

Foreign Owner Duty Surcharges

January 2018

The foreign owner duty surcharges are targeted at foreign purchasers and increase the transaction costs of purchasing property in Victoria, NSW and Queensland. In particular, Victorian Duty rates may be as high as 25% over the development cycle where foreign developers sell residential property to foreign owners. We note that an exemption is available to certain Australian based foreign developers purchasing land in Victoria where it can be shown that their commercial activities add to the housing stock in Victoria. Foreign developers who fit within this

category should contact us to apply to the Commissioner for this exemption.

It is also noted that where an entity which is only 20% foreign owned in NSW (or 50% in Victoria) purchases residential land/property, they will still be subject to the surcharge on the full value of the property (i.e. entities which have substantial Australian ownership will still be subject to the surcharge).

Stamp Duty	Victoria	New South Wales	Queensland	South Australia	Western Australia
Additional surcharge rate	7%	8%	3%	7% (from 1 January 2018)	4% (from 1 January 2019)
Types of Owners that the Foreign Surcharge applies?	<p>Foreign purchaser which is defined as follows:</p> <p>Foreign natural persons</p> <p>Individuals that are not citizens or permanent residents of Australia; and</p> <p>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</p>	<p>Foreign Person which is defined as follows:</p> <p>Foreign person</p> <p>Individuals that are not citizens of Australia; and</p> <p>Individuals that are not ordinarily a resident of Australia (individual who has been in Australia for at least 200 or more days in the previous 12 months); and</p> <p>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</p>	<p>Foreign Persons which are defined as follows:</p> <p>Foreign Individual</p> <p>Individual other than an Australia citizen or permanent resident.</p>	<p>Foreign Persons which are defined as follows:</p> <p>Foreign Individual</p> <p>Individuals that are not citizens or permanent residents of Australia; and</p> <p>Individuals that are not New Zealand citizens with a special category visa (Subclass 444)</p>	<p>Individuals, trusts and companies.</p> <p>Definitions are not currently available</p>
	<p>Foreign corporations</p> <p>A corporation incorporated outside of Australia</p> <p>Corporations incorporated in Australia if a foreign natural person, foreign corporation or trustee of a foreign trust has a controlling interest</p> <p>A controlling interest is:</p> <ul style="list-style-type: none"> - Greater than 50% of the voting power in the corporations; or - have an interest in greater than 50% of the issued shares in the corporation; or - ability to influence the outcome of the decisions about the corporation's financial and operating policies. 	<p>Foreign Corporation</p> <p>A corporation in which an interest of 20% or more is owned by a foreign individual, corporation or government.</p> <p>A corporation in which 2 or more foreign individuals, corporations or governments own an interest of 40% or more.</p>	<p>Foreign Corporation</p> <p>A corporation incorporated outside of Australia.</p> <p>Corporations incorporated in Australia if a foreign natural person, foreign corporation or trustee of a foreign trust has a controlling interest</p> <p>A controlling interest is:</p> <ul style="list-style-type: none"> - at least 50% of the voting power in the corporations; or - have an interest in at least 50% of the issued shares in the corporation. 	<p>Foreign Corporation</p> <p>A corporation incorporated outside of Australia</p> <p>Corporations where 50% or more of its shareholding or voting is held by foreign persons.</p>	

	<p>Foreign Trust</p> <p>A trust where a foreign natural person, foreign corporation or trustee of a foreign trust has a substantial interest in the trust (beneficial interest of more than 50% of the capital or has the capacity to determine or influence the outcome of the decisions about the administration and conduct of the trust).</p> <p>Please refer to note 1 and 3.</p>	<p>Foreign Trust</p> <p>A trustee of a trust in which an interest of 20% or more is held by a foreign individual, corporation or government.</p> <p>A trustee of a trust in which 2 or more foreign individuals, corporations or governments hold an interest of 40% or more.</p> <p>Please refer to note 1 and 4.</p>	<p>Foreign Trust</p> <p>A trust where a foreign natural person, foreign corporation or trustee of a foreign trust has at least a 50% interest.</p> <p>For discretionary trusts, if the takers in default are a foreign person, the trustee may be liable to the surcharge.</p> <p>Please refer to note 2.</p>	<p>Foreign Trust</p> <p>A trust where a beneficial interest of 50% or more is held by 1 or more foreign persons.</p> <p>Trusts where one or more of the following is a foreign person: a trustee, a person who has the power to appoint under the trust, an identified object under the trust or a person who takes capital of the trust property in default.</p>	
		<p>Foreign partnerships</p> <p>General partner of a limited partnership where foreign individuals, corporations or governments hold at least 20% in the partnership.</p> <p>General partner of a limited partnership where two or more foreign individuals, corporations or governments hold at least 40% in the partnership.</p> <p>Foreign government</p> <p>Not defined.</p>			
<p>Types of Land that the Foreign Surcharge applies?</p>	<p>Residential Property</p> <p>Land that has a building on it that is designed and constructed solely or primarily for residential purposes and that can be used as a place of residence.</p> <p>Land that is vacant but will have residential premises built on it.</p> <p>Please refer to note 5 and 6.</p>	<p>Residential land</p> <p>Land on which there are one or more dwellings or a parcel of land on which there is a building under construction that, when completed will constitute one or more dwellings</p> <p>A strata lot that is lawfully occupied as a separate dwelling or suitable for that purpose</p> <p>A land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling</p> <p>Vacant land that is zoned or designated for residential or principally for residential purposes.</p> <p>Please refer to note 5 and 7.</p>	<p>Residential land</p> <p>Land that is or will be used solely or primarily for residential purposes and on the land there is or will be a building designed and approved by a local government for human habitation.</p> <p>The above would include established residential premises, vacant land upon which residential premises will be built, land for development or residential use and refurbishing a building for residential use.</p> <p>Please refer to note 5 and 6.</p>	<p>Residential land</p> <p>Land the Commissioner determines is being predominantly used for residential purposes.</p> <p>Land the Commissioner determines should be taken to be residential land due to improvements that are residential in character.</p> <p>Vacant land or land zoned for residential use.</p>	<p>Residential property</p> <p>Land which has a residence, a residence that is being constructed; the owner has entered into a contract for the construction of a residence; or a movable building that will be attached to the land</p> <p>This is irrespective of the land being used for other purposes</p>
<p>Exemptions or Concessions for Surcharge</p>	<p>No off the plan concession available</p> <p>Treasurer's discretion for corporations and trusts that have foreign controlling/substantial interest and are Australian-based and whose commercial activities add to the supply of housing stock in Victoria (either new residential developments or re-development).</p>	<p>Foreign purchasers will no longer be entitled to the 12 month deferral for the payment of stamp duty on off-the-plan purchases.</p> <p>Australian based property developers (applicable only to Australian corporations) can seek a refund of the surcharge if they construct a new home on residential land and the property is sold within five years.</p> <p>Individuals holding permanent resident visas and New Zealand citizens holding a subclass 444 visa will be exempt on their principal place of residence, provided they occupy the home for 200 days continuously within 12 months of purchase.</p>	<p>No off the plan concession available for additional surcharge.</p>	<p>No exemptions available.</p>	<p>Exemptions are available for:</p> <ul style="list-style-type: none"> residential developments of ten or more properties; commercial residential property such as hotels, student accommodation, retirement village; or dual use properties that are primarily used for commercial purposes.

Double foreign duty surcharge on developments, where foreign person / purchaser develops property and sells to a foreign person / purchaser	Yes - if exemption for developer cannot be obtained.	Yes	Yes	Yes	Details not available
Is foreign duty surcharge only on proportion of the entity owned by foreign person / purchaser?	No. Charged on full value of the residential property.	No. Charged on full value of residential land.	No. Charged on full value of residential land.	No. Charged on full value of residential land.	Details not available
Is foreign duty surcharge only on proportion owned by foreign person / purchaser where land is under joint ownership (on title)?	Yes	Yes	Yes	Yes	Details not available
Change of zoning / intention	If the zoning or the intention of the property changes to residential, the surcharge will apply to the purchase price.	N/A	N/A	N/A	Details not available
Change of residency status	N/A	N/A	If a corporation / trust ceases to be a resident within 3 years of purchase, the surcharge will apply to the purchase price. There is an entitlement to a refund of additional foreign acquirer duty if a person is no longer a foreign person at the time of settlement.	If a corporation/trust ceases to be a resident within 3 years of purchase, the surcharge will apply to the purchase price. The amount of surcharge duty payable is reduced if a company or trust becomes foreign by virtue of being partially acquired by a foreign person and the amount of duty paid upon acquisition. There is an entitlement to a refund of additional foreign acquirer duty if a person is no longer a foreign person within 12 months of settlement.	Details not available

Notes: **1.** Need to include associated persons in determining the above threshold. **2.** Need to include related persons in determining the above threshold **3.** Any time a trustee of a discretionary trust purchases residential property in Vic, and any beneficiary of that trust is a foreign person, the trustee may be liable to the surcharge. **4.** Any time a trustee of a discretionary trust purchases residential property in NSW, and any beneficiary of that trust is a foreign person, the trustee may be liable. **5.** Does not include commercial residential premises such as hotels, boarding houses, student accommodation. **6.** For dual purpose properties: If property is primarily used for residential purposes, dutiable value of whole property will be subject to additional duty. **7.** Note for dual purpose properties: the surcharge will apply on a proportionate basis.

Let's discuss the possibilities.

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