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Absentee Land Tax and additional Duty for Foreign Acquirers

The rates for Stamp Duty and Land Tax in Queensland have recently been amended to provide additional charges for foreign and absentee land owners – do they apply to you?

DUTY

An additional charge for Duty now applies at the rate of 3% of the GST inclusive transfer value where the acquirer is:

1. A foreign individual,
2. A foreign corporation, or
3. A Trustee of a foreign Trust.

The definitions in the *Act* treat as foreign anyone who is not either an Australian citizen or a permanent resident of Australia. Importantly, a Trust is deemed to be a foreign Trust (Section 237 of the *Duties Act*) if at least 50% of the primary (often called residuary) beneficiaries in the Trust are foreign citizens / corporations.

Please note that the legislation allows a reviewing of this situation should it change at any time within 3 years of the date of acquisition (see Section 246A).

LAND TAX

From 1 July 2017, an additional surcharge of 1.5% applies to the unimproved value of any property held by an absentee owner in respect of any land in excess of $349,999. This effectively means an unimproved land value of $350,000 or more.

The definition of absentee in the *Land Tax Act 2010* (**Land Tax Act**) includes persons who do not ordinarily reside in Australia. It is a wider definition than that used for the *Duties Act* and potentially includes Australian citizens who are living abroad for a continuous period of more than one year, (unless they can make an application for exemption and convince the Office of State Revenue that they are overseas for purposes of their employment and will be overseas for 5 years or less in total).

This definition includes Trusts where at least 50% of the beneficiaries live abroad.

HOW WILL THIS IMPACT TRUSTS?

It is vitally important when establishing Trusts in Queensland to be aware of these two implications as has may be caught in relation to Stamp Duty or Land Tax simply because more than 50% of the beneficiaries are foreign persons as defined by the *Duties Act* or the *Land Tax Act.*

Unfortunately, because of the text used in the legislation, once a Trust has been caught in this way it is very difficult to amend the Trust to exclude the application of the legislation because this may well result in the Trust itself being assessible for separate and additional Duty as the result of a deemed transfer of ownership within the Trust once the identity of the applicable residuary beneficiaries has been changed.

If you would like to discuss the impact of this legislation or how you can structure your ownership, we are happy to help.

Please feel free to contact Adam Robinson on

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