

**Ashurst**

# Foreign Purchaser Stamp Duty & Absentee Owner Surcharges Summary

State Taxes – Australia

1 July 2023

Outpacing change

# Table 1: Transfer duty – foreign purchaser residential land stamp duty surcharges<sup>1</sup>

State	Surcharge rate	“Residential Land”	Foreign corporations <sup>2</sup>	Foreign (non-discretionary) trusts <sup>3</sup>	Special rules and clawback provisions <sup>4</sup>
NSW <sup>5,6</sup>	8%	<ul style="list-style-type: none"> <li>One or more “dwellings”</li> <li>Substantially vacant land zoned residential</li> <li>Not primary production land</li> </ul>	<ul style="list-style-type: none"> <li>Applies FIRB definition</li> <li>“Substantial interest” of 20% or “aggregate substantial interest” of 40% for two or more foreigners</li> </ul>	<ul style="list-style-type: none"> <li>“Substantial interest” of 20% of the income or property of the trust or “aggregate substantial interest” of 40% for two or more foreigners</li> </ul>	<ul style="list-style-type: none"> <li>No off the plan concession available</li> <li>Exemptions may apply (eg for foreign controlled property developer or eligible build-to-rent developments)<sup>6</sup></li> </ul>
QLD <sup>6</sup>	7%	<ul style="list-style-type: none"> <li>Land that is, or will be, solely or primarily used for residential purposes</li> <li>Land on which residential development is being, or will be, undertaken (does not apply to certain types of commercial residential premises)</li> </ul>	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>One or more persons or related persons of foreign persons have 50% or more foreign control (votes, potential votes and shares)</li> </ul>	<ul style="list-style-type: none"> <li>50% or more of the trust interests in the trust are foreign interests</li> <li>Foreign interests aggregated</li> </ul>	<ul style="list-style-type: none"> <li>Three year reassessment provision if acquirer becomes a foreign person</li> <li>Exemptions may apply (eg ex gratia relief for Australia-based foreign developers adding to the supply of housing stock and eligible build-to-rent developments)<sup>6</sup></li> </ul>
SA	7%	<ul style="list-style-type: none"> <li>Land used predominantly for residential purposes</li> <li>Land not used for any particular purpose but which should be taken to be used for residential purposes due to improvements that are residential in character</li> <li>Vacant land zoned for residential use</li> </ul>	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>50% or more shares or voting rights held by foreign person(s)</li> </ul>	<ul style="list-style-type: none"> <li>50% or more of capital of the trust property held by one or more foreign persons</li> </ul>	<ul style="list-style-type: none"> <li>Exemptions may apply (eg ex gratia relief for significant development of new residential homes)</li> <li>One year reassessment provision if acquirer ceases to be a foreign person</li> <li>Three year reassessment provision if acquirer becomes a foreign person</li> </ul>

State	Surcharge rate	“Residential Land”	Foreign corporations <sup>2</sup>	Foreign (non-discretionary) trusts <sup>3</sup>	Special rules and clawback provisions <sup>4</sup>
TAS	Residential: 8% Primary production: 1.5%	<ul style="list-style-type: none"> <li>Residential property: <ul style="list-style-type: none"> <li>Land used solely or primarily for residential purposes</li> <li>Land that is vacant and will be used solely or primarily for residential purposes</li> <li>Land that includes a building intended to be refurbished and used solely or primarily for residential purposes</li> <li>Land on which persons intend to construct a building to be used solely or primarily for residential purposes</li> <li>Land development for the purposes of constructing a building used solely or primarily for residential purposes</li> <li>Excludes land on which a building is being lawfully used solely or primarily as commercial residential property</li> </ul> </li> <li>Primary production<sup>7</sup>: <ul style="list-style-type: none"> <li>Land used solely or primarily for primary production purposes</li> <li>Land that a person intends to develop so the land is capable of being used solely or primarily for primary production purposes</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>Corporation where foreign persons have a significant interest (ie 50% or more shares or voting rights or potential voting rights held by foreign persons (in aggregate))</li> </ul>	<ul style="list-style-type: none"> <li>50% or more beneficial interest in trust estate by one or more foreign persons (taking their interests in aggregate)</li> </ul>	<ul style="list-style-type: none"> <li>Three year reassessment provision if acquirer becomes a foreign person</li> <li>Tasmanian-based foreign developers that build 50 residential dwellings on land within a financial year may apply for a refund of surcharge duty paid</li> </ul>

State	Surcharge rate	“Residential Land”	Foreign corporations <sup>2</sup>	Foreign (non-discretionary) trusts <sup>3</sup>	Special rules and clawback provisions <sup>4</sup>
VIC <sup>5</sup>	8%	<ul style="list-style-type: none"> <li>Land capable of being used solely or primarily for residential purposes</li> <li>Land on which person intends to construct residential premises</li> <li>Not commercial residential premises (GST definition), a residential care facility, a supported residential service or a retirement village (as defined)</li> </ul>	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>More than 50% foreign control (votes, potential votes or shares)</li> <li>Foreign interests aggregated</li> </ul>	<ul style="list-style-type: none"> <li>More than 50% of the capital of the estate of the trust (substantial interest by foreign person(s))</li> <li>Foreign interests aggregated</li> </ul>	<ul style="list-style-type: none"> <li>Foreign owners are required to notify change in intention (ie a foreign purchaser must advise in writing within 14 days of forming the intention to convert property into residential property)</li> <li>Exemptions may apply (eg for acquisitions by Australian based developers for developments which add to the supply of housing stock in Victoria)</li> </ul>
WA	7%	<ul style="list-style-type: none"> <li>Land capable of being, or intended to be, used solely or dominantly for residential purposes</li> <li>Land that is vacant or substantially vacant and zoned solely for residential purposes</li> <li>Any estate or interest in land as described above</li> <li>Not land intended for aged care, commercial residential premises (GST definition) or a retirement village</li> </ul>	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>Corporation where foreign persons have a controlling interest (ie 50% or more shares or voting rights or potential voting power held by foreign person(s) or their associates)</li> </ul>	<ul style="list-style-type: none"> <li>One or more foreign persons, with associates, hold beneficial interests in at least 50% of the income or property of the trust</li> </ul>	<ul style="list-style-type: none"> <li>Exemptions may apply (eg for residential developers)</li> </ul>

- The surcharge applies to any dutiable transaction where a foreign purchaser acquires land, and is in addition to the normal transfer duty rate. The surcharge also applies for relevant acquisitions by foreign acquirers in landholders for landholder duty purposes. In NSW, a refund of foreign purchaser surcharge duty is available for eligible build-to-rent developments upon application and subject to conditions. In VIC, the Treasurer may provide an exemption to a foreign corporation or foreign trust, subject to certain criteria being satisfied. Ex-gratia relief may be available in QLD (for certain foreign corporations or foreign trusts) and SA (for significant development of new residential homes), and in WA and TAS, an exemption may be available to residential developers. See also footnote 6 for legislated exemptions in NSW and QLD.
- Different rules apply for corporations, trusts and individuals.
- Special rules apply to discretionary trusts.

- Exemptions may be available for property developers, builders or operating businesses.
- Revenue NSW has announced that foreign surcharge duty is inconsistent with international tax treaties with New Zealand, Finland, Germany, India, Japan, Norway, Switzerland and South Africa. Refunds are potentially available for surcharge duty paid on or after 1 January 2021. Victoria has announced it will continue to apply foreign surcharge duty to all foreign purchasers.
- An exemption to foreign purchaser surcharge duty in respect of eligible build-to-rent (BTR) developments has been in place in NSW since 2020. The Revenue Legislation Amendment Act 2023 (Qld), which was enacted on 23 June 2023, introduced a 100% discount from additional foreign acquisition duty for land which is used as an eligible BTR development or where the acquirer will construct an eligible BTR development on or before 30 June 2030.
- Only applies to TAS.

# Table 2: General land tax and surcharge land tax rates<sup>1</sup>

State	General land tax rate <sup>2</sup>	Surcharge land tax rate <sup>3</sup>	Foreign corporations <sup>4</sup>	Foreign (Non-discretionary) trusts	Liability date
<b>ACT<sup>5</sup></b>	Fixed charge of \$1,462 plus valuation charge up to 1.14% on five year average of unimproved value of the residential land	0.75% on the average unimproved value of all residential land owned by foreign persons	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>One or more foreign persons or associated persons of foreign persons have 50% or more control (maximum votes and shares)</li> </ul>	<ul style="list-style-type: none"> <li>50% or more of the capital of the trust estate is held by one or more foreign beneficiaries and their associates</li> </ul>	Midnight on 1 July, 1 October, 1 January and 1 April in each year
<b>NSW<sup>6,7</sup></b>	Land value of \$5,026,000 or more: \$67,364 plus 2% <sup>8</sup>	2% on all residential land owned by foreign persons <sup>9</sup>	<ul style="list-style-type: none"> <li>Applies FIRB definition</li> <li>“Substantial interest” of 20% or “aggregate substantial interest” of 40% for two or more foreigners</li> </ul>	<ul style="list-style-type: none"> <li>Applies FIRB definition</li> <li>“Substantial interest” of 20% of the income or property of the trust or “aggregate substantial interest” of 40% for two or more foreigners</li> </ul>	Midnight on 31 December each year
<b>NT<sup>10</sup></b>	N/A	N/A	N/A	N/A	N/A
<b>QLD<sup>11</sup></b>	For companies and trustees with freehold land of \$10m or more: \$187,500 plus 2.75%	2% on all freehold land of \$350,000 or more owned by foreign persons	<ul style="list-style-type: none"> <li>Corporation not incorporated in Australia; or</li> <li>One or more foreign persons or associated persons of foreign persons have 50% or more control (maximum votes and shares)</li> </ul>	<ul style="list-style-type: none"> <li>50% or more of the trust interests in the trust are foreign interests</li> </ul>	Midnight on 30 June each year

- Tailored relief measures have been implemented by a number of Australian States and the ACT, as part of the various State and Territory responses to the impact of COVID-19.
- Rates shown are generally the highest marginal rates which apply.
- The surcharge rates apply in addition to the applicable general land tax rate.
- Different rules apply for corporations, trusts and individuals.
- The effective rate from 1 October 2022.
- As announced in the 2022-2023 NSW Budget, it is intended that the land tax early payment discount will be lowered to 0.5% effective from 1 January 2023. Also as announced in the 2022-2023 NSW Budget, the newly enacted Property Tax (First Home Buyer Choice) Act 2022 (NSW) provides that from 16 January 2023, eligible first home buyers purchasing a property up to \$1.5m will be given the option to pay an annual property tax instead of transfer duty upfront when purchasing their home. For the 2022-2023 year, the annual owner-occupier property tax rates will be set at \$400 plus 0.3% of the property's unimproved land value for the year, and, the annual residential investor property tax rates will be set at \$1,500 plus 1.1% of the property's unimproved land value for the year. For completeness, we note that the First Home Buyer Assistance Scheme remains in place.
- Eligible build-to-rent projects may be entitled to a 50% reduction in the land value and exemption from the surcharge rate until 2040 upon application and subject to conditions.
- As announced in the 2022-2023 NSW Budget, it is intended that the foreign investor land tax surcharge will increase from 2% to 4% from the 2023 land tax year.
- For the 2023 land tax year, the general land threshold is \$969,000 and the premium threshold is \$5,925,000.
- From 30 June 2022 the property activation levy based on the unimproved capital value of vacant and unoccupied non-residential properties in the Darwin CBD will no longer apply.
- In QLD, ex gratia relief may be available for significant development.

State	General land tax rate <sup>2</sup>	Surcharge land tax rate <sup>3</sup>	Foreign corporations <sup>4</sup>	Foreign (Non-discretionary) trusts	Liability date
SA <sup>12</sup>	Land value over \$2m: Midnight on 30 June each year  \$20,550 plus 2.4% <sup>13</sup>	N/A	• N/A	• N/A	Midnight on 30 June each year
TAS <sup>14</sup>	Land value of \$500,000 or more: \$1,850 plus 1.5%	2% on all residential land owned by foreign persons	<ul style="list-style-type: none"> <li>• Corporations not incorporated in Australia; or</li> <li>• Foreign persons are in a position to control more than 50% of the voting power, or have an interest of 50% or more in issued shares</li> </ul>	<ul style="list-style-type: none"> <li>• One or more foreign person has more than a 50% interest in the capital of the trust</li> </ul>	Midnight on 1 July each year
VIC <sup>15</sup>	Land value of \$3m or more: \$27,975 plus 2.55%	2% on all land owned by absentee owners  A further 1% on all residential land in Melbourne's middle and inner suburbs left vacant for six months or more	<ul style="list-style-type: none"> <li>• Corporation not incorporated in Australia; or</li> <li>• One or more foreign persons can control the composition of the board, or have more than 50% control (maximum votes and shares)</li> </ul>	<ul style="list-style-type: none"> <li>• At least one foreign person has a beneficial interest in land under the trust, or is a unitholder in a unit trust</li> </ul>	Midnight on 31 December each year
WA	Land value over \$11m: \$186,550 plus 2.67%	N/A <sup>16</sup>	N/A	N/A	Midnight on 30 June each year

12. The Statutes Amendment (Budget Measures 2021) Bill 2021 (SA) has been introduced to Parliament. The Bill will establish a 50% reduction in the taxable value of land when assessing land tax. The reduction will be available for the 2022-23 financial year for eligible new build-to-rent projects, where construction commences on or after 1 July 2021. The land tax reduction will be available up to, and including, the 2039-40 financial year.

If the land is owned by a trust, land tax charged for the 2021-22 year is \$16,866 plus 2.4% on the taxable value of the land which exceeds \$1,350,000. However, this Bill has since lapsed and it is unclear at this time if the Bill will be restored and implemented at a later date.

13. The effective rate from 1 July 2022.

14. The effective rates from 1 July 2022. Effective from 1 July 2022, the tax-free threshold for land tax will double to \$100,000, and, the upper tax threshold will increase to \$500,000 with the effect that the tax rate for land valued between \$100,000 and \$500,000 will decrease from 0.55% to 0.45%.

15. In VIC, the Treasurer may provide an exemption to a foreign corporation or foreign trust, subject to certain criteria being satisfied (eg for acquisitions by Australian based developers for developments which add to the supply of housing stock in Victoria). Separately, recent legislative amendments have introduced specific concessions for BTR projects, namely 50% reduction of land tax and full exemption from absentee owner surcharge land tax for up to 30 years upon application and subject to conditions.

16. A metropolitan region improvement tax rate of 0.14% applies to the aggregated taxable value of land in excess of \$300,000 for property located in the metropolitan area surrounding Perth

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