

## Foreign investor duty surcharge

For foreign persons acquiring an interest in property in Tasmania ...

### About the surcharge

The Foreign Investor Duty Surcharge (FIDS) is an additional amount of duty charged when residential or primary production property is acquired (either directly or indirectly) by a foreign person.

A direct acquisition occurs when the land acquired will be registered as being owned by the foreign person. These are assessed under [Chapter 2](#) of the *Duties Act 2001* (the Duties Act).

An indirect acquisition occurs if a significant interest in a land owning company or trust is acquired by a foreign person, or where a land use entitlement is acquired by way of allotment of shares or issue of units. These are assessed under [Chapter 3](#) of the Duties Act.

Where an acquisition occurs in the period on or after 1 July 2018 up until 31 March 2020, or a written agreement is entered into before 1 April 2020, FIDS is charged as an additional duty impost of:

- 3 per cent on the proportion of the dutiable value of residential property directly or indirectly acquired by a foreign person; and
- 0.5 per cent on the proportion of the dutiable value of primary production property directly or indirectly acquired by a foreign person.

Where an acquisition occurs on or after 1 April 2020, FIDS is charged as an additional duty impost of:

- 8 per cent on the proportion of the dutiable value of residential property directly or indirectly acquired by a foreign person; and
- 1.5 per cent on the proportion of the dutiable value of primary production property directly or indirectly acquired by a foreign person.

### Definition of a foreign person

A foreign person includes:

- a foreign natural person;
- a foreign corporation; and
- a foreign trustee (including a nominee).

### Who is a foreign natural person?

A foreign natural person is an individual who is not acting in the capacity as a trustee of a trust, who is not:

- an Australian citizen within the meaning of the [Australian Citizenship Act 2007](#) of the Commonwealth; or
- the holder of a permanent visa within the meaning of the [Migration Act 1958](#) of the Commonwealth; or
- a New Zealand citizen who is the holder of a special category visa within the meaning of the [Migration Act 1958](#) of the Commonwealth.

### What is a foreign corporation?

A foreign corporation is a corporation incorporated:

- outside of Australia; or
- in Australia in which foreign natural person/s, foreign corporation/s, or trustee/s of foreign trust/s have a significant interest in the corporation.

All corporations are presumed to be foreign unless proved otherwise.

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### **What is a foreign trustee?**

A foreign trustee is a person who holds, agrees to hold, or has acquired, dutiable property on trust for a foreign trust. A foreign trustee can be an Australian citizen or corporation incorporated in Australia.

### **What is a foreign trust?**

A foreign trust is a trust in which a foreign natural person, foreign corporation, or a foreign trustee has a substantial interest in the trust. All trusts are deemed to be foreign unless proven otherwise.

### **Are discretionary trusts foreign trusts?**

A trustee under a discretionary trust generally has a power or discretion to distribute the capital of the trust estate to a person or a member of a class of persons. Any such person is taken to have a beneficial interest in the maximum percentage of the capital of the trust estate that the trustee is empowered to distribute to that person. This means that any discretionary trust that has any potential foreign beneficiaries will be a foreign trust.

If a trust is a self-managed superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*, a member of the fund is taken to have a beneficial interest in the capital of the fund. The member's interest is to be calculated as the amount the member would be entitled to if they were to transfer their membership to another fund.

If a trust is created by way of testamentary instrument, a beneficiary of the trust is taken to have a beneficial interest in the capital of the trust. The interest is to be calculated, as the amount the beneficiary would be entitled were the estate fully administered.

### **How can I satisfy my TRO Agent or the Commissioner of State Revenue that I am not a foreign person?**

The following form has been updated to assist in identifying if a transferee is a foreign person: [Duty Transferee Information Form](#).

### **About the use of the form**

TRO Agents can use the above form to collect information from the liable taxpayer/s in order to submit transactions through TRO.

The Commissioner of State Revenue will also use the form. Information required in the form can also be collected directly by your representative and entered into TRO. See more details in the next column.

#### **About the form: Individuals**

Individuals (not acting in a capacity as a trustee) who are Australian citizens need to disclose to their TRO Agent (or the Commissioner of State Revenue) that they are an Australian Citizen. The State Revenue Office may ask for additional evidence if required.

Individuals who are not foreign persons (because they held a Permanent Visa or a Special Category Visa when the acquisition occurred) will need to provide evidence to satisfy that they are a holder of a Visa (providing just the visa number and class is not sufficient).

Evidence may include a certified copy of the individual's passport evidencing their Visa status or documentation obtained from the Visa Entitlement Verification Online (VEVO) system from the Commonwealth Department of Home Affairs.

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### About the form: Corporation or Trust

A corporation or trust acquiring residential or primary production property will be required to satisfy its TRO Agent (or the Commissioner of State Revenue if not using a TRO Agent), that it is not foreign in order to avoid imposition of the FIDS. A careful examination of a corporation's structure or the trust provisions will be required and the evidence required can vary.

### What is residential property?

Residential property includes:

- vacant land on which a building may be built so that the land would be capable of being used predominantly for residential purposes; and
- land on which a person intends to build a building (or which includes a building the person intends to refurbish) so that the land would be capable of being used predominately for residential purposes.

Residential property also includes:

- land on which a building is currently located which is capable of being used predominately for residential purposes; and
- certain goods which are linked to the use of any of the above land.

Residential property includes an option, a land use entitlement or a partnership interest which relates to residential property.

Please note that Residential property **does not** include land on which a building is being lawfully used solely or primarily as:

- a commercial establishment whose primary purpose is to offer short-term accommodation, or lodging, to a person(s) for consideration, excluding short stay premises as defined in the [Short Stay Accommodation Act 2019](#); or
- residential accommodation by or on behalf of an educational facility; or
- a hostel or a boarding house; or
- a residential care service or a retirement village as defined in the [Land Tax Act 2001](#).

### What is primary production property?

Primary production property includes:

- land which is capable of being used predominately for primary production purposes;
- land which a person intends to develop so that it is capable of being used predominately for primary production purposes; and
- certain goods which are linked to the use of any of the above land.

Primary production property also includes an option, a land use entitlement or a partnership interest which relate to primary production property.

### What if the land type changes?

A foreign person must notify the Commissioner of State Revenue within 14 days if land becomes primary production property or residential property within 3 years of its acquisition. This includes where primary production property becomes residential property.

The transaction will be reassessed as if at the time of the acquisition the land was residential property or primary production property (whichever is relevant). The additional FIDS is payable 90 days from the date of the land type change.

The land type change rules do not apply to landholder transactions under [Chapter 3](#).

### Are there any concessions or exemptions?

FIDS is not payable if the underlying transaction is exempt or is eligible for a concession. An exception to this occurs if the transaction is eligible for a concession under [section 50](#) of the Duties Act, in which case FIDS is payable.

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### ***Are there any concessions or exemptions? (cont.)***

There are two specific exemptions from FIDS, sections 30J and 30K of the [Duties Act 2001](#).

#### **A dwelling used as a principal residence.**

If a property is purchased:

- with an existing dwelling which will be used as the transferees' principal place of residence within 6 months of purchase; and
- is held by parties to a marriage, significant relationship or by caring partners; and
- it is held in equal shares (as either joint tenants or tenants in common); and
- only one of the parties is a foreign natural person,

then the transaction is exempt from FIDS. If FIDS has been paid, then the Commissioner may, on application, reassess the FIDS payable. Use this [application form](#) to apply.

#### **A vacant block of land on which a principal residence is built**

If a vacant property is purchased and within 2 years:

- a dwelling is constructed; and
- the land is used as the transferees' principal place of residence; and
- is held by parties to a marriage, significant relationship or by caring partners; and
- it is held in equal shares (as either joint tenants or tenants in common); and
- only one of the parties is a foreign natural person,

then the Commissioner may, on application, refund the FIDS paid at the time of the dutiable transaction. To make an application you will need to complete this [application form](#), together with the necessary supporting documentation.

### ***What if a person becomes foreign?***

A person must notify the Commissioner of State Revenue within 14 days if the person becomes a foreign person within 3 years of the acquisition of the land. The transaction will be reassessed as if at the time of the acquisition the person was a foreign person. The additional duty is payable within 90 days of the person becoming a foreign person.

The exception to this is if a New Zealand citizen is the holder of a Special Category visa (subclass 444) within the meaning of the [Migration Act 1958](#) of the Commonwealth. If this visa holder temporarily leaves Australia, the visa is withdrawn, meaning that the person may become liable for FIDS.

To overcome this issue, the Commissioner has issued a determination under section 30M of the Act whereby a New Zealand citizen that temporarily leaves Australia will not be deemed a foreign person in certain circumstances.

### ***What if a person or trust becomes non foreign?***

A natural person or a discretionary trust that ceases to be foreign person within 6 months of either the dutiable transaction, or 30 March 2020, may apply to the Commissioner, in writing, for a refund of the FIDS paid.

To make an application for a refund of FIDS, complete the [application form](#), available on the SRO website.

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### What if the acquisition occurred before 1 July 2018?

- A. FIDS is not chargeable if the acquisition (whether directly or indirectly) occurred before 1 July 2018.
- B. If a contract was entered into before 1 July 2018, but settled on or after that date, FIDS applies.

### What do I do if I am liable for FIDS?

The dutiable document or acquisition statement needs to be assessed for duty in the normal manner. However, some additional information is required so that the FIDS can be calculated.

For direct acquisitions under [Chapter 2](#) this will include information about:

- what type/s of land are being acquired;
- the value of any residential and/or primary production property being acquired; and
- the percentage of the land being acquired by a foreign person/s.

For landholder acquisitions under [Chapter 3](#) the information required will include:

- the type/s of land held by the landholder;
- the value of any residential and/or primary production property held by the landholder as at the date of any acquisition in the landholder made by the foreign person; and
- the percentage of the landholder acquired by a foreign person/s.

For land use entitlements under [Chapter 3](#), the information will include the type/s of land related to the land use entitlement.

### Contact and other details

- [Property Transfer Duties](#) at [www.sro.tas.gov.au](http://www.sro.tas.gov.au)
- State Revenue Office  
Ph: (03) 6166 4400 or 1800 001 388  
9:00am to 5:00pm, weekdays
- Email: [dutyhelp@treasury.tas.gov.au](mailto:dutyhelp@treasury.tas.gov.au)