

Changes to the Victorian SRO's application of duty for discretionary trusts

The State Revenue Office (SRO) of Victoria is bringing its concessional approach to Foreign Purchaser Additional Duty (FPAD) for discretionary trusts to an end.

Background

FPAD applies to foreign purchasers of residential property in Victoria. The rate of FPAD is currently 8% which is in addition to normal Duty. Please refer to our [table of Foreign Owner Duty Surcharges for all states and territories here](#).

When is a discretionary trust foreign?

A discretionary trust can be a foreign purchaser even if the trustee and primary beneficiaries are Australian citizens residing in Australia. A discretionary trust will meet the definition of a foreign purchaser for the purposes of FPAD where more than 50% of the trust's capital could be distributed to a foreign natural person or entity.

Who are the beneficiaries?

The deed of a discretionary trust defines who its beneficiaries are and the trustee generally has the discretion to determine which beneficiaries receive income and capital distributions. The definition of 'beneficiary' in most discretionary trust deeds will be wide reaching and could allow the trustee to make capital distributions to at least one foreign natural person or entity, thereby making the trust itself a foreign trust.

What are the changes?

As a temporary measure, the Commissioner of the SRO has opted to not apply FPAD to discretionary trusts that have foreign beneficiaries who have not previously received and are unlikely to receive in future any distributions from the trust.

However **from 1 March 2020**, the SRO will no longer apply this approach. This means any discretionary trust that could distribute more than 50% of the trust's capital to a foreign natural person or entity will now be subject to FPAD if it acquires residential property, regardless of whether the foreign beneficiary has or will ever receive a distribution.

What are the next steps?

Before buying a property, consider the possible application of duty surcharges, such as FPAD in Victoria. It may be appropriate to include a clause in the trust deed denying the trustee the discretion to distribute to foreign natural persons or entities. When establishing new discretionary trusts for our clients, we consider whether the trust will acquire Victorian residential property and if a foreign beneficiary exclusion clause is appropriate.

Contact us

If you need advice in relation to the tax or duty implications of acquiring a property in a trust, company, partnership, joint venture, self-managed superannuation fund or personally, our property specialists would be pleased to hear from you.



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