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Stamp Duty Foreign Investment Surcharge

By ,

The 2016-2017 State Budget which was handed down recently confirms the Treasurer's remarks that Queensland will introduce a 3% duty surcharge on 'foreign persons' purchasing 'residential land'. Following this, the Duties and Other Legislation Amendment Act 2016 (Qld) **(Act)** received assent on 27 June 2016.

To which transactions, and from which point will the surcharge apply?

The 3% surcharge, called 'additional foreign acquirer duty'**(AFAD)** will apply to dutiable transactions involving foreign persons and residential land on or after 1 October 2016.
Accordingly, AFAD will affect the following types of duty:

- Transfer duty - arising from a transfer of land, or an agreement to transfer land (such as a Contract for Sale or Option);
- Landholder duty - that may be involved with some acquisitions in public or private landholders by a corporation or listed unit trust; or
- Corporate trustee duty - that may be involved in an acquisition of shares in corporations that hold property on trust.

Foreign persons that are subject to AFAD will be required to lodge an 'AFAD statement' within 30 days of the relevant liability date.

What types of properties are 'residential land'?

Generally speaking, AFAD will apply to land in Queensland that is used, or will be used, solely or primarily for residential purposes. The definition extends to established homes and apartments, vacant land upon which a home or apartment will be built, land for development for residential use and refurbishment of a building for residential use.

Who is considered a 'foreign person'?

The definition will include:

- A foreign individual (a person other than an Australian citizen or permanent resident);
- A foreign corporation (a corporation that is incorporated outside of Australia or a corporation controlled by a foreign person or persons); or
- A foreign trustee of a foreign trust (a trust in which at least 50% of the interests in the trust are held by a foreign person or persons).

Statutory Charge

The Commissioner is entitled to a first ranking charge over the foreign person's interest in the residential land if there is any AFAD unpaid.
A proposed purchaser of residential land from a foreign person will be bound by the charge if it is registered at the time of disposal. However, the charge cannot be registered if the foreign person is no longer the registered owner.

Further Application of the Act

In addition, the Act brings about the following noteworthy changes:

First Home Owner's Grant Increase

The current grant of $15,000 that is available to eligible first home buyers has increased to $20,000, for eligible transactions entered between 1 July 2016 and 30 June 2017 (inclusive).

Extension of Family Farm Duty Concession

Currently, there is a stamp duty concession available for transactions involving a transfer of land used for primary production business (or any adjacent land), or personal property used to conduct business on the land, between specific family members. However, its application is limited to where the transfer is made by way of a gift. From 1 July 2016, this concession will also be available to an eligible transferee who pays consideration.

Should you wish to discuss any matters arising out of this article, please contact the author:

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