



Trust Deeds holding residential land in NSW must be amended by 31 December 2020

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The *Duties Act 1997* and the *Land Tax Management Act 1956* have been recently amended to state that discretionary trusts will be deemed to be a 'foreign trust' if the terms of the trust do not prevent, under an irrevocable clause, a foreign person from being a beneficiary of the discretionary trust.

Generally, a 'foreign person' who owns residential land in NSW pays:

- Duty surcharge of 8% on the dutiable value of land; and
- Land Tax surcharge of 2% of the land tax value of residential land owned as at 31 December each year.

Trustees of discretionary trusts that own residential land in NSW must amend their trust deeds to exclude foreign persons as beneficiaries by 31 December 2020 in order to avoid foreign Land Tax and Duty surcharges. Importantly, the changes also allow trustees to be refunded foreign surcharges, provided the trust terms are amended by the prescribed due date.

Where residential land is held by a trust (whether a discretionary or a unit trust) whose beneficiary is a discretionary trust without a foreign person exclusion clause in the deed, the land holding trust may be considered a foreign trust. Therefore, it is important to assess whether both the land holding trust deed and the beneficiary trust deed need to be amended to prevent foreign surcharges from applying.

Trustees of trusts holding, or planning to purchase, residential land in NSW should look to:

- Review and amend the trust deed to ensure the trust is not a 'foreign trust' by 31 December 2020;
- Consider whether any beneficiary of the land holding trust is a discretionary trust which also requires its trust deed to be amended; and
- Where applicable seek a refund from Revenue NSW if they have paid any foreign surcharges in previous years.

If you require further information, please contact [John Gray](#) on 02 8235 1205.