause substitutes the note with ‘Private company and private unit trust scheme – see the dictionary.’

Clause 7 – Constructive ownership of landholdings and other property – linked entities

Section 81 (2) (a) (iv) and (b)

This clause omits ‘a wholesale unit trust scheme’ from Section 81 (2)

Clause 8 – Interest and significant interest in landholders – pt 3.2

Section 83 (2)

This clause omits everything after ‘would be entitled’ and substitutes this with ‘to at least 50% of the property distributed.’

Clause 9 – What is a relevant acquisition? – pt 3.2

Omit section 86 (2), except note

This clause omits section 86 (2), What is a relevant acquisition, except for the note.

Clause 10 – Section 86 (3), definition of qualifying investor

This clause omits the definition of a qualifying investor under section 86 (3).

Clause 11 – Registration of unit trust schemes Part 3.2A

This clause omits Part 3.2A relating to the registration of unit trust schemes.

Clause 12 – Objections Section 252 (l) to (s)

This clause omits Section 252 (l), (m), (n), (o), (p), (q), (r) and (s) from Section 252 Objections.

Clause 13 – New chapter 18

This clause inserts a new chapter 18 dealing with transitional arrangements.

Clause 14 – Dictionary, definition of associated person, paragraph (b)

This clause omits reference to Section 86 (2) in the definition of associated person.

Clause 15 - Dictionary, definition of disqualifying circumstance

This clause omits the definition of disqualifying circumstances.

Clause 16 - Dictionary, definition of private unit trust scheme

This clause amends the definition of private unit trust scheme to omit ‘or wholesale unit trust scheme’.

Clause 17 – Dictionary, definition of public unit trust scheme, paragraph (c)

This clause omits paragraph (c) from the definition of public unit trust scheme.

Clause 18 – Dictionary, definition of registered

In this clause, the definition of registered is omitted.

Clause 19 – Dictionary, definition of responsible entity

This clause substitutes the definition of responsible entity in the Dictionary with ‘responsible entity – see the Corporations Act, section 9.’

Clause 20 – Dictionary, definition of wholesale unit trust scheme

By this clause, the definition of wholesale unit trust scheme is omitted.

Clause 21 – Dictionary, definition of widely held trust

This clause substitutes the definition of a widely held trust with a new definition:

widely held trust means a unit trust scheme that has not less than 300 unit holders none of whom, individually or with an associated person, is entitled to more than 20% of the units in the trust, and for the purposes of this definition—

- (a) if a registered unit holder in a unit trust scheme holds units as a trustee for 2 or more trusts the unit holder is treated as a separate registered unit holder in relation to each of those trusts and the units held under each trust are to be treated as a separate unit holding; but
- (b) a trustee is not treated as a separate registered unit holder in relation to 2 or more trusts if, as separate registered unit holders in relation to those trusts, they would be associated persons.