

Australian Capital Territory

# Duties Regulation 2023

Subordinate law SL2023–18

made under the

**Duties Act 1999, 87 (Acquisition statements)**

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Duties Regulation 2023* (the *regulation*) as made by the Executive. It has been prepared in order to assist the reader of the regulation and to help inform debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### OVERVIEW

The regulation under the *Duties Act 1999*, section 87 (2) prescribes that a person is not required to prepare an acquisition statement for a relevant acquisition in relation to landholder duty (under chapter 3 of the *Duties Act 1999*) if the rate of duty for the relevant acquisition is nil.

The rate of duty for landholder duty is determined under a disallowable instrument authorised under the *Taxation Administration Act 1999*, section 139 for the Act. The rate of duty may change over time but if it is nil an acquisition statement is not required.

An acquisition statement is still required to be lodged if a person is claiming an exemption from landholder duty under another provision of the *Duties Act 1999*. An exemption under the *Duties Act 1999* usually only applies if the Commissioner is satisfied that the exemption criteria have been met. A person cannot self-assess their entitlement to an exemption and therefore determine that they are not required to lodge an acquisition statement.

## CLAUSE NOTES

### Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Duties Regulation 2023*.

### Clause 2 Commencement

This clause provides that the regulation commences on the commencement of the *Revenue Legislation Amendment Act 2023*, section 20.

### Clause 3 Prescribed relevant acquisitions—Act, s 87 (2)

This clause provides that an acquisition statement is not required to be prepared if the rate of duty for the relevant acquisition is nil.

#### Example 1

The *Taxation Administration (Amounts Payable—Duty) Determination 2023*, DI2023-162 in section 7 identifies that nil duty is payable on a relevant acquisition under section 90 of the *Duties Act 1999* if the dutiable amount of the transaction is less than or equal to \$1 800 000.

On 1 December 2023, John makes a relevant acquisition of 50 per cent in a landholder with landholdings an unencumbered value of \$1 000 000. The dutiable amount of the transaction under section 90 (1) of the *Duties Act 1999* is \$500 000. The dutiable amount payable under DI2023-162 is \$500 000 and under section 7 (2) the rate of duty payable in Table 4 is nil.

John does not need to prepare and lodge an acquisition statement under section 87 of the *Duties Act 1999*.

#### Example 2

On 1 January 2024, Alex Pty Ltd makes a relevant acquisition of 40 per cent in a landholder with landholdings an unencumbered value of \$4 000 000. Alex Pty Ltd was not required to lodge an acquisition statement for their acquisition on 1 January 2024, because they did not have a significant interest in the landholder. Glass Pty Ltd held the remaining 60 per cent interest on trust for Door Trust.

On 15 April 2024, Glass Pty Ltd retired as trustee of the Door Trust and Alex Pty Ltd was appointed as trustee. Alex Pty Ltd was not a beneficiary or potential beneficiary of Door Trust. Alex Pty Ltd made a further relevant acquisition in the landholder when they acquired a 60 per cent interest in the landholder. The landholder has landholdings with an unencumbered value of \$4 000 000.

Alex Pty Ltd intends to apply for an exemption under sections 115H (2) (a) and 54 of the *Duties Act 1999* for a change in trustee.

Alex Pty Ltd is still required to lodge an acquisition statement under section 87 of the *Duties Act 1999* because prima facie, if no exemption is

provided, they have made a relevant acquisition. The acquisition on 1 January 2024 is within the relevant period of the acquisition on 15 April 2024 and would therefore be aggregated under sections 86 (1) (a) (ii) to deem that the relevant acquisition was 100 per cent. The dutiable amount payable under DI2023-162 is \$4,000 000 and under section 7 (2) the rate of duty payable in Table 4 is \$200,000.

Alex Pty Ltd's entitlement to an exemption under sections 115H(2)(a) and 54 of the *Duties Act 1999* for the 60 per cent interest acquired on 15 April 2024 will be assessed when their acquisition statement and supporting evidence is lodged with the Commissioner.