

Foreign Owner Land Tax Surcharges

October 2020

The foreign owner land tax surcharge increases the ongoing costs of owning property in Victoria, New South Wales, Queensland and Australian Capital Territory. However, it should be noted that Victoria and Queensland provide an exemption for Australian based foreign owners who make significant contributions to the Victorian or Queensland economies.

Foreign owners who fit within this category should contact us to apply to the Commissioner for this exemption to avoid this ongoing cost.

We note that the general rules below may be modified by specific measures implemented as part of each government's response to COVID-19.

Land Tax	Victoria	New South Wales	Queensland	Australian Capital Territory
Land tax surcharge	2%	2%	2% surcharge applies to Absentee individuals, foreign corporations and foreign trusts for the value of the property over \$350,000.	0.75%

To whom does the Foreign land tax surcharge apply?

Absentee owner which is defined as follows:
Absentee individual
 Is not an Australian Citizen or permanent resident.
 Does not ordinarily reside in Australia; and was absent from Australia:
 - On 31 December of the year prior to the tax year; or
 For more than six months in total in the calendar year prior to the tax year.

Foreign Person which is defined as follows:
Foreign Person
 Individuals that are not citizens of Australia.
 Individuals that are not ordinarily a resident of Australia (individual who has been in Australia during 200 or more days in the previous 12 months).
 Individuals that are not New Zealand citizens with a special category visa (Subclass 444).
 Individuals holding retirement visas (subclass 410 and 405) will be exempt for land tax surcharge for their principal place of residence.

Absentee individuals
 Individuals who do not ordinarily reside in Australia and was absent from Australia at 30 June or has been absent for more than half of the 12 month period ending at 30 June.
 Australian citizens and Australian permanent visa holders living, working or travelling are exempt.

Foreign Persons which are defined as follows:
Foreign Individual
 Individuals that are not Australian citizens or permanent residents of Australia;
 Individuals that do not ordinarily reside in Australia;
 and
 Individuals that are not New Zealand citizens with a special category visa (Subclass 444).

Land Tax	Victoria	New South Wales	Queensland	Australian Capital Territory
To whom does the Foreign land tax surcharge apply?	<p>Absentee corporation</p> <p>Incorporated outside of Australia, or In which an absentee person(s) has a controlling interest:</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>Incorporated outside of Australia, or In which an foreign person(s) has a controlling interest:</p> <ul style="list-style-type: none"> - greater than 50% of the voting power in the corporations; or - ability to control 50% of the voting power in the corporation; or - have an interest in greater than 50% of the issued shares in the corporation. 	<p>Foreign Corporation</p> <p>Incorporated outside of Australia, or In which an foreign person(s) has a controlling interest:</p> <ul style="list-style-type: none"> - greater than 50% of the voting power in the corporation; or - hold greater than 50% of the shares in the corporation. <p>A foreign government is classified as a corporation.</p>
	<p>Absentee Trust</p> <p>A trust which has at least one beneficiary who is an absentee person.</p> <p>Note: Need to include associated persons in determining the above threshold.</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>A discretionary trust will be a foreign trust where a:</p> <ul style="list-style-type: none"> - foreign person is a potential beneficiary of the trust or - the deed could be amended to include a foreign person as a potential beneficiary . <p>The amendment requirement above does not apply where the amendment is made before 31 December 2020</p> <p>Note: Need to include associated persons in determining the above threshold.</p>	<p>Foreign Trust</p> <p>A trust where at least 50% of the trust interest in the trust are foreign interest.</p> <p>A foreign interest is a trust interest of:</p> <ul style="list-style-type: none"> - foreign person (not an Australian citizen or permanent resident) - foreign corporation. - foreign trust <p>A beneficiary of a discretionary trust will have an interest in the trust equal to the amount that the beneficiary would receive in default of appointment of income by the trustee.</p>	<p>Foreign Trust</p> <p>A trust which has at least one beneficiary who is a foreign person or a person associated with a foreign person holds a controlling interest, i.e. at least 50% of the interests in the trust as beneficiaries.</p> <p>For discretionary trusts, where the foreign person is specifically named in the trust deed as someone to whom capital distributions can be made.</p> <p>Note: Need to include associated persons in determining the above threshold.</p>
What does the surcharge rate apply to?	All land	Residential land	All land	Residential land
		This broadly encompasses dwellings or land that is to be used for residential purposes.		This broadly encompasses dwellings or land that is to be used for residential purposes.

Land Tax	Victoria	New South Wales	Queensland	Australian Capital Territory
<p>Exemptions to Foreign Owner Surcharge</p>	<p>Treasurer's discretion based on the absentee owners contribution to the Victorian economy - available to absentee corporations that were incorporated in Australia and absentee trusts.</p> <p>Absentee Trusts that are charities, concessional, public unit trusts, wholesale unit trust schemes, complying superannuation trusts, administration trusts and trusts relating to child maintenance land.</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>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>Individuals holding retirement visas (subclass 410 and 405) will be exempt for land tax surcharge for their principal place of residence.</p> <p>From 31 December 2020 to 31 December 2039, residential property owned by Australian corporations may be exempted, or refunded, the land tax surcharge where build-to-rent properties are built on the land and satisfy the reduction in land value conditions.</p>	<p>Australian citizens and Australian permanent visa holders living, working or travelling are exempt.</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>Foreign individuals will be exempted where:</p> <ul style="list-style-type: none"> - The foreign person lives in the relevant property as their principal place of residence - Another owner of the property satisfies the principal place of residence requirement. - The land becomes unfit for occupation. - The land is used for affordable community housing. - Residential land owned by a not-for-profit housing corporation.
<p>Does the surcharge apply to indirect acquisitions?</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>

Land Tax	Victoria	New South Wales	Queensland	Australian Capital Territory
Is foreign land tax surcharge only on proportion of the entity owned by foreign person/purchaser?	<p>Discretionary Trust/Company No, the surcharge applies to the full value of the land.</p> <p>Fixed Trust/Unit Trust Yes, the surcharge applies only to the ownership percentage held by absentee owners.</p>	<p>Discretionary Trust/Company No, the surcharge applies to the full value of the land.</p> <p>Fixed Trust/Unit Trust Yes, the surcharge applies only to the ownership percentage held by foreign owners.</p>	No, the surcharge applies to the full value of the land.	Yes, the surcharge applies only to the ownership percentage held by foreign owners.

Get in touch

Our experts can assist with further information.



Stephen O'Flynn

Partner, Tax

T +61 3 8635 1986

E [soflynn@shinewing.com.au](mailto:sflynn@shinewing.com.au)



Abi Chellapen

Partner, Tax

T +61 3 8635 1905

E achellapen@shinewing.com.au



Tim Hogan-Doran

Partner, Tax

T +61 2 8059 6838

E thogan-doran@shinewing.com.au

The comments and information contained in this document are generic in nature and do not purport to represent advice that can be relied upon. You should seek your own advice for your own circumstances. The author or any other persons involved in the preparation or distribution of this document expressly disclaim all and any contractual, tortious or other form of liability to any person in respect of this document and any consequences arising from its use by any person in reliance in whole or any part of the contents of this document.



Advisors & Accountants

Brisbane

Level 14
12 Creek Street
71 Eagle Street
Brisbane QLD 4000
T +61 7 3085 0888

Melbourne

Level 10
530 Collins Street
Melbourne VIC 3000
T +61 3 8635 1800
F +61 3 8102 3400

Sydney

Level 8
167 Macquarie Street
Sydney NSW 2000
T +61 2 8059 6800
F +61 2 8059 6899



shinewing.com.au

ShineWing Australia Pty Ltd ABN 78 625 921 390. Liability limited by a scheme approved under Professional Standards Legislation. ShineWing Australia is an independent member of ShineWing International Limited— members in principal cities throughout the world.