

Revenue Ruling

Ruling Number	: PUB-DT-2020-1
Title	: Section 30M Discretion
Date of Ruling	: 30 March 2020
Tax Line	: Duties
Legislative Reference	: Duties Act 2001
Replaces previous Ruling	: N/A

Preamble

Part 3A of Chapter 2 of the [Duties Act 2001](#) (the Act) charges an additional amount of duty known as the Foreign Investor Duty Surcharge (FIDS) when residential or primary production property is acquired by a “foreign person”.

Section 30M of the Act provides that the Commissioner of State Revenue (the Commissioner) may publish circumstances under which a foreign transferee is taken not to be a “foreign person” for the purposes of Part 3A of Chapter 2 of the Act.

This Ruling is a publication made by the Commissioner in accordance with section 30M of the Act.

Ruling

A New Zealand citizen who is the holder of a special category visa within the meaning of the *Migration Act 1958* of the Commonwealth is not a foreign person for the purposes of the Act, and therefore not liable for FIDS. The Special Category visa (subclass 444) is a temporary visa that allows a New Zealand citizen to stay and work in Australia. However, the visa is withdrawn when the person leaves Australia, meaning that the person may become liable for FIDS, even if their departure from Australia is for a short period only.

In order to avoid the subsequent imposition of FIDS under section 30H of the Act in circumstances where a New Zealand citizen temporarily leaves Australia, the Commissioner has determined that a transferee is taken not to be a foreign person, for the purposes of Part 3A of Chapter 2 of the Act, in the following circumstances:

- the transferee is a natural person; and
- the person was a citizen of New Zealand at all material times; and
- the person was in Australia at the time of the dutiable transaction and held a Special Category visa (subclass 444); and
- the person’s principal residence was in Australia at all material times; and
- the person, within three (3) years of the dutiable transaction, temporarily leaves Australia for a period of three months or less within any calendar year.

Although a New Zealand citizen would ordinarily be considered to have become a foreign person for the purposes of the Act in circumstances where they temporarily leave Australia, where the conditions (shown at the bottom section of the previous page) are met:

- the person is taken to not be a foreign person in relation to the dutiable transaction; and
- the person is not required to provide notice under section 30H(3) of the Act; and
- FIDS is not chargeable in respect to that person's interest in the dutiable property.

Date of application of this ruling

This Revenue Ruling applies from 30 March 2020.

More information from the State Revenue Office

All rulings must be read in conjunction with the 'Explanation and Status of Revenue Rulings' available on the SRO website, www.sro.tas.gov.au/resources/rulings.

Email: Legislation, Communication and Review Section: revenuereview@treasury.tas.gov.au

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A handwritten signature in black ink, appearing to be 'JC Root', written over a horizontal line.

JC Root

Commissioner of State Revenue

30 March 2020