

Duties (Declared Public Unit Trusts) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 123

made under the

Duties Act 2001

General Outline

Short title

Duties (Declared Public Unit Trusts) Amendment Regulation 2021

Authorising law

Sections 79 and 508(1) of the *Duties Act 2001*

Policy objectives and the reasons for them

The objective of the *Duties (Declared Public Unit Trusts) Amendment Regulation 2021* is to amend the *Duties Regulation 2013* to include additional trusts on the list of declared public unit trusts in schedule 1, part 2.

The *Duties Act 2001* imposes transfer duty on the dutiable value of dutiable transactions. Among other things, a dutiable transaction includes the acquisition or surrender of an interest in a trust that directly or indirectly holds dutiable property in Queensland. However, unit dealings in public unit trusts that hold Queensland dutiable property do not usually attract duty as it is recognised that investments in these trusts are more akin to shareholdings rather than beneficial interests in the underlying trust property.

The Queensland Future (Debt Retirement) Fund (Debt Retirement Fund) was established under the *Queensland Future Fund Act 2020* to provide funding to reduce the State's debt. Assets contributed to the Debt Retirement Fund are invested through various trusts. In addition, interests in other trusts may be acquired for the Debt Retirement Fund from time to time.

Under the *Duties Act 2001*, unit dealings in the trusts through which the Debt Retirement Fund invests, or in which the Debt Retirement Fund has or acquires an interest, may incur transfer duty liabilities unless the relevant trusts are public unit trusts.

Chapter 2, part 8, division 7 of the *Duties Act 2001* contains provisions relating to public unit trusts. There are five categories of public unit trusts, including declared public unit trusts. Section 79 of the *Duties Act 2001* states that a declared public unit trust is a trust declared under a regulation. Section 4 of the *Duties Regulation 2013* provides that unit trusts listed in schedule 1 are declared public unit trusts for chapter 2, part 8, division 7 of the *Duties Act 2001*. For a trust to become a declared public unit trust, it must also meet and maintain certain conditions set out in section 4(2) of the *Duties Regulation 2013*.

The QIC Private Equity Fund No. 2, QIC Private Equity Fund No. 3 and the QIC Private Equity Fund No. 5 each currently meet the relevant conditions in section 4(2) of the *Duties Regulation 2013* to qualify as declared public unit trusts.

The QIC Registry Trust is currently taken to be a declared public unit trust under an administrative arrangement which commenced 4 June 2021.

Achievement of policy objectives

The *Duties (Declared Public Unit Trusts) Amendment Regulation 2021* achieves the policy objectives by amending the list of declared public unit trusts in schedule 1, part 2 of the *Duties Regulation 2013* to include:

- a unit trust that is established and continues for making investments for the purpose of the Debt Retirement Fund, provided all of the units in it are held by a government entity or government owned corporation
- QIC Private Equity Fund No. 2
- QIC Private Equity Fund No. 3
- QIC Private Equity Fund No. 5
- QIC Registry Trust.

To fall within the new class of trust added to the list of declared public unit trusts, a trust must meet the conditions of the class, in addition to the requirements of section 4(2) of the *Duties Regulation 2013*. A trust within this class will not need to be specifically listed in schedule 1, part 2 of the *Duties Regulation 2013* to be a declared public unit trust.

To give legislative effect to the administrative arrangement under which the QIC Registry Trust is currently taken to be a declared public unit trust, the QIC Registry Trust is included on the list of declared public unit trusts from 4 June 2021. The remaining trusts, or class of trust, are included on the list of declared public unit trusts from the commencement of the *Duties (Declared Public Unit Trusts) Amendment Regulation 2021*.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objectives of the *Duties Act 2001*, which contemplates the making of a regulation to declare unit trusts that satisfy certain conditions to be public unit trusts for chapter 2, part 8, division 7 of the *Duties Act 2001*.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Once a trust is a declared public unit trust, unit dealings in it are not dutiable. However, no revenue implications arise as it is not intended that duty be imposed on dealings in units in unit trusts that qualify for declared public unit trust status.

Implementation will not result in any additional costs to Government. In relation to the QIC Registry Trust, it is already taken to be a declared public unit trust under an administrative arrangement.

Consistency with fundamental legislative principles

The amendments are generally consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. A potential inconsistency is discussed below.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, sections 4(2)(a) and 4(3)(g)

The *Duties (Declared Public Unit Trusts) Amendment Regulation 2021* gives the QIC Registry Trust declared public unit trust status retrospectively from 4 June 2021.

Retrospective amendment of the *Duties Regulation 2013* is required to give legislative effect to the administrative arrangement that commenced on that date.

This does not breach fundamental legislative principles as the amendment is beneficial in that it ensures that, from 4 June 2021, acquisitions or surrenders of units in the QIC Registry Trust are not subject to transfer duty. Section 34 of the *Statutory Instruments Act 1992* allows for provisions of subordinate legislation to commence retrospectively if they are beneficial in that they do not operate to the disadvantage of a person by decreasing their rights or imposing liabilities on them. Giving the QIC Registry Trust declared public unit trust status retrospectively is advantageous as liabilities for transfer duty would otherwise be imposed on unit dealings in the QIC Registry Trust between 4 June 2021 and commencement of the *Duties (Declared Public Unit Trusts) Amendment Regulation 2021*.

The inclusion of the other trusts, or class of trust, on the list of declared public unit trusts will operate prospectively.

Consultation

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted. The amendments to the *Duties Regulation 2013* are excluded from further regulatory impact analysis as they fall within agency-assessed exclusion category (b) - regulatory proposals that impose taxation or a royalty.

Further consultation was not considered necessary. The *Duties Act 2001* contemplates declared public unit trust status being given to trusts that meet and maintain the conditions in section 4(2) of the *Duties Regulation 2013*.