

Looming deadline on NSW property surcharges for discretionary trusts

Time is about to expire to amend discretionary trust deeds so as to avoid unintended duties and taxes

Little time is left to take action to amend trust deeds of family and other discretionary trusts so as not to inadvertently subject the trust to increased transfer duties on property acquisitions and in turn increased land tax on previously acquired property holdings.

Background

The *State Revenue Legislation Further Amendment Bill 2019* was introduced into the New South Wales (NSW) Parliament on 22 October 2019 to amend legislation relating to NSW duties and land tax.

Amongst other measures, the Bill clarifies the position for a liability to surcharge purchaser duty (as well as surcharge land tax) to be imposed on foreign trustees of discretionary trusts.

The proposed legislation provides that a trustee of a discretionary trust is deemed to be a foreign trustee if the terms of the trust do not prevent a foreign person from being a beneficiary.

If however the terms of the trust explicitly prevent a foreign person from being a beneficiary, the trustee is deemed to not be a foreign trustee for surcharge purchaser duty purposes, as well as the surcharge referable to land tax liabilities.

A further requirement, to ensure no surcharge liabilities arise, is that the terms of the trust are not capable of amendment in a manner that would result in there being a potential beneficiary who is a foreign person.

Transitional Arrangements

The Bill also provides transitional arrangements for surcharge purchaser duty and land tax, including the ability to obtain refunds, when the terms of a discretionary trust are amended to prevent a foreign person from being a beneficiary, **before midnight on 31 December 2019**.

This was in part in furtherance of earlier guidance from the Commissioner of Revenue NSW to exercise a discretion to give retrospective effect to amendments to trust deeds, such that the surcharge purchaser duty (and surcharge land tax) would not apply.

As a result of these new laws, time is quickly running out to ensure surcharge liabilities on NSW properties do not arise and to potentially obtain refunds of land tax surcharges for example that were paid in respect of the 2017, 2018 or 2019 land tax years.

How can we help?

ShineWing Australia can assist with the review of trust deeds that may be impacted, as well as assess prior year land tax positions and eligibility for refunds.

Where a refund is available we can help clients with the drafting and submission of refund requests to Revenue NSW.

If you think that there may be a need to amend a discretionary trust deed to cater for the above ramifications, please contact us as soon as possible in order to ensure the timely review and where appropriate, amendment of impacted discretionary trust deeds.



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