



NEW QLD STAMP DUTY CHARGE FOR FOREIGN BUYERS

AUTHOR // PAUL O'DEA

SEPTEMBER 2016

Developers and foreign investors should be aware that in Queensland from **1 October 2016**, there will be a 3% stamp duty surcharge on foreign buyers for the acquisition of residential property, under the *Duties Act 2001*. This will be known as Additional Foreign Acquirer Duty (“AFAD”).

AFAD will apply to contracts entered into **on or after 1 October 2016**, regardless of whether they are pursuant to a pre existing option.

FOREIGN BUYERS

“Foreign buyers” are those who buy land and are either:

- individuals without Australian citizenship or permanent residents (permanent residents include New Zealanders with either permanent visas or special category visas both defined by the *Migration Act 1958* (Cth));
- companies incorporated outside Australia, or Australian companies where at least 50% interest is with a foreign person/s or related person/s (ie relatives/spouse or partners in a partnership); or
- a trust where at least 50% of its interests are held by a foreign person/s.

There will also be a 3 year reassessment period applicable to corporations and/or trusts. If there is a

change of ownership or shares that renders the entity “foreign” within 3 years of the residential acquisition, the corporation or trust may subsequently be liable for AFAD.

RESIDENTIAL LAND

“Residential land” is land that is or will be solely or primarily used for residential purposes. This includes established houses and apartments, vacant land where a home or apartment will be built, land for development for residential use (ie smaller unit block developments, housing subdivisions, and major developments with a residential component), and/or refurbishment, renovation, or extension of a building for residential use.

“Residential land” does not include land that will be or is currently used for hotel and motel purposes.

TYPE OF TRANSACTIONS AFFECTED

AFAD will apply to all dutiable transactions involving residential land where a foreign person is acquiring an interest. As such, AFAD will be applied to the following transactions:

- transfer or an agreement for the transfer of land;
- declaration of trust over land;
- an option granted over land;
- surrender of an interest in land;

ClarkeKann is a commercial law firm with offices in Brisbane and Sydney. Our expertise covers commercial & corporate transactions, employment & IR, financial services, litigation, risk management and insolvency, property transactions and resources projects, across a range of industries. For a full list of our legal services, please visit our website at www.clarkekann.com.au. To update your contact details or unsubscribe to any of our publications, email us at publications@clarkekann.com.au.

This bulletin is produced as general information in summary for clients and subscribers and should not be relied upon as a substitute for detailed legal advice or as a basis for formulating business or other decisions. ClarkeKann asserts copyright over the contents of this document. This bulletin is produced by ClarkeKann. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under professional standards legislation.

[Privacy Policy](#)

- lease of land where a premium or other consideration is payable for the grant of the lease; or
- purchases of development sites.

EXEMPTIONS

Any transaction which is exempt from transfer duty, landholder duty, or corporate trustee duty will be exempt from AFAD.

CONCESSIONS

Residential acquisitions by foreign purchasers *will not* attract the home or first home concessions to the extent that AFAD is imposed. Any non AFAD component of the transaction will still be able to receive concessional treatment however.

CHARGES

If AFAD is not paid, the Commissioner will have a first ranking statutory charge over the foreign acquirer's interest in the residential land. If within 18 months of the charge being registered AFAD has still not been paid, the Commissioner may apply to the Supreme Court for an order to sell the land in order to recover the unpaid AFAD.

THE QUEENSLAND TREASURER'S ANNOUNCEMENT

In what may be a response to some criticisms of AFAD, the Queensland Treasurer has announced that certain foreign acquirers may be able to gain "ex gratia" relief from the 3% AFAD if they manage to satisfy particular requirements, being:

- the foreign acquirer must demonstrate a "significant development" status. To pass this test, the development by the foreign acquirer must include a minimum of 50 residential lots; or
- in regional areas, where a major project may not meet the "significant development" status, the foreign acquirer must demonstrate that the development would deliver significant economic benefits in the region where it's proposed to

occur. The regional significance test is targeted at non metropolitan areas and is not intended to apply to urban infill developments.

When determining whether to grant ex gratia relief to a foreign company, weighted consideration would be given to those who:

- have a head office in Australia;
- have a significant staff presence in Australia; or
- primarily contract for Australian services and materials through Australian contractors.

Note that the *Duties and Other Legislation Amendment Bill 2016* is silent in respect of the announcements above and there have not been any formal releases confirming these changes.

WHAT DO YOU NEED TO DO?

Developers should be aware that contracts entered into before 1 October 2016 will not be subject to the imposition of additional duty and as such should aim to inform prospective buyers of this.

Foreign investors looking to purchase residential land should seek advice on their potential liability to pay any additional duties or land tax.

The ClarkeKann Property & Projects team can assist in determining whether a potential transaction will be liable for any additional duty as well as identifying any possible exemptions or concessions that may be available to you.

FOR MORE INFORMATION, PLEASE CONTACT:



PAUL O'DEA //
Partner

T 61 7 3001 9243

E p.odea@clarkekann.com.au

Acknowledgement is given to Fleur Cardell and Connor Fitzgibbon, Law Clerks, ClarkeKann Lawyers, in compiling this article.