



Substantially One Arrangement

1. This ruling provides guidance on when two or more transactions are taken to *form, evidence, give effect to or arise from substantially one arrangement* for duties purposes. The factors outlined in this ruling are not exhaustive.

Background

2. The *Duties Act 2008* (Duties Act) contains several provisions about how transfer and landholder duty apply when two or more transactions¹ are substantially one arrangement.
3. This ruling consists of three parts:
 - (a) the background which lists the provisions of the Duties Act where the concept of substantially one arrangement is relevant
 - (b) general guidance on when transactions are substantially one arrangement and
 - (c) annexures with specific guidance on how the concept of substantially one arrangement relates to the particular provisions of the Duties Act. The information in each annexure should be read in conjunction with the general guidance.

Aggregation of dutiable transactions

4. Duty is calculated using a sliding scale. Aggregated transactions will incur a greater amount of duty than if each transaction is assessed separately. Transactions will be aggregated when they are substantially one arrangement.²

See [Annexure 1](#) for further information.

Relevant acquisitions and chattels or prospecting licences

5. A transaction for chattels alone, or for a prospecting licence alone,³ is generally not a dutiable transaction.⁴ However, a transaction for chattels, or for a prospecting licence, is a dutiable transaction when the transaction and a relevant acquisition⁵ are substantially one arrangement.

See [Annexure 2](#) for further information.

1 A reference to 'transactions' in this ruling also refers to share and unit acquisitions, where appropriate.

2 See Annexure 1 for information about aggregation of a transaction for chattels with another dutiable transaction and about aggregation of a transaction for a prospecting licence with another dutiable transaction.

3 Including a transaction over a right relating to a prospecting licence, such as a derivative mining right or a right under an application.

4 As above.

5 In a relevant acquisition, the acquirer makes an acquisition in an entity and their interest (or their interest combined with the interest of any related persons) after the acquisition is a significant interest. For an entity that is a listed corporation or unit trust, a significant interest is 90 per cent or higher. For an unlisted corporation or unit trust, a significant interest is 50 per cent or higher.

Fixed infrastructure rights

6. A transaction for a fixed infrastructure access right⁶ (access right) or fixed infrastructure statutory licence (statutory licence) is a dutiable transaction if:
 - (a) there is another transaction for the relevant fixed infrastructure or fixed infrastructure control right (control right) and the transactions are substantially one arrangement or
 - (b) a relevant acquisition occurs in an entity that is entitled to the relevant fixed infrastructure or control right, and the transaction and relevant acquisition are substantially one arrangement.
7. Access rights are included in an entity's land assets if the entity or an associated entity is entitled to the relevant fixed infrastructure or control right. Statutory licences are treated as an entity's land assets for landholder duty calculation if the entity or an associated entity is entitled to the relevant fixed infrastructure or control right. An associated entity includes another entity in which an interest is acquired when the acquisitions in the entity and the other entity are substantially one arrangement.

See [Annexure 3](#) for further information.

Relevant acquisitions and related persons

8. Landholder duty applies to a relevant acquisition in an entity. To determine if there is a relevant acquisition, the acquirer's interest in the entity is combined with the interest of any related person. Related persons include a person who, along with the acquirer, acquires an interest in the entity through acquisitions that are substantially one arrangement.

See [Annexure 4](#) for further information.

Landholder threshold

9. An entity is a landholder if the entity is directly or indirectly entitled to land assets⁷ in Western Australia with a total value of at least \$2 million. An entity is also a landholder if:
 - (a) there is an acquisition in the entity and one or more acquisitions in other entities that are substantially one arrangement and
 - (b) the total value of all entities' entitlements to Western Australian land assets is at least \$2 million.

See [Annexure 5](#) for further information.

6 See [Revenue Ruling DA 26 'Things Fixed to Land and Rights relating to Fixed Infrastructure'](#) for information about fixed infrastructure rights.

7 Land assets are defined to include among other things, land interests, pastoral leases, mining tenements, derivative mining rights and anything fixed to land.

Landholder duty and linked entities

10. Linked entities of an entity are taken into account to determine if the entity is a landholder and its value.⁸ Acquisitions in two or more entities that are substantially one arrangement may result in entities in which they have an interest being taken to be linked entities.

See [Annexure 6](#) for further information.

Ruling

Form, evidence, give effect to or arise from

11. The phrase 'form, evidence, give effect to or arise from' is not defined in the Duties Act and takes its ordinary and grammatical meaning. Use of 'or' to separate the words indicates each word should be given its own significance.⁹
- (a) The verb 'form' means 'to shape; to fashion; to make up or constitute'.
 - (b) The verb 'evidence' means 'to make evident or clear; show clearly; manifest'.
 - (c) The words 'give effect to' means 'put into force'.
 - (d) The words 'arise from' means 'to result or proceed from'.¹⁰
12. The phrase is intended to cover the widest range of possible circumstances which may support a determination that there is substantially one arrangement.

Substantially one arrangement

13. To attribute a meaning to the phrase 'substantially one arrangement', the meaning of the individual words must be considered.
- (a) The word 'substantially' is important. Transactions may not be one arrangement in fact but may be 'substantially' one arrangement.¹¹ The Commissioner will look at the substance of the transactions and determine if they are, in substance, one arrangement posing as several.¹²
 - (b) The word 'one' points to some essential unity, oneness or unifying factor between the transactions.¹³ There must be a relationship, connection or interdependence between the transactions that gives them the essential unity.¹⁴ The unifying factors must not be fortuitous ones.¹⁵ There will be no oneness if a transaction is separate, independent and unconnected with the others.¹⁶

8 An entity is linked to another entity if it has a 90 per cent interest in a listed entity or in any other case, a 50 per cent interest.

9 705-707 Hay Street Pty Ltd v Commissioner of State Revenue [2016] WASAT 140 at 108.

10 705-707 Hay Street Pty Ltd v Commissioner of State Revenue [2016] WASAT 140 at 109 to 113.

11 Brianco Nominees Pty Ltd & Ors v Commissioner of State Revenue (Taxation) [2008] VCAT 999 at 29.

12 Jeffrey v Commissioner of Stamps (1980) 23 SASR 398 at 406.

13 Khoury v Chief Commissioner of State Revenue [2010] NSWADT 13 at 24.

14 Grafton v Commissioner of State Revenue [2011] WASAT 180 at [30], 41.

15 Khoury v Chief Commissioner of State Revenue [2010] NSWADT 13 at 28.

16 Brianco Nominees Pty Ltd & Ors v Commissioner of State Revenue (Taxation) [2008] VCAT 999 at 36.

- (c) In a statutory context, an 'arrangement':
 - (i) is wide enough to include a unilateral arrangement¹⁷
 - (ii) extends beyond agreements and does not need to be legally enforceable¹⁸
 - (iii) does not have to be in writing¹⁹ and can be inferred, taking into consideration all the relevant circumstances²⁰
 - (iv) comprises two or more transactions and constitutes a wider course of action than a single agreement²¹ and
 - (v) includes all kinds of concerted action by which persons arrange their affairs for a particular purpose or to produce a particular effect.²²

Determining if transactions are substantially one arrangement

14. No single factor will determine if transactions together form, evidence, give effect to, or arise from, substantially one arrangement.
 - (a) It is a question of fact involving matters of degree, taking into account all relevant circumstances.²³ The circumstances that are relevant will depend on the individual case and will include the circumstances surrounding the transactions. The intentions, actions and conduct of the party liable to pay the duty, along with any other persons involved, are potentially relevant.
 - (b) It is determined by the facts and circumstances at the time the transactions are entered into. Facts which establish the transactions are of a fortuitous nature may lead to a determination that the transactions are not linked even though they might result in one arrangement.²⁴
15. Multiple transactions will generally be substantially one arrangement if there is an underlying connection between them that indicates they constitute a single arrangement between any of the parties. The connection must be an intentional one and not merely coincidental.
16. The use of assets together following their purchase is an indicator there may be an underlying connection between multiple transactions. However, for the transactions to be taken as substantially one arrangement, there must be other factors that indicate the relationship between the transactions is integral and not simply fortuitous.
17. When determining if transactions are substantially one arrangement, the Commissioner will consider them from the perspective of the purchaser, transferee or acquirer. The fact that the transferor or vendor is the same in respect of each transaction is not a deciding factor and the intention of the transferor or vendor will not generally be relevant.²⁵

17 Chief Commissioner of State Revenue and Pacific General Securities Ltd and Finmore Holdings Pty Ltd (2004) 58 ATR 17 at 23.

18 Grafton v Commissioner of State Revenue [2011] WASAT 180 at 27.

19 Grafton v Commissioner of State Revenue [2011] WASAT 180 at 27.

20 Khoury v Chief Commissioner of State Revenue [2010] NSWADT 13 at 25.

21 Australand Investments Ltd v Commissioner of State Revenue [2009] VSC 453.

22 Bell v Federal Commissioner of Taxation (1953) 87 CLR 548 at 573.

23 Wakefield & Ors v Commissioner of State Revenue [2019] QSC 85 at 53.

24 Blood Properties Pty Ltd v Commissioner of State Revenue (Taxation) [2005] VCAT 754 at 33.

25 Rawlings & Ors v Commissioner of State Revenue [2015] QCAT 10 at 12.

18. The parties to the transactions need not have a pre-existing relationship or otherwise be associated with one another, although this may indicate the transactions are substantially one arrangement.
19. When determining if transactions are substantially one arrangement the Commissioner will consider:²⁶
- (a) the terms of any agreement, arrangement or understanding (written or oral) between the transferor(s) and/or the transferee(s)²⁷
 - (b) any common conditions between the transactions relating to the same event occurring or not occurring, where the event indicates an integral relationship between the transactions
 - (c) whether there is any interdependency between the transactions, including whether completion of a transaction is conditional on the completion of any other transaction
 - (d) whether the transactions were negotiated together, independently and/or arise from common circumstances
 - (e) whether the transactions have common or interdependent financing arrangements
 - (f) whether the transferors for each transaction are the same or related persons
 - (g) whether the persons liable to pay the duty for each transaction are the same or related persons
 - (h) the period of time over which the transactions occurred
 - (i) whether the transactions are pursuant to prior options, along with the circumstances surrounding the grant of the options and their exercise
 - (j) whether a single amount representing the consideration for the transactions was negotiated (whether or not apportioned) or if consideration was negotiated for each transaction on a separate basis
 - (k) whether the transactions relate to fractional interests in common property or entities
 - (l) whether the transactions relate to items of property in close proximity to each other (for example, neighbouring parcels of land or mining tenements forming part of the same mineral field)
 - (m) the commercial outcomes of the overall arrangement
 - (n) whether each transaction can stand alone
 - (o) whether the transactions relate to assets of a single going concern business and whether transaction documents contain a GST going concern clause
 - (p) whether the transactions relate to property previously, or intended to be, used for a common purpose (such as property historically used as a farming operation, fixed infrastructure and equipment located on mining tenements, or a going concern business, and the land on which it operates) and the extent to which it can be operated independently and
 - (q) whether the transactions relate to entities which have a historical relationship or sought to achieve common outcomes (such as acquisition of entities with a common parent or joint venture project partners).

²⁶ The matters the Commissioner will consider are not limited to those listed.

²⁷ A reference to 'transferee' and 'transferor' in this ruling also refers to an acquirer and the person from whom an acquisition is made, where appropriate.

Ruling History

Revenue Ruling	Issued	Effective Dates	
		From	To
DA 25.0	27 October 2021	27 October 2021	30 June 2022
DA 25.1	1 July 2022	1 July 2022	Current

Annexure 1 – Aggregation of dutiable transactions

The information in this annexure is in addition to, and should be read in conjunction with, the information in the body of the ruling.

Transactions taken to be substantially one arrangement

1. In addition to the circumstances outlined in the body of the ruling, transactions relating to separate items of dutiable property are substantially one arrangement if they occur within 12 months of each other and the person liable to pay the duty is the same unless the Commissioner is satisfied to the contrary.²⁸ The onus is on the taxpayer to satisfy the Commissioner that the transactions are not substantially one arrangement.

Example 1

Jim enters into an agreement to purchase the land of a licensed hotel. On the same day, Jim also enters into an agreement to buy a residential property next door to the hotel from a different vendor. He immediately begins the process of obtaining council approval to convert the front portion of the residential property into a small restaurant that will act as an extension to the hotel. Jim uses the property as his residence until approval is granted. After 12 months, final approval is given to convert the front portion of the property.

Although he used the property for an independent purpose for 12 months, he always intended that the two lots would be used for a common purpose. The two transactions are substantially one arrangement and will be aggregated.

If he had made the decision to convert the residential lot into a restaurant some time after the transactions were completed, the two transactions would generally not be substantially one arrangement.

Example 2

On the same weekend, Chris and Jane each enter into separate contracts to purchase adjacent vacant lots from different vendors. The contracts for purchase were negotiated individually and were not conditional on the purchase of the neighbouring lot or receiving development approval.

In the week following the completion of the transactions, Chris and Jane jointly lodge a development application for the two lots. The date on the development plan indicates that it was drawn up before the transactions were entered into.

As the circumstances of the transaction evidence a common purpose, they would be considered substantially one arrangement.

If the transactions had occurred without the lodgment of the joint development application, the proximity of the lots may be considered fortuitous and the transactions may not be substantially one arrangement.

28 Duties Act s 37(2).

Example 3

Over the course of two years, ABC Developer Pty Ltd enters into multiple option agreements to buy rural lots in anticipation of the area being rezoned to allow residential developments.

The option agreements are not conditional on one another and, for commercial reasons, ABC Developer does not disclose its development plans to potential vendors.

As there is no evidence of an underlying connection, the granting of the options would generally not be taken to be substantially one arrangement.

Once the lots are rezoned, ABC Developer exercises all relevant options to purchase the lots, giving rise to agreements to transfer the lots. ABC Developer applies to amalgamate and subdivide the land.

Because the circumstances surrounding the exercise of the options, including rezoning and applying to amalgamate and subdivide the land, evidence a common purpose, the agreements to transfer the lots are substantially one arrangement.

Transactions that are not substantially one arrangement

2. The circumstances when two or more transactions will generally not be substantially one arrangement include, but are not limited to:
 - (a) transactions for the acquisition of property at auction where the property was offered for sale separately
 - (b) transactions involving an exchange of properties
 - (c) transactions involving the partition of jointly held property, to the extent that the property is transferred to different persons
 - (d) where one transaction is conditional on the successful sale of another property held by the purchaser or
 - (e) transactions relating to a property distribution arising from a winding up of a corporation or unit trust scheme, a deceased estate, a dissolution of a partnership or a Family Court order, to the extent that the property is transferred to different persons.

Example 4

Three people are joint owners of a block of land which is being subdivided into three smaller lots. The land will be partitioned into three lots of different sizes and different values under a single instrument. One lot will be transferred to each owner. The transactions to partition the land and transfer the resulting lots would generally not be substantially one arrangement.

Example 5

Chan agrees to buy two vacant lots from a new land release, intending to build a house on each as investments. The lots are not adjacent, but are in close proximity to each other. The agreements were separately negotiated and, while they are not conditional upon each other, they are conditional upon a new subdivision plan being registered for those and other adjacent lots. The agreements to buy the lots would generally not be substantially one arrangement.

Example 6

Hans buys three adjacent lots from the same vendor at an auction. Each lot was offered separately for sale and Hans does not intend to amalgamate the lots. The agreements to buy the lots would generally not be substantially one arrangement.

Example 7

A small mining company enters into separate agreements with various owners of early stage exploration licences to acquire those licences. None of the owners are related to each other, and the licences are not contiguous or in close proximity to each other. Each of the agreements is conditional on the mining company listing on the ASX through an initial public offering, but they are not conditional on each other.

While the agreements are all conditional on the same event, they would not be substantially one arrangement as the tenements do not form a single project and it is clear that none of the agreements are contingent on any others. The evidence suggests that if one of the owners had refused to sell their tenements, or if the agreement failed to complete, it would not have impacted any of the other agreements.

Each transaction would be separately assessed for duty.

Aggregation of transactions

3. When two or more transactions are substantially one arrangement, the transactions will be aggregated.
4. Aggregated transactions are treated as a single dutiable transaction that took place at the same time as the last of the aggregated transactions.²⁹ Duty is assessed on the combined dutiable value of the aggregated transactions and apportioned between the transactions.³⁰
5. Transactions are not aggregated unless they are chargeable with the same rate of duty.³¹
6. If two or more transactions appear to be connected, or if there is an indication they may be part of one arrangement, the lodging party must:
 - (a) provide the information detailed in Duties Information Requirement: aggregation³² or a written statement consenting to the aggregation and
 - (b) lodge the transaction records together under one bundle or provide a covering letter with at least one transaction record referring to the other transactions that may be aggregated, including any transactions that have already been assessed for duty.

29 Duties Act ss 37(4) and 205P(3).

30 Duties Act s 37(6).

31 Duties Act s 37(3).

32 Duties Information Requirements are accessible on the website at <https://www.wa.gov.au/government/multi-step-guides/duties-information-requirements/aggregation-duty-requirements>

Transactions taken to be dutiable transactions

7. A transaction for chattels is a dutiable transaction if it is aggregated with another dutiable transaction.³³
8. A transaction relating to one or more prospecting licences, or to a right or rights that relate to a prospecting licence, is a dutiable transaction if it is aggregated with another dutiable transaction.³⁴
9. A transaction for intellectual property is a dutiable transaction if it is aggregated with another dutiable transaction for a Western Australian business asset.³⁵

Example 8

Pam enters into a contract to purchase chattels of a business that has ceased trading, including plant and equipment located on the premises which the business operated from.

She also enters into a separate contract to purchase the premises which the business operated from.

The plant and equipment will be used in a new business that Pam will operate from the premises.

As the chattels were historically used in connection with the business that operated from the premises and have been acquired for a similar purpose, the transactions are substantially one arrangement and will be aggregated. The transactions for the chattels and the premises are treated as a single dutiable transaction and are assessed for duty on their aggregate value.

33 Duties Act s 14. A transaction for chattels may also be aggregated with a foreign dutiable transaction for residential property, in which case foreign transfer duty will apply to the transaction for the chattels: Duties Act s 205E(2)

34 Duties Act s 91DA.

35 Duties Act s 81.

Annexure 2 – Relevant acquisitions and chattels or prospecting licences

The information in this annexure is in addition to, and should be read in conjunction with, the information in the body of the ruling.

1. A transaction for chattels is a dutiable transaction if:³⁶
 - (a) a relevant acquisition³⁷ occurs and
 - (b) the transaction for chattels and the relevant acquisition are substantially one arrangement.³⁸

Example 9

A Pty Ltd owns land assets valued at \$10 million and chattels valued at \$4 million which are used in connection with the land assets.

B Pty Ltd purchases A's chattels. In a separate agreement one day later, B acquires all the shares in A. B uses the chattels in connection with the land assets.

Due to the timing of the transactions and the ongoing connection between the chattels and the land assets, the transactions are substantially one arrangement. The transaction for chattels is a dutiable transaction. Transfer duty is payable on the transaction for chattels and landholder duty is payable on the relevant acquisition in B.

Example 10

C Pty Ltd as trustee for the C Unit Trust holds commercial land valued at \$3 million. The land is leased to John, who operates a business on the land. John intends to move the business to larger offices nearby.

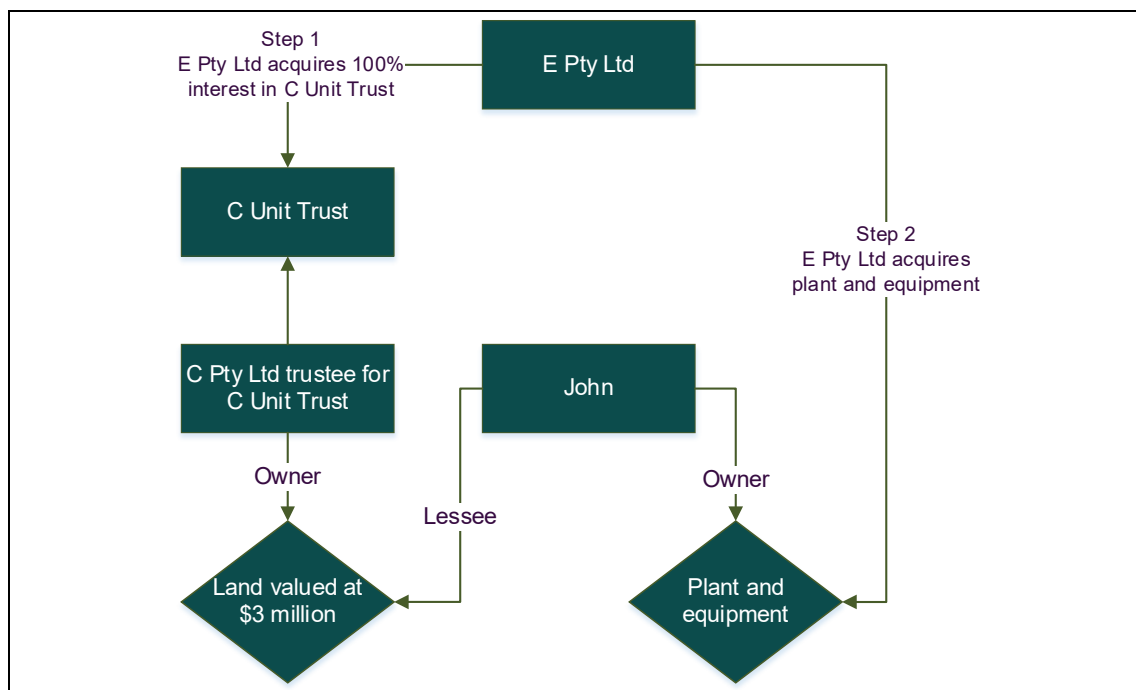
E Pty Ltd plans to open a similar business, and agrees to acquire all of the units in the C Unit Trust. John agrees to sell plant and equipment chattels to E. Each agreement is conditional upon completion of the other, both of which are to take place on the same day.

As the transactions are interdependent and relate to land, and plant and equipment used in connection with the land, they are substantially one arrangement. The transaction for chattels is a dutiable transaction. Transfer duty is payable on the transaction for chattels and landholder duty is payable on the relevant acquisition in the C Unit Trust.

36 Duties Act s 14(1).

37 Duties Act ss 163 and 161: In a relevant acquisition, the acquirer makes an acquisition in an entity and their interest after the acquisition is a significant interest. For an entity that is a listed corporation or unit trust, a significant interest is 90 per cent or higher. For an unlisted corporation or unit trust, a significant interest is 50 per cent or higher.

38 Duties Act s 14(3).



2. A transaction for a prospecting licence³⁹ is a dutiable transaction if:
- a relevant acquisition⁴⁰ occurs and
 - the transaction for the prospecting licence and the relevant acquisition are substantially one arrangement.⁴¹

Example 11

Mr X enters into negotiations with owners of I Pty Ltd to buy all of the issued shares in the company. I Pty Ltd holds a collection of exploration licences and prospecting licences that are in close proximity to each other, and no other assets.

Before an agreement with the shareholders is finalised, Mr X agrees to directly purchase all of the prospecting licences from I Pty Ltd for \$100,000. An agreement is then made for the sale of shares in I Pty Ltd, which are sold for \$5 million.

The acquisition of an interest in I Pty Ltd and the agreement to transfer the prospecting licences form substantially one arrangement, as the prospecting licences and the remaining assets of the landholder are in close proximity and the prospecting licences were recently held by the landholder.

³⁹ Including associated rights such as a derivative mining right or a right under an application.

⁴⁰ Duties Act ss 163 and 161: In a relevant acquisition, the acquirer makes an acquisition in an entity and their interest after the acquisition is a significant interest. For an entity that is a listed corporation or unit trust, a significant interest is 90 per cent or higher. For an unlisted corporation or unit trust, a significant interest is 50 per cent or higher.

⁴¹ Duties Act s 91DA.

3. A transaction for either chattels, or a prospecting licence, and a relevant acquisition are substantially one arrangement if they occur within 12 months and the person liable to pay the duty is the same person, unless the Commissioner is satisfied to the contrary.⁴² The onus is on the taxpayer to satisfy the Commissioner that the transactions are not substantially one arrangement.

Example 12

F Pty Ltd owns all of the shares in G Pty Ltd, which owns mining tenements valued at \$10 million. H Pty Ltd agrees to purchase all of the shares in G.

Six months later F advertises various plant and equipment chattels from a nearby minesite for sale on the open market. H buys some of the items and transports them to the mining tenements held by G.

While the acquisition of shares in G and the purchase of chattels occurred within 12 months, the transactions would generally not be considered substantially one arrangement. The purchase of plant and equipment is a separate and independent transaction not contemplated at the time of the acquisition of G. The purchase of the plant and equipment is not a dutiable transaction.

Annexure 3 – Fixed infrastructure rights

The information in this annexure is in addition to, and should be read in conjunction with, the information in the body of the ruling.

1. Fixed infrastructure is anything fixed to land.⁴³
2. A fixed infrastructure access right (access right) authorises access to or use of land for any purpose associated with fixed infrastructure or things used in conjunction with fixed infrastructure.⁴⁴
3. A fixed infrastructure statutory licence (statutory licence) is a licence, permit or authority issued under State or Commonwealth law and required for the ownership, control, operation or use of fixed infrastructure.⁴⁵
4. A fixed infrastructure control right (control right) is a lease, licence or other right that enables the holder to have the day-to-day control, and the operation or use, of fixed infrastructure.⁴⁶

Transactions for fixed infrastructure rights

5. A transaction for an access right or statutory licence alone is not a dutiable transaction.⁴⁷
6. A transaction for an access right or statutory licence is a dutiable transaction if:
 - (a) there is another dutiable transaction for the relevant fixed infrastructure or control right and
 - (b) the transaction for the access right or statutory licence and the other dutiable transaction are substantially one arrangement.⁴⁸
7. A transaction for an access right or statutory licence is a dutiable transaction if:
 - (a) a relevant acquisition in a landholder occurs
 - (b) the landholder (or a linked entity) is entitled to the relevant fixed infrastructure or control right and
 - (c) the transaction for the access right or statutory licence and the relevant acquisition are substantially one arrangement.⁴⁹

43 Duties Act s3A(1)(f).

44 Duties Act s 91A(1).

45 As above.

46 Duties Act s91A(1).

47 Duties Act s 91C(1).

48 Duties Act s 91C(3).

49 Duties Act s 91C(4).

Example 13

J Pty Ltd owns a minerals processing plant and adjoining power station infrastructure. J's subsidiary, K Pty Ltd, holds a contractual licence to operate the power station. The licence is a control right.

L Pty Ltd acquires 100 per cent of the shares in K.

Four months later, J grants K a contractual licence over an area of land adjacent to the power station, as required by the terms of the acquisition agreement. The licence is an access right authorising K to use the area of land to access the power station to carry out the power station operations.

The factors that indicate the acquisition and the grant of the access right are substantially one arrangement include:

- the interdependency of the transactions
- the transactions were negotiated together
- the relationship between J and K
- the transactions relate to rights intended to be used in combination with each other and
- acquiring one right without the other would be of limited commercial benefit.

Specifically, the acquisition of K and the grant of the access right are substantially one arrangement. The transaction for the access right is a dutiable transaction.

If the transactions were not substantially one arrangement, the grant of the access right alone would not be a dutiable transaction.

Associated entities

8. An access right is taken into account when determining a landholder's entitlement to land assets if the landholder, or an associated entity, is entitled to the relevant fixed infrastructure or control right.⁵⁰
9. A statutory licence is treated as a land asset for calculating landholder duty if the landholder, or an associated entity, is entitled to the relevant infrastructure or control right.⁵¹
10. Associated entities include an entity, or interests in an entity, being acquired under another acquisition if that other acquisition and the relevant acquisition in the landholder are substantially one arrangement.⁵²
11. A linked entity of an associated entity is also an associated entity.⁵³

50 Duties Act s 204A(1) and (2).

51 Duties Act s 204B(1).

52 Duties Act s 204D(2)(d).

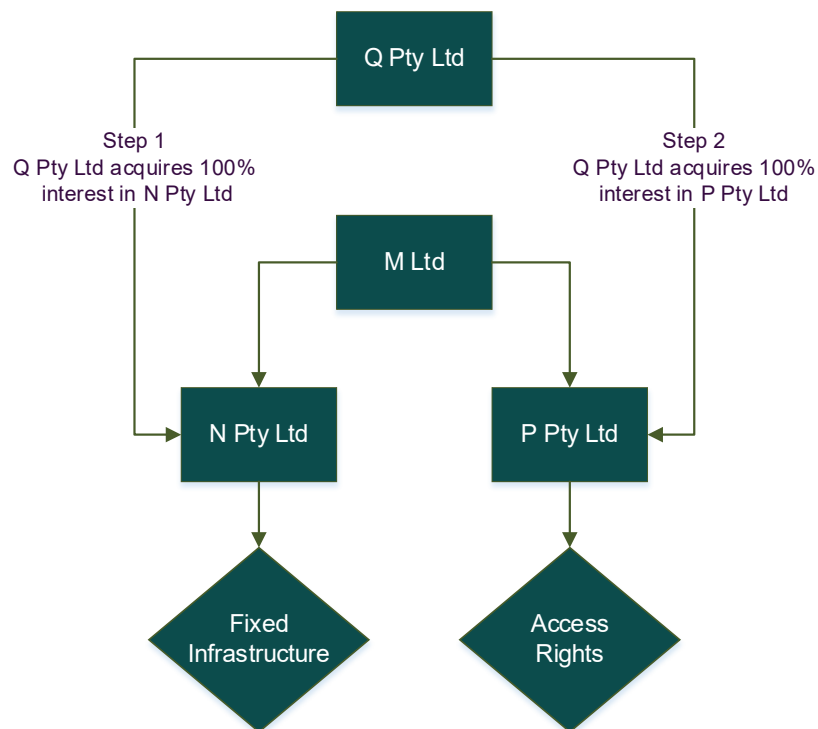
53 Duties Act s 204D(2)(e)

Example 14

M Ltd has two direct subsidiaries, N Pty Ltd which holds fixed infrastructure, and P Pty Ltd, which holds an access right that relates to the fixed infrastructure held by N.

Q Pty Ltd agrees to acquire all of the shares in N. The agreement to acquire N requires M and Q to negotiate in good faith to acquire the shares in P. Four months later Q agrees to acquire all of the shares in P.

The acquisitions are substantially one arrangement because the transactions are between the same parties, the acquisition of P was contemplated when Q acquired N and the assets of N and P are used in combination with each other. The access right held by P is a land asset for the purposes of landholder duty.



Annexure 4 – Relevant acquisitions and related persons

The information in this annexure is in addition to, and should be read in conjunction with, the information in the body of the ruling.

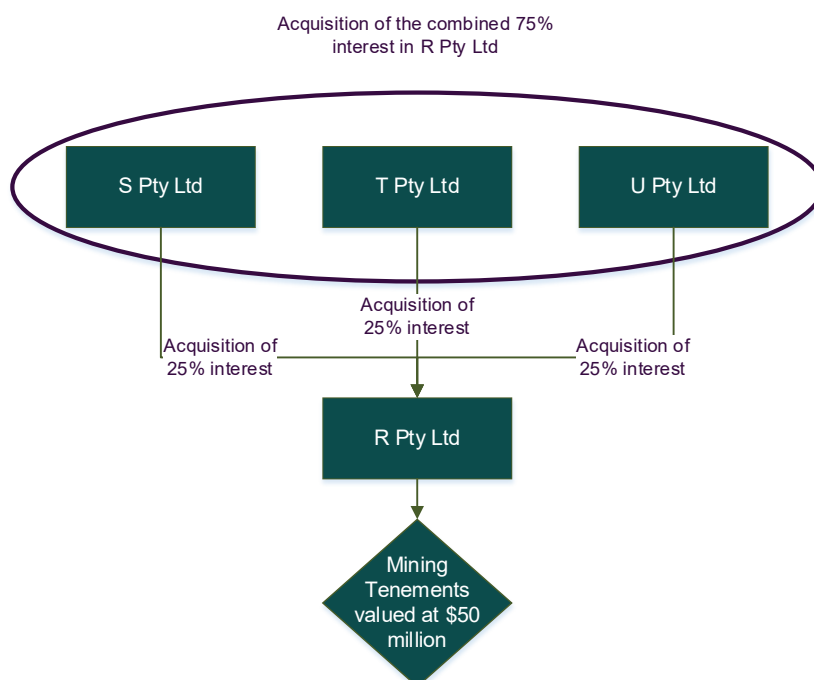
1. A significant interest is a 90 per cent or greater interest in a listed landholder or a 50 per cent or greater interest in an unlisted landholder.⁵⁴
2. A person makes a relevant acquisition if, before the acquisition:
 - (a) the combined interest of the person and any related persons is not a significant interest and, after the acquisition, the combined interest is a significant interest or
 - (b) the combined interest of the person and any related persons is a significant interest and, after the acquisition, the combined interest is increased.⁵⁵
3. Persons are related persons if they acquire interests in a landholder through transactions that are substantially one arrangement.⁵⁶

Example 15

R Pty Ltd, an unlisted company, owns mining tenements in Western Australia valued at \$50 million. R's owners seek high value investors to provide cash to develop the mining project in exchange for an interest in R.

S Pty Ltd, T Pty Ltd and U Pty Ltd each express an interest in investing in the project. Following joint negotiations the parties agree that S, T and U will each obtain a 25 per cent interest in R in exchange for \$50 million.

The acquisitions arose from common circumstances, followed from joint negotiations, and result in raising of capital for the project. They are substantially one arrangement. Landholder duty is payable on the acquisition of the combined 75 per cent interest.



54 Duties Act s 161

55 Duties Act s 163(1).

56 Duties Act s 162(1)(h). This provision does not apply if the acquisitions result from a public float.

Example 16

A company owns land in Western Australia that it is developing to build apartments. It has six shareholders with varying interests based on their original contribution. Two of the shareholders want to exit the investment, and each agrees to sell their interest in the company to a different new investor. Each sale uses the same price per share based on a recent valuation. Settlement for each agreement takes place on 30 June for accounting and tax purposes.

The acquisitions would generally not be substantially one arrangement as the common consideration and settlement date are fortuitous and do not indicate a single purpose.

Example 17

A property developer purchases land for development for \$20 million through a 100 per cent subsidiary unit trust. The developer issues an information memorandum seeking investors in the project at a set price of \$1 million for a 5 per cent interest. The developer is willing to sell up to 60 per cent of the trust to investors, but will maintain control of the project even if their interest falls below 50 per cent.

The developer receives several offers totalling 55 per cent of the trust. Units are transferred to each of the investors on the same day.

While the interests were acquired by the investors on the same day, there is no underlying unity to the acquisitions. Each investor acted independently, and no acquisitions were dependent on other acquisitions completing, so they would not be considered substantially one arrangement.

Example 18

A unit trust held by a collection of family members hold an investment property valued at \$3 million. Under the terms of the trust deed, the unit trust may buy back units from a unit holder if all other unit holders agree. One of the family members, who holds 10 per cent of the issued units, asks to be bought out based on the current value of the investment. The other unit holders agree to the buyback.

As a result of the buyback, the remaining unit holders increase their combined interest from 90 per cent to 100 per cent. The acquisitions arise from substantially one arrangement, as each acquisition occurred as a result of the buyback.

Annexure 5 – Landholder threshold and relevant arrangements

The information in this annexure is in addition to, and should be read in conjunction with, the information in the body of the ruling.

1. An entity is a landholder if:
 - (a) the entity, or an entity linked to the entity, is entitled to land assets⁵⁷ and/or chattels in Western Australia and
 - (b) the acquisition is part of a *relevant arrangement*.⁵⁸
2. An acquisition is part of a relevant arrangement when:
 - (a) there are one or more acquisitions of interests in other entities⁵⁹
 - (b) the total value of entitlements to Western Australian land assets held by the acquired entities and their linked entities is at least \$2 million and
 - (c) the acquisitions together are substantially one arrangement.⁶⁰

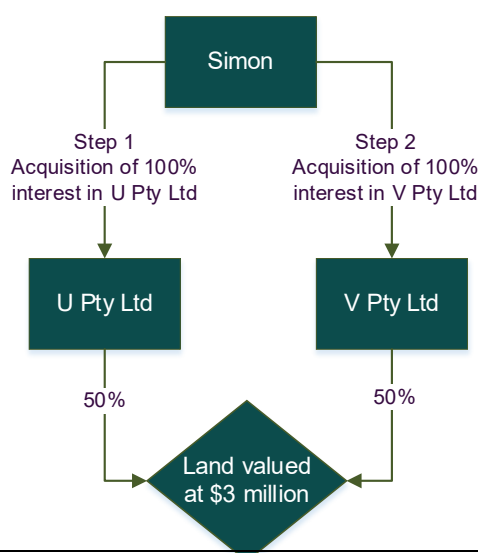
Example 19

U Pty Ltd and V Pty Ltd each hold a 50 per cent share in a block of land valued at \$3 million which they are jointly developing. Neither company holds any other land assets and, individually, neither is a landholder.

Simon acquires all of the shares in U, and two months later acquires all of the shares in V.

Specifically, the acquisitions are substantially one arrangement as U and V have an interest in the same land and acquisitions took place in a short period of time, allowing Simon to gain full control of the land.

The acquisitions of U and V are a relevant arrangement and U and V are both landholders. Landholder duty is payable on the acquisitions of U and V.



⁵⁷ Land assets are defined in section 148(1) of the Duties Act to include among other things, land interests, pastoral leases, mining tenements, derivative mining rights and anything fixed to land.

⁵⁸ Duties Act s 155(3).

⁵⁹ The acquisition/s in the other entity/ies may occur at a different time: Duties Act s 155(4)(a)

⁶⁰ Duties Act s 155(4).

Example 20

W Pty Ltd owns commercial property in Bunbury, Western Australia valued at \$3 million. X Pty Ltd owns residential property in Joondalup, Western Australia valued at \$1 million. There is no relationship between them.

Y Pty Ltd enters into an agreement to acquire the shares in W with a view to redeveloping the property. Two months later, Y Pty Ltd enters into an agreement to acquire the shares in X with a view to demolishing the existing properties to build a new residential development.

Landholder duty applies to the acquisition of W as it is a landholder.

The two transactions would generally not be taken to be substantially one arrangement. Relevant factors include:

- the transactions were carried out for separate purposes
- there is no connection between the property subject to the transactions
- neither agreement references the other and separate negotiations were made for each transaction
- separate consideration was arrived at for each transaction and
- separate financing arrangements facilitated each transaction.

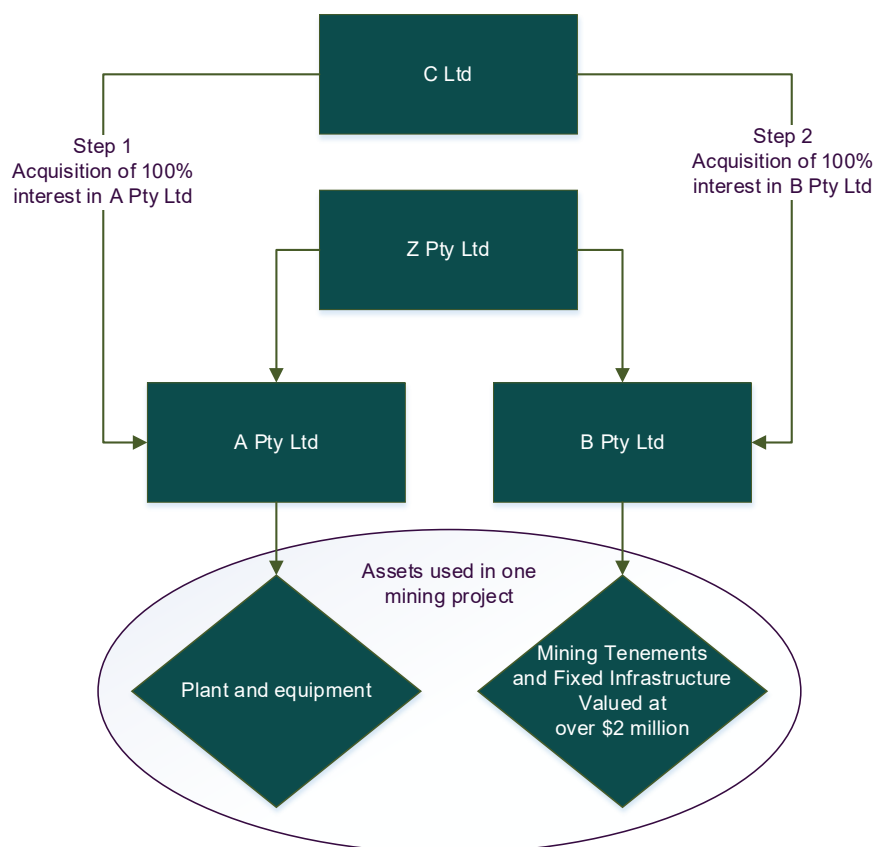
Landholder duty is not payable on the acquisition of X as it is not a landholder.

Example 21

A Pty Ltd and B Pty Ltd are subsidiaries of the same holding company, Z Pty Ltd. The group together own and operate a mining project in Western Australia.

B owns the mining tenements and fixed infrastructure for the project which are valued at over \$2 million. A owns equipment used in the project. To operate the project, B uses equipment owned by A through an undocumented arrangement.

In January 2020 and March 2020 respectively, C Ltd enters into separate agreements to acquire the shares in A and B. Completion of each agreement is conditional on completion of the other. Completion of both transactions happens on the same day. The mining project continues undisturbed under C's ownership.



B is a landholder and landholder duty applies to that acquisition.

The transactions to acquire A and B are substantially one arrangement because:

- the transactions took place within a 12 month period
- the transactions have a common purchaser
- the interdependence between the agreements for both transactions
- the tenements, infrastructure and equipment are used together in the operation of the same mining project
- the previous relationship between A and B and
- the commercial outcome of the transaction is the transition of a going concern business.

The acquisition of A is part of a relevant arrangement. A is a landholder and landholder duty is payable on the acquisition of that entity based on the value of its equipment.

3. When the same person makes relevant acquisitions in two or more entities within 12 months, the acquisitions are substantially one arrangement unless the Commissioner is satisfied to the contrary.⁶¹ The onus is on the taxpayer to satisfy the Commissioner that the acquisitions do not form, evidence, give effect to or arise from substantially one arrangement.

61 Duties Act ss 204F(1) and 155(4)(b).

Annexure 6 – Landholder duty and linked entities

The information in this annexure is in addition to, and should be read in conjunction with, the information in the body of the ruling.

1. An entity is linked to a listed entity if it has a 90 per cent or greater interest in the listed entity. An entity is linked to an unlisted entity if it has a 50 per cent or greater interest in the unlisted entity.⁶²
2. A linkage chain exists if a series of entities, starting with the acquired entity, are successively linked to one another.⁶³
3. When a relevant acquisition in a landholder occurs, the calculation of landholder duty includes the value of land assets and chattels held by a linked entity to the extent of the landholder's interest in that linked entity.⁶⁴
4. If there are multiple acquisitions and one or more of the acquired entities are not individually linked to an unlisted entity, the acquired entities are taken to be linked to the unlisted entity if the acquisitions are substantially one arrangement and either:
 - (a) one of the acquired entities is the unlisted entity and the other acquired entities hold a direct or indirect interest⁶⁵ in that unlisted entity and
 - (b) the interest acquired in the unlisted entity, combined with the total direct or indirect interest of each other acquired entity in the unlisted entity, is 50 per cent or moreor
 - (c) the acquired entities each hold a direct or indirect interest in an unlisted entity and
 - (d) the combined direct or indirect interest of the acquired entities in that unlisted entity is 50 per cent or more.⁶⁶
5. When the effect of transactions is to acquire an increased indirect interest in an unlisted entity, this will be a factor in determining that the transactions are substantially one arrangement.
6. If the same person acquires interests in two or more entities within 12 months, the acquisitions are substantially one arrangement unless the Commissioner is satisfied to the contrary.⁶⁷ The onus is on the taxpayer to satisfy the Commissioner that the acquisitions are not substantially one arrangement.

62 Duties Act s 156(4).

63 Duties Act s 156(3).

64 Duties Act s 186(1)(b).

65 As referred to in Duties Act s154A(2)

66 Duties Act s 156A(1) and (2).

67 Duties Act ss 204F(1) and 156A(1).

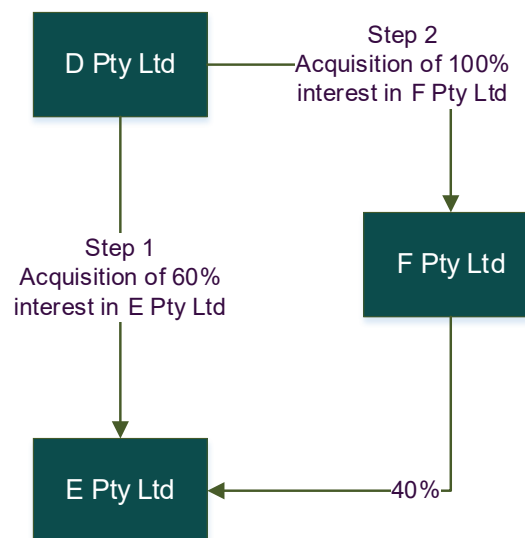
Example 22

D Pty Ltd acquires 60 per cent of E Pty Ltd which is a landholder. Two days later, D acquires 100 per cent of F Pty Ltd which does not hold any assets except a 40 per cent interest in E. Individually:

- D's 60 per cent acquisition of E is a relevant acquisition and landholder duty applies and
- D's 100 per cent acquisition of F is not a relevant acquisition. F holds no land assets. As F holds less than a 50 per cent interest in E, it is not linked to E.

As the acquisitions occurred within 12 months, they are taken to be substantially one arrangement unless the Commissioner is satisfied to the contrary.

The effect of the acquisitions is that D has taken 100 per cent control of E and E is a linked entity of F. F is a landholder, and landholder duty is payable on both acquisitions.



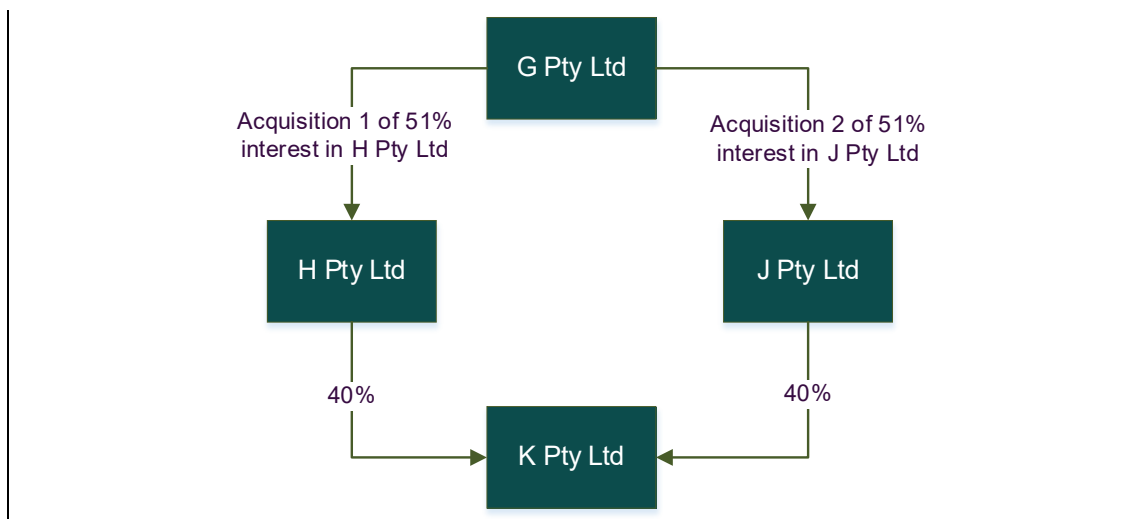
Example 23

H Pty Ltd and J Pty Ltd each hold a 40 per cent interest in the landholder K Pty Ltd. Neither H nor J are directly entitled to land assets and are not linked to K as each holds less than a 50 per cent interest.

On the same day, G Pty Ltd acquires 51 per cent of H and J. Individually, neither acquisition is a relevant acquisition in a landholder.

As the acquisitions occurred within 12 months, they are taken to be substantially one arrangement unless the Commissioner is satisfied to the contrary. H's and J's interests in K are combined to give 80 per cent. Through the combined interest, they are both linked to K.

As H and J are linked to K, G's acquisitions are relevant acquisitions in a landholder and landholder duty is payable.



Example 24

L Pty Ltd operates a mining project as an incorporated joint venture between M Ltd and N Ltd. The value of L's land assets is \$100 million. M holds 60 per cent of L while N holds 40 per cent. M and N each hold various other land assets in Western Australia.

M sells its 60 per cent interest in L to P Pty Ltd. Six months later N is taken over by Q Ltd.

Although the acquisitions occurred within 12 months of each other, the Commissioner would be satisfied they are not substantially one arrangement if Q establishes that there is no underlying connection between the acquisitions and they do not give any person a larger indirect interest in L. L will not be linked to N for the purposes of determining the duty payable on the acquisition of N.

