



## THE TAX INSTITUTE

14 September 2021

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By email: [consultation@sro.vic.gov.au](mailto:consultation@sro.vic.gov.au)

Dear Ms Ow,

### **Draft Revenue Ruling DA.047v3 | Landholder duty concessions for eligible roll-overs**

The Tax Institute welcomes the opportunity to provide comments to the State Revenue Office (**SRO**) in relation to draft revenue Ruling DA-047v3 *Landholder duty - Duty concession on the interposition of a unit trust between stapled security holders and the stapled entities (Draft Ruling)*.

In the development of this submission, we have closely consulted with our Victorian State Tax Committee to prepare a considered response which represents the views of the broader membership of The Tax Institute.

The Tax Institute considers that the Draft Ruling requires further clarification regarding the application of paragraph 250DI(b) of the *Duties Act 2000* (Vic) (**Duties Act**) and the interaction with other duty concessions. These are discussed in further detail below.

All legislative references are to the Duties Act unless stated otherwise.

### **Background**

The Draft Ruling replaces the prior version (DA-047v2) to reflect the amendments made to Division 1B in Part 2 of Chapter 11 of the Duties Act.<sup>1</sup> Broadly under the changes:

- section 250DI of the Duties Act now provides a duty concession (rather than an exemption) for a relevant acquisition made by an exchanging member in the course of, or as a result of, the interposition of a unit trust between the stapled security holders and the stapled entities; and
- there have been reforms to Division 1B which remove specific provisions imposing conditions for the grant or revocation of the (former) exemption.

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<sup>1</sup> Resulting from the enactment of the *State Taxation Acts Amendment Act 2019* (Vic).

The preamble to the Draft Ruling provides that:

*[t]he purpose of this Revenue Ruling is to clarify the circumstances in which the concessional rate of duty under Division 1B will apply to relevant acquisitions arising on the reorganisation of listed stapled entities in accordance with Subdivision 124Q of the ITAA97.*

### **Clarifying the circumstances in which paragraph 250DI(b) will apply**

The Draft Ruling does not currently provide guidance as to how the Commissioner will apply the discretion in paragraph 250DI(b) in the context of shares or units in stapled entities which are not listed on the date of the relevant acquisition, however the Commissioner is satisfied that those shares or units are *'intended to be listed within 3 years from the date of the relevant acquisition'*.<sup>2</sup> The Tax Institute is of the view that it would be beneficial for the Draft Ruling to provide clarification as to:

- the circumstances in which the Commissioner considers the discretion in paragraph 250DI(b) would apply; and
- the information or evidence that taxpayers would generally be required to demonstrate to satisfy the Commissioner that the conditions of paragraph 250DI(b) have been met.

We consider that it would be useful to illustrate the above through an example in the Draft Ruling.

### **Applicable rate of duty**

As stated in the Draft Ruling, for eligible roll-overs that occur on or after 1 July 2019, “[t]he concessional rate of duty under Division 1B is 10% of the duty that would otherwise be payable on the relevant acquisitions”. Section 87 of the Duties Act provides a separate concessional duty rate of 10% of the transfer duty rate for relevant acquisitions in a public landholder, which can include a listed company or listed trust (the **Listed Landholder Duty Rate**).

In light of the above, we consider that it is important for the Draft Ruling to confirm that where the section 250DI concession applies, the effective duty rate would be 10% of the Listed Landholder Duty Rate (provided that paragraph 88(a) of the Duties Act does not apply). That is:

- in a paragraph 250DI(a) scenario – notwithstanding that the stapled entities may not be listed when the trustee of the interposed trust acquires the interests in the stapled entities (i.e. due to the practices adopted by the Australian Stock Exchange (**ASX**) or a recognised stock exchange), the Commissioner will treat the stapled entities as listed for the purpose of section 250DI and also for the purposes of applying the Listed Landholder Duty Rate under section 87 (provided that paragraph 88(a) does not apply); and
- in a paragraph 250DI(b) scenario – notwithstanding that the stapled entities are not listed, but are intended to be listed, the Commissioner will treat the stapled entities as listed for the purpose of section 250DI and also for the purposes of applying the Listed Landholder Duty Rate under section 87 (provided section 88(a) of the Duties Act does not apply).

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<sup>2</sup> Duties Act para 250DI(2)(b).

We would be pleased to continue to work with the SRO on further development of the Draft Ruling to ensure it provides the most useful advice and guidance for taxpayers.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix A** for more about The Tax Institute.

If you would like to discuss any of the above, please contact the Chair of The Tax Institute's Victorian State Tax Committee, James Hamblin, on (03) 8608 2854, or Associate Tax Counsel, Abhishek Shekhawat, on (02) 9017 8973.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Godber', with a long horizontal flourish extending to the right.

**Peter Godber**

President

## **APPENDIX A**

### **About The Tax Institute**

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.