

# Guideline

## Foreign Investor Duty Surcharge

### Meaning of Residential Property and Primary Production Property

#### Background

The Foreign Investor Duty Surcharge (FIDS) is an additional amount of duty charged under the *Duties Act 2001* (the Act) when residential or primary production property is acquired, directly or indirectly, by a foreign person. Land which is neither residential property nor primary production property is referred to in this guideline as “commercial” property (although not specifically defined by legislation). Commercial property does not attract FIDS.

This guideline focuses on the meaning of Residential Property and Primary Production Property for the purpose of determining:

- a) whether FIDS should be applied to the transaction; and if so
- b) the rate of FIDS to be applied.

For guidance on the definition of Foreign Person see the [Foreign Investor Duty Surcharge - Foreign Person guideline](#).

#### FIDS rates

FIDS is calculated on a dutiable transaction as an additional duty, and applies to transactions that occur **on or after 1 July 2018**.

Where a written agreement was entered into **prior to 1 April 2020**, or the transaction settles prior to 1 April 2020, FIDS will be applied as an additional duty impost of:

- 3.0 per cent of the dutiable value of Residential Property directly or indirectly acquired by a Foreign Person; and
- 0.5 per cent of the dutiable value of Primary Production Property directly or indirectly acquired by a Foreign Person.

Where a transaction settles **on or after 1 April 2020**, and there is not a written agreement entered into prior to 1 April 2020, FIDS will be applied as an additional duty impost of:

- 8.0 per cent of the dutiable value of Residential Property directly or indirectly acquired by a Foreign Person; and
- 1.5 per cent of the dutiable value of Primary Production Property directly or indirectly acquired by a Foreign Person.

FIDS is not payable if the underlying transaction is exempt, or the transaction is eligible for a concession under Part 5 of the Act. An exception to this is if the transaction is eligible for a concession under section 50 of the Act, in which case FIDS is payable.

For the purpose of calculating FIDS, where a dutiable transaction relates to more than one parcel of land, each parcel of land is taken to be a separate item of dutiable property. Therefore, to determine whether land meets the definition of either Residential Property or Primary Production Property, it is necessary to consider each title separately. A transaction relating to multiple parcels of land can be subject to FIDS at both rates based on the value of the land in each category.

Transactions that may be subject to FIDS are to be lodged with a Foreign Investor Acquisition Statement.

## **Meaning of Residential Property**

Residential Property includes land in Tasmania:

- which is vacant land on which a building may be lawfully built and occupied as a place of residence so that the land is capable of being lawfully used solely or primarily for residential purposes; or
- which is capable of being lawfully used solely or primarily for residential purposes; or
- which includes a building, or part of a building, that a person intends to have refurbished or extended so the land is capable of being lawfully used solely or primarily for residential purposes; or
- on which a person intends to have a building constructed so the land is capable of being lawfully used solely or primarily for residential purposes; or
- in respect of which a person has undertaken or intends to undertake land development for the purposes of –
  - constructing a building so the land is capable of being lawfully used solely or primarily for residential purposes; or
  - enabling another person to construct a building so the land is capable of being lawfully used solely or primarily for residential purposes; and
- certain goods which are linked to the use of any of the above land.

Residential Property also includes an option to purchase land, a land use entitlement or a partnership interest relating to land referred to above.

## **Meaning of Primary Production Property**

Primary Production Property includes land in Tasmania that:

- is capable of being lawfully used solely or primarily for primary production purposes; or
- a person intends to develop so the land is capable of being lawfully used solely or primarily 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 to purchase land, a land use entitlement or a partnership interest relating to land referred to above.

## Vacant land

Vacant land is any land that does not have any substantial improvements on it. As such, vacant land could include land that has minor improvements that are capable of being easily removed, for instance fencing, garden shed or similar improvements.

The relevant Council zoning of the property is important in regard to determining whether the land can be lawfully used for residential or for primary production purposes. However, it is also necessary to consider the current use and intended use of the property to determine whether the land is Residential Property or Primary Production Property.

## Residential zoned

Vacant land that is zoned residential will be subject to FIDS at the relevant residential rate. Without evidence to the contrary, residentially zoned land means a residential building may be lawfully built on the land, and therefore it meets the definition of Residential Property.

### EXAMPLE I - VACANT LAND

*(Residential Zoned)*

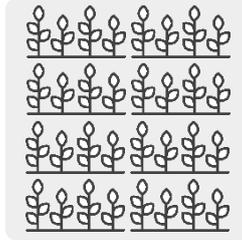


ⓘ Vacant land is zoned residential and a residence can be lawfully built on it which can be used solely or primarily for residential purposes. FIDS at the relevant residential rate will apply if the land is acquired by a Foreign Person regardless of whether the Foreign Person intends to build a residence.

## Mixed zone

Where vacant land is zoned mixed it could potentially be capable of being used solely or primarily for residential or primary production purposes (i.e. rural / residential zoned land). Without evidence to the contrary, as the vacant land is capable of having a lawfully built residential building on the land, it meets the definition of Residential Property and will be subject to FIDS at the relevant residential rate.

**EXAMPLE 2 - VACANT LAND**  
(Mixed zone - Sole and primary use)



- ! The vacant land is zoned rural / residential and was previously used to graze cattle. The land is considered to be vacant land as there is no infrastructure on the property and the cattle grazing ceased many years ago. As the property is capable of having a residence built on it, FIDs at the relevant residential rate will apply, unless the Foreign Person is able to provide satisfactory evidence that the intended use will be for Primary Production purposes, on which FIDs at the relevant primary production rate would then apply.

**EXAMPLE 3 - VACANT LAND**  
(Mixed zone - Capable of primarily residential use)



- ! The land is zoned residential / commercial and is currently adjoining a development that has 20 per cent capacity of commercial offices and the remaining 80 per cent residential apartments. There are no restrictions on building a similar development on the vacant land. As the vacant land can have a development lawfully built and occupied primarily for residential purposes it is Residential Property and subject to FIDS at the relevant residential rate if acquired by a Foreign Person.

**EXAMPLE 4 - VACANT LAND**  
(Mixed zone - Not capable of primarily residential use)



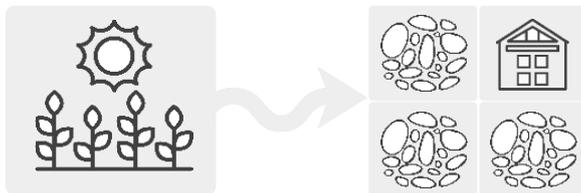
- ! The land is zoned residential / commercial and is currently a vacant lot. While the land is zoned mixed use there is a Council restriction that ensures any future development meets the central business requirements. This states that any development can only have a maximum of 30 per cent residential capacity and the remaining has to be retail spaces. Due to this restriction the land cannot be lawfully used solely or primarily for residential purposes and is therefore not subject to FIDS if acquired by a Foreign Person.

## Intended use

Despite the current zoning, capability and current use of vacant land, the intention of the acquiring Foreign Person may override any obvious classification of the property type.

### EXAMPLE 5 - VACANT LAND

*(Intended use)*



- ! The vacant land is zoned rural and has crops growing on it. The property is being acquired by a Foreign Person who intends to pursue a zoning change, develop and subdivide the land into smaller lots within the next year. These lots will be on sold as residential building lots. While the current use of the property is for primary production purposes, as the acquirer intends to undertake land development to enable primarily residential use, FIDS at the relevant residential rate will apply.

## Improved land

Similar to vacant land, the current use, capable use and the intention of the acquirer will determine whether the land meets the definition of Residential or Primary Production Property.

### EXAMPLE 6 - IMPROVED LAND

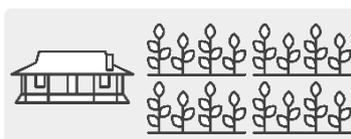
*(Solely or primarily residential purpose)*



- ! The property is a lawful residential home on a single parcel of land. FIDS at the relevant residential rate will apply if acquired by a Foreign Person.

### EXAMPLE 7 - IMPROVED LAND

*(Solely or primarily primary production purpose)*



- ! The land is zoned rural / residential and consists of a large acreage with a residential homestead all on one title, and the title is not able to be subdivided. More than half of the total land area is cultivated and contains infrastructure and crops, and there is no intention to cease the primary production activity. Despite there being a residential building on the land, the property is currently being primarily used for primary production purposes. FIDS at the relevant primary production rate will apply if acquired by a Foreign Person.

However, if the large acreage only contained a residential property and no primary production activity, the property would be considered Residential, and FIDS at the relevant residential rate would apply.

## Mixed use properties

If the property is capable of being lawfully used solely or primarily for residential purposes the higher FIDS residential rate may apply. Tests to consider include:

- Does the zoning of the land restrict residential use to the extent that it can never be used solely or primarily for residential purposes?
- Does the current occupancy certificate allow the building to be lawfully used solely or primarily for residential purposes?
- Does the building have physical characteristics e.g. kitchen and bathroom facilities that enable lawful use?

The current use of a property for commercial purposes will be irrelevant if the property is capable of being used solely or primarily for residential purposes. However, each transaction would be considered on a case by case basis. If there are characteristics that would prevent the property from being capable of being used lawfully for residential purposes, FIDS may not apply.

### EXAMPLE 8 - IMPROVED LAND

*(Mixed use - Capable of residential property)*



- ! The property is in a residential / commercial zone. Historically the property was a home and was converted to a medical practice with all the former bedrooms converted to rooms for each practitioner. The kitchen and bathroom are used by the medical staff. While the property is presently being used as a medical practice (and the acquirer intends to continue a medical practice) the property maintains an occupancy certificate and therefore is capable of being lawfully used solely or primarily for residential purposes. FIDS at the relevant residential rate would apply.

### EXAMPLE 9 - IMPROVED LAND

*(Mixed zone - Not capable for primarily residential use)*



The property is in a residential / commercial zone. Historically the property was a home and was converted to a medical practice on the ground floor and a residential apartment on the first floor (which comprises less than half of the total floor area of the building). All the former ground floor bedrooms were converted to rooms for each practitioner. The kitchen and bathroom are used by the medical practitioners and staff, and the land surrounding the building is a carpark for the medical practice. While the property was capable of being used solely or primarily for residential purposes before being converted to a medical establishment, and has all the physical characteristics of a residential property, once converted the occupancy permit restricted the occupation of the ground floor to commercial activities. As the residential apartment only covers a small area of the property, it is incapable of being primarily used for residential purposes. The property is therefore not subject to FIDS if purchased by a Foreign Person.

## Intended use

Despite the current zoning, capability and current use of a property, the intention of the acquiring Foreign Person may override any obvious classification of the property type. Where a Foreign Person intends to refurbish or develop a property so that the land is capable of being lawfully used solely or primarily for residential purposes, FIDS would apply.

### EXAMPLE 10 - IMPROVED LAND *(Commercial conversion to residential)*



The property is in a residential / commercial zone. The property is a warehouse structure. The foreign acquirer intends to convert the property to residential apartments and has sought Council approval as a precondition of the contract. While the property is in a mixed zone, and the physical characteristics prevent it from being immediately capable of lawful residential use, the intention of the acquirer to refurbish the property into residential apartment's results in the property being Residential Property. FIDS at the relevant residential rate applies.

## Multiple Parcels

For the purpose of calculating the surcharge where a dutiable transaction relates to more than one parcel of land, each parcel of land is taken to be a separate item of dutiable property.

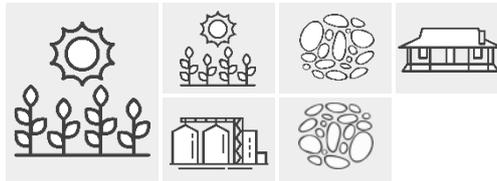
To determine the rate of FIDS to be applied, consideration should be given to each individual title and whether they meet the definition of either Residential Property or Primary Production Property. A transaction relating to multiple parcels of land can be subject to FIDS at both rates based on the class of each of the titles.

### **EXAMPLE 11 - MULTIPLE PARCEL** *(Multiple parcels - Residential property)*



- ⓘ Both parcels of land are zoned residential. One parcel has a residential home, the other parcel an in-ground pool and gardens of the home owner. The parcel with the pool is not vacant land as it has a substantial improvement on it, and the Foreign Person does not intend to build a building on the land with the pool. Therefore, the parcel with the pool is not Residential Property for the purposes of the Act and FIDS at the relevant residential rate would only apply to the land with the residence on it, if the parcels were purchased by a Foreign Person.

### **EXAMPLE 12 - MULTIPLE PARCELS** *(Multiple parcels - Mixed property)*



- ⓘ The land is zoned rural / residential and consists of six titles. The transaction relates to the acquisition of a residential home, vineyard and winery acquired by a Foreign Person.

Two titles have substantial infrastructure and vines growing on them and will continue to be used for this purpose. These two parcels are Primary Production Property and subject to FIDS at the relevant primary production rate. One title has a processing plant, storage and cellar door. This processing facility is used for secondary processing of grapes and as such the parcel of land is commercial in nature (it does not meet the definition of Primary Production Property) and is not subject to FIDS. A residential home is on one parcel of land and is subject to FIDS at the relevant residential rate.

The remaining two titles are vacant land. Due to their zoning both of these parcels could meet the definition of both Primary Production Property and Residential Property. As these titles both have road access and are able to have a lawfully built residential building constructed on the land, both are subject to FIDS at the relevant residential rate.

## Calculating FIDS

The additional duty surcharge is determined based on the interest acquired by the Foreign Person, the dutiable value of the relevant property and the rate of the surcharge dependant on the property type.

### EXAMPLE 13 - CALCULATIONS

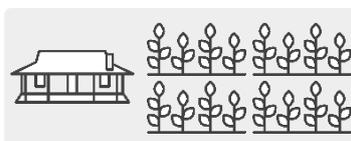
*(Single property - Single acquirer)*



- ! On 25 March 2021, Jack (a Foreign Person) is gifted a residence. The property is valued at \$500 000. Whilst Jack was gifted the property, the dutiable value of the transaction is \$500 000 and duty of \$18 247.50 applies to the transaction. As the property is Residential Property an additional surcharge of 8 per cent of the dutiable value applies. The FIDS payable is \$40 000.00 bringing the total duty payable to \$58 247.50.

### EXAMPLE 14 - CALCULATIONS

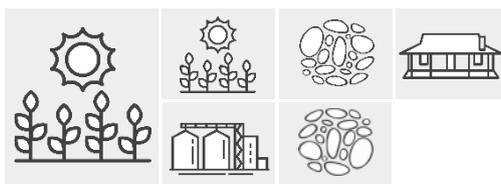
*(Single property - Multiple acquirers)*



- ! Jan and Darren jointly purchase a cattle farm with substantial improvements, including a farmhouse. The property is on one title, and settles on 10 May 2021. Jan is an Australian citizen and Darren is a Foreign Person. The dutiable value of the property is \$1 000 000. Duty of \$40 185.00 applies to the transaction. As the property is primarily used for primary production purposes it is Primary Production Property and is subject to FIDS of 1.5 per cent. As Darren is acquiring a 50 per cent interest in the property the FIDS is calculated on half the dutiable value being \$500 000. The FIDS payable is \$7 500.00 bringing the total duty payable to \$47 685.00.

## EXAMPLE 15 - CALCULATIONS

*(Multiple parcels - Single acquirers)*



On 15 December 2020, Max (a Foreign Person) acquires a vineyard. The dutiable value of the property is \$3 200 000. Duty of \$139 185.00 applies to the transaction. The property consists of six parcels of land. Two parcels with existing vines growing, two parcels of land-locked vacant land with no road access that Max intends to extend the vineyard into, and a parcel of land that predominately has a processing plant, storage and cellar door located on it. The remaining parcel of land has a residence that Max intends to rent out as part of a winery experience tour operation.

The two parcels of land with the current vineyard and the two parcels of land that Max intends to expand the vineyard into are Primary Production Property, as the vacant land cannot be used for residential purposes due to its lack of access, are subject to FIDS at a rate of 1.5 per cent. The parcel of land containing the processing plant is not subject to FIDS. Although Max is using the residence as part of the commercial operation of winery tours, the property is Residential Property and subject to FIDS at a rate of 8 per cent. The total duty on the transaction is calculated as follows:

Dutiable value apportioned to each property type:

Vineyard and intended vineyard	\$1 700 000	@ 1.5 per cent	\$ 25 500
Residential property	\$ 500 000	@ 8 per cent	<u>\$ 40 000</u>
Processing plant and cellar door	<u>\$1 000 000</u>	Not subject to FIDS	
		Total FIDS	\$ 65 500
Total dutiable value of transaction	\$3 200 000	Duty	<u>\$139 185</u>
		Total duty	\$204 685

## EXAMPLE 16 - CALCULATIONS

*(Multiple parcels - Multiple acquirers)*



Matthew, Ben and Josh jointly purchase a commercial swimming pool and an adjacent property that contains the pool entry and shop in part of the ground floor, with the remainder of the building being a residence. Settlement occurs on 31 July 2020. They intend to continue the current operations. Josh is a Foreign Person. The dutiable value of the property is \$2 000 000. Duty of \$85 185.00 applies to the transaction.

The properties are in a residential / commercial zone. The parcel containing the pool entry, shop and residence is primarily used or is able to be used for residential purposes. The property is Residential Property and subject to FIDS at a rate of 8 per cent. The property containing the pool has a Council restriction that prevents it from being used for residential purposes. The property is not subject to FIDS. The dutiable value apportioned to the Residential Property is \$600 000. As Josh is acquiring a third interest in the properties, FIDS is calculated on one third of the \$600 000, being \$200 000. The FIDS payable is \$16 000.00 bringing the total duty payable to \$101 185.00.

### **Change in property use**

If land becomes Primary Production Property or Residential Property within three years of its acquisition, a Foreign Person must notify the Commissioner of State Revenue within 14 days of the change. 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.

## Frequently Asked Questions

**Q. Do I have to prove an acquiring entity is not a Foreign Person if the dutiable transaction is not related to Residential or Primary Production Property?**

A. No. FIDS applies to the purchase of land that is, can become or is intended to be, used as residential or primary production land. The State Revenue Office will determine the application of FIDS based on the property type and intended use of the land.

If you are the representative for a taxpayer, it may be prudent to obtain proof of whether the purchaser is foreign or not so you can advise your client of current or future FIDS implications.

**Q. I am a foreign citizen who purchased a commercial property nine months ago, but am now converting it to a residence. Am I liable for FIDS?**

A. Yes.

If, within three years of its purchase:

- land that was not residential or primary production land subsequently becomes residential or primary production land, or
- land which was primary production land becomes residential land,

the surcharge, or an additional amount of FIDS, may become payable.

The foreign transferee must notify the Commissioner of State Revenue within 14 days of land changing to residential or primary production land if:

- the change occurs within three years of its purchase, and
- one or more of the purchasers was a foreign person who remains an owner at the time the land use changes.

**Q. I am a foreign citizen who has purchased a lot in a residential subdivision but I do not intend to build a residence on the land? Am I liable for FIDS?**

A. Yes. The property is Residential Property, regardless of whether you intend to build a residence. The vacant land can have a building lawfully built which would be capable of being used solely or primarily for residential purposes. FIDS at the relevant residential rate will apply.

**Q. I am a foreign citizen who purchased a small farm 10 months ago and paid FIDS at the relevant Primary Production Property rate. At the time of purchase I always intended to run the farm, but I have now sought approval to have the land subdivided into residential lots. Am I liable for additional FIDS?**

A. Yes. If within a three year period after the dutiable transaction the property becomes Residential Property the transaction is subject to FIDS at the relevant residential rate. The transaction needs to be reassessed and any FIDS previously paid will be deducted from the reassessed FIDS applied.