

# Foreign Owner Duty Surcharges

October 2020

The foreign owner duty surcharges are targeted at foreign purchasers and increase the transaction costs of purchasing property in all states (except ACT). 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 and Queensland where it can be shown that their commercial activities add to the housing stock in Victoria or Queensland. Foreign developers who fit within this category should contact us to apply to the Commissioner for this exemption.

Stamp Duty	Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania
<b>Additional surcharge rate</b>	8%	8%	7%	7%	7%	8% on Residential Land and 1.5% on Primary Production Land.
<b>Types of Owners that the Foreign Surcharge applies?</b>	<p>Foreign purchaser which is defined as follows:</p> <p><b>Foreign natural persons</b></p> <ul style="list-style-type: none"> <li>Individuals that are not citizens or permanent residents of Australia; and</li> <li>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</li> </ul> <p>Temporary residents are not citizens or permanent residents.</p>	<p>Foreign Person which is defined as follows:</p> <p><b>Foreign person</b></p> <ul style="list-style-type: none"> <li>Individuals that are not citizens of Australia; and</li> <li>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</li> <li>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</li> </ul> <p>Temporary residents are not citizens or permanent residents.</p>	<p>Foreign Persons which are defined as follows:</p> <p><b>Foreign Individual</b></p> <p>Individuals that are not Australian citizens or permanent residents of Australia.</p> <p>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</p> <p>Temporary residents are not citizens or permanent residents.</p>	<p>Foreign Persons which are defined as follows:</p> <p><b>Foreign Individual</b></p> <ul style="list-style-type: none"> <li>Individuals that are not citizens or permanent residents of Australia; and</li> <li>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</li> </ul> <p>Temporary residents are not citizens or permanent residents.</p>	<p>Foreign Persons which are defined as follows:</p> <p><b>Foreign Individual</b></p> <ul style="list-style-type: none"> <li>Individuals that are not Australian citizens or permanent residents of Australia; and</li> <li>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</li> </ul> <p>Temporary residents are not citizens or permanent residents.</p>	<p>Foreign Persons includes a foreign individual, foreign corporation and foreign trust.</p> <p>Basic presumption that a person is a foreign person unless proven to the contrary.</p> <p><b>Foreign Individual</b></p> <ul style="list-style-type: none"> <li>Individuals that are not Australian citizens or permanent residents of Australia; and</li> <li>Individuals that are not New Zealand citizens with a special category visa (Subclass 444).</li> </ul> <p>Temporary residents are not citizens or permanent residents.</p>

Stamp Duty	Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania
Types of Owners that the Foreign Surcharge applies? (Continued)	<p><b>Foreign corporations</b></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"> <li>greater than 50% of the voting power in the corporations; or</li> <li>have an interest in greater than 50% of the issued shares in the corporation; or</li> <li>ability to influence the outcome of the decisions about the corporation's financial and operating policies.</li> </ul>	<p><b>Foreign Corporation</b></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><b>Foreign Corporation</b></p> <p>A corporation incorporated outside of Australia.</p> <p>Corporations incorporated in Australia or controlled by foreign persons 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"> <li>at least 50% of the voting power in the corporations;</li> <li>ability to control at least 50% of the potential voting power; or</li> <li>have an interest in at least 50% of the issued shares in the corporation.</li> </ul>	<p><b>Foreign Corporation</b></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><b>Foreign Corporation</b></p> <p>A corporation incorporated outside of Australia.</p> <p>A corporation in which foreign persons control at least 50% of the voting power or hold 50% of the shares in the corporation.</p>	<p><b>Foreign Corporation</b></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><b>Foreign Trust</b></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 <b>more than</b> 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><b>Note 1:</b> Need to include associated persons in determining the above threshold.</p> <p><b>Note 2:</b> 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.</p>	<p><b>Foreign Trust</b></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><b>Note 1:</b> Need to include associated persons in determining the above threshold.</p> <p><b>Note 2:</b> Any time a trustee of a discretionary trust purchases residential property in NSW, the trustee will be liable for the surcharge unless the trust deed prevents a foreign person from being a beneficiary and prevents the trustee amending the deed to include a foreign beneficiary.</p> <p><b>Foreign partnerships</b></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><b>Foreign government</b></p> <p>Not defined.</p>	<p><b>Foreign Trust</b></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><b>Note 1:</b> Need to include related persons in determining the above threshold.</p> <p><b>Note 2:</b> For discretionary trusts, if the takers in default are a foreign person, the trustee may be liable to the surcharge.</p>	<p><b>Foreign Trust</b></p> <p>Fixed Trusts where a beneficial interest of 50% or more is held by 1 or more foreign persons.</p> <p>Discretionary 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><b>Foreign Trust</b></p> <p>A non-discretionary trust for which foreign persons and their associates hold beneficial interests in at least 50% of the income or property of the trust.</p> <p>A discretionary trust controlled by a foreign person or a discretionary trust which foreign persons and their associates hold at least a 50% interest as takers in default.</p>	<p><b>Foreign Trust</b></p> <p>A non-discretionary trust for which foreign persons hold beneficial interests in at least 50% in the capital of the trust.</p> <p>A discretionary trust in which a trustee has the power or discretion to distribute the capital of the trust to a foreign person.</p>

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<p><b>Types of Land that the Foreign Surcharge applies?</b></p>	<p><b>Residential Property</b></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><b>Note:</b> Does not include commercial residential premises such as hotels, boarding houses, student accommodation, residential care facility or supported residential service.</p> <p><b>Note for dual purpose properties:</b> If property is primarily used for residential purposes, dutiable value of whole property will be subject to additional duty.</p>	<p><b>Residential land</b></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><b>Note:</b> Does not include commercial residential premises such as hotels, boarding houses, student accommodation. However, retirement villages and certain aged care facilities (that don't meet particular criteria) may be considered residential land.</p> <p><b>Note for dual purpose properties:</b> The surcharge will apply on a proportionate basis.</p>	<p><b>Residential land</b></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><b>Note:</b> Does not include commercial residential premises such as hotels, boarding houses, student accommodation. However, retirement villages, student accommodation and aged care facilities may be considered residential land. This will be considered on a case by case basis</p> <p><b>Note for dual purpose properties:</b> If property is primarily used for residential purposes, dutiable value of whole property will be subject to additional duty.</p>	<p><b>Residential land</b></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><b>Note:</b> Does not include residential land that is used for a commercial purpose such as hostels, hotels, motels, serviced apartments and short term unit accommodation. However, retirement villages, aged care facilities and other long term accommodation residential premises will be considered residential land.</p> <p><b>Note for dual purpose properties:</b> If property is predominantly used for residential purposes, dutiable value of whole property will be subject to additional duty.</p>	<p><b>Residential property</b></p> <p>Land that is capable or intended to be used solely or dominantly for residential purposes or vacant land zoned solely for residential purposes.</p> <p><b>Note:</b> Does not include aged care facilities, commercial residential premises such as hotels, student accommodation and retirement villages. Furthermore, additional duty will not apply to commercial, industrial or mixed used properties used primarily for commercial purposes.</p> <p><b>Note for dual purpose properties:</b> If property is predominantly used for residential purposes, dutiable value of whole property will be subject to additional duty.</p>	<p><b>Residential land</b></p> <p>Vacant Land on which a building that is capable of being used predominantly for residential purposes can be built.</p> <p>Land on which a person intends to build or refurbish a building that would be capable of being used predominately for residential purposes.</p> <p>Land upon which a building exists which is capable of being used for predominately residential purposes. This includes an option or land use entitlement which relates to a residential property.</p> <p><b>Primary Production Land</b></p> <p>Land which is capable of being used predominately for primary production purposes; or land which a person intends to develop so that it is capable of being used predominately for primary production purposes.</p>

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<b>Exemptions or Concessions for Surcharge</b>	<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>An exemption is available if the underlying transaction is not subject to general duty.</p> <p>Foreign natural persons who acquire the property jointly with their spouse or partner that is not a foreign person and the person resides in the property as their principal place of residence for a continuous period of at least 12 months. These requirements may be reduced at the discretion of the Commissioner.</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>Where land is held for less than 10 years, Australian incorporated property developers (including trustee companies) can seek a refund of the surcharge (or a proportion of surcharge) paid if they lodge an application for refund within 12 months of the sale of a new home on residential land.</p> <p>They can seek a prospective exemption if they can satisfy the Commissioner that they would be entitled to a full refund of the surcharge. This exemption may have additional conditions that the property developer must meet and may be revoked in the event any of the conditions are breached.</p> <p>Transitional rules apply for land purchased by Australian incorporated property developers that purchase land prior to 21 June 2016.</p> <p>In limited circumstances, the surcharge is not payable if the underlying transaction is exempt from general duty.</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>Holders of retirement visas (subclass 410 and 405) will be exempt from foreign purchaser additional duty for their principle place of residence.</p> <p>From 1 July 2020 to 31 December 2039 , transfers entered into by Australian corporations may be exempted, or refunded, the stamp duty surcharge where the transfer relates to land on which build-to-rent properties are situated and the reduction in land value conditions are satisfied.</p>	<p>No off the plan concession available for additional surcharge.</p> <p>Commissioner of State Revenue Office has discretion to grant ex gratia relief for Australian based foreign entities that make a significant contribution to the Queensland economy and community.</p> <p>Factors that indicate an entity will be Australian based include head office or principal place of business and significant management in Australia, employees are Australian citizens or permanent resident and services and materials primarily acquired from Australian contractors .</p> <p>The foreign entity will also need to be in compliance with all Foreign Investment Review Board and other regulatory requirement to be granted ex-gratia relief.</p> <p>Entities will make a significant contribution to Queensland having regard to: the foreign entities commercial activities; number of local workers; amount spent in local economy; development activity; regional or specific industry impact of activities; and activity of the parent entity and its subsidiary entities.</p> <p>An exemption is available if the underlying transaction is not subject to general duty.</p>	<p>A refund is available where a foreign person, corporation or trust ceases to be foreign within 12 months of acquiring the interest in the residential land.</p> <p>An exemption is available if the underlying transaction is not subject to general duty.</p>	<p>An exemption is available for residential developments where the foreign entity:</p> <ul style="list-style-type: none"> <li>constructs or refurbishes 10 or more dwellings on the residential property; or</li> <li>subdivides the residential property so that 10 or more dwellings can be constructed on the property.</li> </ul> <p>To qualify, the construction, refurbishment or subdivision must commence, or in certain circumstances be completed, within 5 years of the completion date of the transaction.</p> <p>Applications for reassessment must be made in the approved form within the later of:</p> <ul style="list-style-type: none"> <li>12 months of the relevant commencement or completion date of the construction, refurbishment or subdivision of the residential property; or</li> <li>5 years from the completion date of the transaction subject to foreign transfer duty; or</li> <li>The date of the acquisition subject to foreign landholder duty.</li> </ul> <p>In limited circumstances, the surcharge is not payable if the underlying transaction is exempt from general duty.</p>	<p>An exemption is available if the underlying transaction is not subject to duty.</p>

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<b>Double foreign duty surcharge on developments, where foreign person / purchaser develops property and sells to a foreign person / purchaser</b>	Yes – if exemption for developer cannot be obtained.	Yes	Yes	Yes	Yes – if exemption for developer cannot be obtained.	Yes
<b>Is foreign duty surcharge only on proportion of the entity owned by foreign person / purchaser?</b>	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.	No. Charged on full value of residential land.	No. Charged on full value of residential land.
<b>Is foreign duty surcharge only on proportion owned by foreign person/ purchaser where land is under joint ownership (on title)?</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Change of zoning/ intention</b>	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	N/A	If the land become residential or primary production property within 3 years of its acquisition.
<b>Generally when do you test whether you are a foreign person?</b>	Time of the acquisition of interest in the residential land (settlement).	Time at which the liability for the duty arises (settlement).	Time of the agreement for purchasing the residential property (contract date).	Time of the acquisition of interest in the residential land (settlement).	Time of the agreement for purchasing the residential property (contract date).	Time of the dutiable transaction (settlement).
<b>Change of residency status</b>	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.	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.	Can be reassessed up until the transfer of the property.	If a person ceases to be a resident within 3 years of a land acquisition, the surcharge will apply to the purchase price.

## Get in touch

Our experts can assist with further information.



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