

Foreign Purchaser Stamp Duty and Absentee Owner Surcharges Summary

1 March 2021



Table 1: Transfer duty – foreign purchaser residential land stamp duty surcharges¹

State	Surcharge rate	“Residential land”	Foreign corporations ²	Foreign (non-discretionary) trusts ³	Special rules and clawback provisions ⁴
ACT/ NT	N/A	N/A	N/A	N/A	N/A
NSW	8%	<ul style="list-style-type: none"> • One or more “dwellings” • Substantially vacant land zoned residential • Not primary production land 	<ul style="list-style-type: none"> • Applies FIRB definition • “Substantial interest” of 20% or 40% for two or more foreigners 	<ul style="list-style-type: none"> • “Substantial interest” of 20% of the income or property of the trust or 40% for two or more foreigners 	<ul style="list-style-type: none"> • No off the plan concession available • For landholder duty, no value threshold • Exemptions may apply (eg for foreign controlled property developer)
QLD	7%	<ul style="list-style-type: none"> • Land that is, or will be, solely or primarily used for residential purposes • Land on which residential development is being, or will be, undertaken • Does not apply to certain types of commercial residential premises 	<ul style="list-style-type: none"> • Corporation not incorporated in Australia; or • One or more persons or related persons of foreign persons have 50% or more foreign control (votes, potential votes and shares) 	<ul style="list-style-type: none"> • 50% or more of the trust interests in the trust are foreign interests • Foreign interests aggregated 	<ul style="list-style-type: none"> • Three year reassessment provision if acquirer becomes foreign controlled • Exemptions may apply (eg significant development)
SA	7%	<ul style="list-style-type: none"> • Land used predominantly for residential purposes • 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 • Vacant land zoned for residential use 	<ul style="list-style-type: none"> • Corporation not incorporated in Australia; or • 50% or more shares or voting rights held by foreign person(s) 	<ul style="list-style-type: none"> • 50% or more of capital of the trust property held by one or more foreign persons 	<ul style="list-style-type: none"> • Exemptions may apply (eg ex gratia relief for significant development of new residential homes) • One year reassessment provision if acquirer ceases to be a foreign person • Three year reassessment provision if acquirer becomes a foreign person

State	Surcharge rate	“Residential land”	Foreign corporations ²	Foreign (non-discretionary) trusts ³	Special rules and clawback provisions ⁴
TAS	Residential: 8% Primary production: 1.5%	<ul style="list-style-type: none"> Residential property: <ul style="list-style-type: none"> – Land used solely or dominantly for residential purposes – Land that is vacant and will be used solely or primarily for residential purposes – Land that includes a building intended to be refurbished and used solely or primarily for residential purposes – Land on which persons intend to construct a building to be used solely or primarily for residential purposes – Land development for the purposes of constructing a building used solely or primarily for residential purposes Primary production⁵: <ul style="list-style-type: none"> – Land used solely or dominantly for primary production purposes 	<ul style="list-style-type: none"> Corporation not incorporated in Australia; or 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) 	<ul style="list-style-type: none"> 50% or more beneficial interest in trust estate by one or more foreign persons (taking their interests in aggregate) 	<ul style="list-style-type: none"> Three year reassessment provision if acquirer becomes foreign
VIC	8%	<ul style="list-style-type: none"> Land capable of being used solely or primarily for residential purposes Land on which person intends to construct residential premises Not commercial residential premises (GST definition), a residential care facility, a supported residential service or a retirement village (as defined) 	<ul style="list-style-type: none"> Corporation not incorporated in Australia; or More than 50% foreign control (votes, potential shares and shares) Foreign interests aggregated 	<ul style="list-style-type: none"> More than 50% of the capital of the estate of the trust (substantial interest by foreign person(s)) Foreign interests aggregated 	<ul style="list-style-type: none"> 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 Exemptions may apply⁶

State	Surcharge rate	“Residential land”	Foreign corporations ²	Foreign (non-discretionary) trusts ³	Special rules and clawback provisions ⁴
WA	7%	<ul style="list-style-type: none"> Land capable of being, or intended to be, used solely or dominantly for residential purposes Land that is vacant or substantially vacant and zoned solely for residential purposes Any estate or interest in land as described above Not land intended for aged care, commercial residential premises (GST definition) or a retirement village 	<ul style="list-style-type: none"> Corporation not incorporated in Australia; or 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 	<ul style="list-style-type: none"> One or more foreign persons, with associates, hold beneficial interests in at least 50% of the income or property of the trust 	<ul style="list-style-type: none"> Exemptions may apply (eg for residential developers)

1 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 foreigners in landholders for landholder duty purposes.

2 Different rules apply for corporation, trusts and individuals.

3 Special rules apply to discretionary trusts.

4 Exemptions may be available for property developers, builders or operating businesses.

5 Only applies to Tasmania.

6 For example, if a foreign purchaser buys a principal place of residence jointly with a spouse or partner who is an Australian citizen, permanent resident or New Zealand citizen who holds a special category visa.

Table 2: Land tax and surcharge land tax rates¹

State	General land tax rate ²	Surcharge land tax rate	Foreign Corporations ³	Foreign (non-discretionary) trusts	Liability date
ACT	Fixed charge of \$1,326 plus valuation charge up to 1.12% on three year average 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"> Corporation not incorporated in Australia; or One or more foreign persons or associated persons of foreign persons have 50% or more control (maximum votes and shares) 	<ul style="list-style-type: none"> 50% or more of the capital of the trust estate is held by one or more foreign beneficiaries and their associates. 	Midnight on 1 July, 1 October, 1 January and 1 April in each year
NSW ⁴	Land value of \$4,488,000 or more: 2%	2% on all residential land owned by foreign persons	<ul style="list-style-type: none"> Applies FIRB definition “Substantial interest” of 20% or 40% for two or more foreigners (maximum votes and shares)“Substantial interest” of 	<ul style="list-style-type: none"> Applies FIRB definition “Substantial interest” of 20% of the income or property of the trust or 40% for two or more foreigners 	Midnight on 31 December each year
NT ⁵	N/A	N/A	N/A	N/A	N/A

State	General land tax rate ²	Surcharge land tax rate	Foreign Corporations ³	Foreign (non-discretionary) trusts	Liability date
QLD	For companies, trustees or absentees, freehold land of \$10m or more: \$187,500 plus 2.75%	2% on all freehold land \$350,000 or more owned by foreign persons	<ul style="list-style-type: none"> Corporation not incorporated in Australia; or One or more foreign persons or associated persons of foreign persons have 50% or more control (maximum votes and shares) 	<ul style="list-style-type: none"> 50% or more of the trust interests in the trust are foreign interests. 	Midnight 30 June each year
SA	Land value over \$1,350,000: \$11,437.50 plus 2.4% ⁶	N/A	N/A	N/A	Midnight 30 June each year
TAS	Land (not principal residence or primary production land) value of \$350,000 or more: \$1,837 plus 1.5%	N/A	N/A	N/A	Midnight on 1 July each year
VIC	Land value of \$3m and over: \$24,975 plus 2.25%	2% on all land owned by absentee owners 1% on all residential land in Melbourne's middle and inner suburbs left vacant for six months or more ⁷	<ul style="list-style-type: none"> Corporation not incorporated in Australia; or One or more foreign persons can control the composition of the board, or have more than 50% control (maximum votes and shares). 	<ul style="list-style-type: none"> At least one foreign person has a beneficial interest in land under the trust, or is a unitholder in a unit trust 	Midnight on 31 December each year
WA	Land value over \$11m: \$186,550 plus 2.67%	N/A ⁸	N/A	N/A	N/A

1 Tailored relief measures have been announced by a number of Australian States and the Australian Capital Territory, as part of the various State and Territory responses to the impact of COVID-19.

2 Rates shown are generally the highest marginal rates which apply.

3 Different rules apply for corporations, trusts and individuals.

4 As part of the NSW State Budget 2020-2021, the NSW Treasurer announced the Government is embarking on a public consultation process in relation to the reform of property taxes in NSW – specifically, replacing stamp duty and land tax with an annual property tax on an opt-in basis. At the moment, this is a policy proposal only – there is no legislation available or confirmed commencement date. Public consultation will run to 15 March 2021 and information published by NSW Treasury indicates that following the consultation period, the policy will be developed in further detail and updates provided in the first half of 2021. The NSW Government also announced in July 2020, that it is intended that a land tax discount (equivalent to at least a 50% reduction in land tax, depending on the unimproved land value) will apply in respect of eligible new build-to-rent housing projects until 2040. It was also announced that an exemption from foreign investor surcharges will also be provided until 2040 for build-to-rent developers.

5 While the Northern Territory does not currently impose a land tax, from 1 July 2019, the Northern Territory introduced a property activation levy on vacant and unoccupied properties in the Darwin CBD. Payment of this levy is first required in 2020-21 and is estimated to raise up to \$2m per annum.

6 If the land is owned by a trust, land tax charged for the 2020-21 year is \$17,889.50 plus 2.4% on the taxable value of the land which exceeds \$1,350,000.

7 Land that was exempt from land tax but ceases to be exempt is subject to a one-off special land tax charge, charged at a rate of 5% of the taxable value of the land and is imposed on the date the land ceases to be exempt. For absentee owners, if the land ceases to be exempt from 1 January 2020 the one-off special land tax charge is charged at a rate of 7%.

8 A metropolitan region improvement tax rate of 0.14% applies to property located in the metropolitan area.

Ashurst Australia contact details

Sydney	Barbara Phair	Partner	+61 2 9258 6584	barbara.phair@ashurst.com
	Costa Koutsis	Partner	+61 2 9258 6423	costa.koutsis@ashurst.com
	Elke Bremner	Senior Associate	+61 2 9258 6896	elke.bremner@ashurst.com
	Anthony Hui	Senior Associate	+61 2 9258 6718	anthony.hui@ashurst.com
Melbourne	Geoff Mann	Partner	+61 3 9679 3366	geoffrey.mann@ashurst.com
Brisbane	Selina Ngo	Senior Associate	+61 7 3259 7240	selina.ngo@ashurst.com