



COMMISSIONER'S PRACTICE

DA 2.1

Superseded

DUTIES - LANDHOLDER DUTY - RELATED PERSONS AND PUBLIC FLOATS OR PUBLIC OFFERINGS

This Commissioner's practice sets out how the Commissioner will treat persons who acquire interests in a landholder under a public float or public offering for the purpose of determining if a relevant acquisition has occurred.

Background

Chapter 3 of the *Duties Act 2008* ("Duties Act") imposes duty in respect of a relevant acquisition of an interest in an entity that is a landholder.

Sections 163 and 164 of the Duties Act define when an acquisition by a person of an interest in an entity is a relevant acquisition. For the purpose of determining if an acquisition is a relevant acquisition, consideration is given to any interest in the entity that is held by a person related to the person making the acquisition.

Section 162(1) of the Duties Act lists the persons or entities that are related persons for the purposes of sections 163 and 164 of the Duties Act.

Paragraph (h) of section 162(1) provides that persons or entities that acquire interests in a landholder by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions, are related persons.

Section 162(2) of the Duties Act provides that if the Commissioner is satisfied, in respect of a particular acquisition, that subsection (3) applies to persons (other than related corporations) who would otherwise be related persons by virtue of subsection (1), he may determine that those persons are not related persons for the purposes of sections 163 and 164 of the Duties Act.

Section 162(3) of the Duties Act applies to persons if:

- a. they are not acting in concert with each other in respect of the acquisition;
and
- b. their interests in the entity:
 - i. were acquired independently and are, and will be, employed independently; and
 - ii. were not acquired for a common purpose and are not, and will not be, employed for a common purpose.

Application of Other Commissioner's Practices

This practice only applies to persons who acquire interests in a landholder under a public float or public offering.

Commissioner's Practice DA 23 outlines the factors the Commissioner will consider when determining if persons or entities are related persons within the meaning of section 162(1)(h) or (i) of the Duties Act.

Commissioner's Practice DA 24 outlines the factors the Commissioner will consider in deciding whether to exercise his discretion under section 162(2) of the Duties Act to determine whether any persons (apart from related corporations) are not related, for the purposes of determining if a relevant acquisition has occurred.

Commissioner's Practice

1. Persons or entities that acquire interests in a landholder as the result of a public float or public offering are considered to be related persons under section 162(1)(h) of the Duties Act, because the acquisitions arise from substantially one series of transactions.
2. Where those persons or entities are related solely by virtue of section 162(1)(h) of the Duties Act, because they acquired their interests under a public float or public offering, the Commissioner will determine that they are not related if the Commissioner is satisfied:
 - 2.1 that the acquisitions arose from a genuine public float or public offering of the securities of the landholder concerned; and
 - 2.2 that the persons or entities would not be related persons except for the fact that they were subscribers to the public float or public offering.

Date of Effect

This Commissioner's practice takes effect from 15 July 2011.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

15 July 2011

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 2.0	27 June 2008	1 July 2008	14 July 2011
DA 2.1	15 July 2011	15 July 2011	15 December 2016