

Government Tightens Foreign Investment Rules

Both the Federal and State governments have made several changes over the last few months that affect foreign based property investors.

- Land Tax payable by foreign and non-resident land owners has generally been increased and is different in each state as is the definition of who is captured by the additional charges. In Queensland for example, the additional liability is calculated on residency whereas in New South Wales being an Australian citizen exempts you from the surcharge. There is no additional Land Tax liability for non-residents in South Australia, Western Australia, or the ACT. We have compiled a summary of the additional charges as they apply to property in each state summarised the key changes below.
- The Foreign Investment Review Board has also reformed some of the rules relating to foreign investment. We have not included those reforms in this update. For more information **contact me on (07) 5448 9600** or refer to www.firb.gov.au/resources/faq/.
- There have been some changes to Stamp Duty in Victoria and Queensland that have increased the charges payable by foreign investors. We have not included those reforms in this update but will provide further details shortly. If you have any questions about these changes, **contact me on (07) 5448 9600** or have a chat with your property lawyer.

This summary is not advice and you should always give us a call to check prior to committing to any property purchase or restructure. All information is current as at the date of this post.

Fact Sheet - Land Tax and Foreign and Absentee Owners

NSW ([Click for more](#))

Special rules apply to foreign land owners.

Land Tax Surcharge ([Click for more](#))

Foreign property owners must pay a Land Tax surcharge of 0.75% from the 2017 land tax year onwards.

This surcharge also applies to the land value of your Principal Place of Residence.

The definition of a "foreign person" is in accordance with the [Foreign Acquisitions and Takeovers Act 1975](#) and can get complicated. If you have any doubt, please **call me (07) 5489600** for specific advice.

In brief, a foreign person can be:

An individual

A person who is not an Australian citizen or a New Zealand citizen holding a special category visa and not ordinarily resident in Australia.

A corporation

Depends on the status of shareholders and the extent of their interest in the company.

A trustee of a trust

Depends on the status of trustee(s) and the extent of their interest in the trust.

A beneficiary of a land tax fixed trust

Liability passes directly through to the unit holders so the determination is made on their account and status.

The trustee remains liable for payment of any default.

Special trusts (All other trusts)

If one or more of the potential beneficiaries of a special trust is a foreign person, then the trustee will be liable for the surcharge on the trust's interest in the property.

A government or government investor a partner in a limited partnership.

Will depend on the % interest and the status of the individual partners.

Queensland ([Click for more](#))

The Land Tax threshold for Absentees is reduced from \$599,999 to \$349,999 and special Land Tax rates apply.

No land tax up to \$349,999.

\$1,450 fixed fee plus 1.7% of the land value between \$350,000 and \$2,249,999.

\$33,750 plus 1.5% of the value above \$2,250,000 and \$4,999,999.

\$75,000 plus 2.0% of the value above \$5,000,000.

\$62,500 plus 1.75% of the value above \$5,000,000.

For the purposes of Queensland Land Tax an absentee owner is an individual who does not usually live in Australia and who:

- Was away from Australia at 30th June; or
- Has been away from Australia for more than 6 months in total during the financial year before 30th June.

Absentees cannot claim the home or primary production exemptions.

Unlike NSW, **the absentee rules apply to Australian Citizens and NZ special visa holders**. This means that people working outside Australia for extended periods are also considered absentees unless the following conditions apply:

- You are a public officer of the Commonwealth or of a state and you were absent in the performance of your duties; or
- You have been working for the same employer in Australia for a year before going overseas and were directed by that employer to go overseas for a period of less than 5 years. (If you are away for more than 5 years you will be assessed as an absentee for the entire period).

The definition of an "absentee" can get complicated. If you have any doubt, please **call me (07) 5489600** for specific advice.

VIC ([Click for more](#))

The Absentee surcharge is payable in addition to the Land Tax liability.

Absentee Owner Surcharge

An absentee for Victorian Land Tax purposes is:

An individual

- A person who is not an Australian citizen, a New Zealand citizen holding a special category visa, or holder of a Permanent Resident visa and does not ordinarily reside in Australia. And
- Was absent from Australia on 31st December of the year prior to the tax year or was absent for more than 6 months of the calendar year prior to the tax year.

A Company

- Incorporated outside Australia; or
- An absentee person has a controlling interest.

A Trust

- A **discretionary trust** where at least one absentee person is a specified beneficiary; or
- A **unit trust** with at least one absentee unit holder; or
- A **fixed trust** with at least one beneficiary who is an absentee and has a beneficial interest in land held subject to the trust.

[CLICK HERE](#) to use the online tool to work out whether you are liable for the Absentee Owner Surcharge on your Queensland property.

For more information give me a call in the office on (07) 5448 9600 or drop me a message.