



Queensland Land Tax Foreign Surcharge – Effects and Possible Relief

By Alex Lam, Senior Associate
and Michael Byrom, Head of Property Services

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From 2019/2020 onwards, in the absence of any potential exemptions or relief, 'foreign companies' and 'foreign trusts' will pay a 2% 'absentee owner' land tax surcharge (AOS) for each dollar of taxable Queensland land above \$349,999.

Importantly, this measure applies to all types of land including residential, commercial and industrial, unless that land is exempt from land tax as primary production land.

Queensland land tax rates for Australian and foreign companies and trusts have been increased by 0.25% for each dollar of taxable Queensland land above \$5 million. This means that 'foreign companies' and trustees of 'foreign trusts' with aggregated landholdings in excess of \$5 million now face a general 0.25% increase in their land tax rates as well as the AOS of 2%. This results in a potential top land tax rate of 4.75% for foreign companies and foreign trusts.

Foreign Companies and Trusts

The definitions of 'foreign company' and 'foreign trust' are extremely broad.

A corporation will be a 'foreign company' if one or more foreign persons, or related persons of foreign persons, are together in a position to control at least 50% of the voting power (or potential voting power) in the corporation, or together have an interest in at least 50% of the issued



shares in the corporation.

Similarly, a unit trust will be a 'foreign trust' if one or more foreign persons, or related persons of foreign persons, have at least 50% of the interests in the trust. A discretionary trust will generally be a 'foreign trust' if its default beneficiaries are foreign persons (or related persons of foreign persons).

Related person is the immediate family member of an individual or a related corporation.

Importantly, all interests held by foreign investors in a corporation or unit trust (together with interests held by their related persons, Australian or foreign) will be aggregated for the purpose of determining whether the relevant 50% threshold is met.

In the [Budget Paper No. 2 Budget Strategy and Outlook 2019-20](#), the Queensland government recognised that there may be exceptional circumstances which the government should consider granting foreign companies or trustees of foreign trust *ex gratia* relief from the new foreign surcharge. The relief is on a case-by-case basis.

Ex-gratia Relief

The *ex-gratia* relief is a payment granted by the government to eligible entities to pay a portion of the land tax assessment equivalent to the amount granted. This relief is to support entities with commercial activities that provide significant contribution to the Queensland economy. This arrangement means the AOS liability still exists under the legislation and an assessment is raised.

The Office of State Revenue circulated proposed guidelines for foreign entities

that may wish to apply for *ex-gratia* relief, to the Property Consultative Committee and other stakeholders for consultation.

The *ex-gratia* relief is discretionary and an entity must ***specifically*** apply for the relief.

The government will consider granting relief on 4 main criteria:

- The applicant is Australian based – having a presence or operation in Australia;
- The applicant is FIRB approved when acquiring the property. However, this may cause problems with incorporated companies which have acquired particular commercial properties which the FIRB threshold or otherwise do not require FIRB approval;
- The applicant must meet regulatory requirements of the [Corporations Act 2001 \(Cth\)](#) and Queensland taxation laws; and
- The applicant's operation contributed to the economy and/or communities of Queensland.

While the first three criteria are not difficult to evidence and satisfy, definitions of "contribution to the economy and communities of Queensland" can be subjective. Examples provided in the guidelines include creation of jobs or promote economic activities such as tourism.

Consideration will be given to the size of the commercial activities relative to the size of its land holding. Consideration is also to be given to the number of employees and the amount of material or services from Queensland. In this respect, an entity



which bought property for building development may be treated as contributory to Queensland economy such as providing jobs and purchases during the building period. However, once the building is completed, the contributory factor no longer exists if that entity is merely collecting rent as a passive investor instead of actively managing the operation of the newly completed building.

If the relief is granted, it will apply as long as the entity continues to satisfy all the conditions. In future there may be requirements to report to OSR every year by way of, for example, a statutory declaration to keep the relief. The entity must also report to OSR if there are any changes of circumstances which would affect the grant of the relief.

If you want to discuss any property matters arising in this article, please contact:

Michael Byrom | Head of Property Services

D (07) 3223 9109

E michael.byrom@brhlawyers.com.au

Alex Lam | Senior Associate

D (07) 3223 9115

E alex.lam@brhlawyers.com.au

Adam Raleigh | Special Counsel

D (07) 3223 9116

E adam.raleigh@brhlawyers.com.au

Erin Priest | Associate

D (07) 3223 9121

E erin.priest@brhlawyers.com.au