

Guideline

Foreign Investor Land Tax Surcharge

Background

The Foreign Investor Land Tax Surcharge (FILTS) is an additional amount of land tax charged under the *Land Tax Act 2000* (the Act) on land classified as [General Land](#) under the Act which:

- a) is acquired by a foreign person on or after **1 July 2022**; or
- b) is owned by a company or trust which becomes foreign on or after **1 July 2022**; and
- c) may be, or is capable of, being lawfully used solely or primarily for residential purposes.

Land acquired by a foreign person prior to 1 July 2022 is not subject to FILTS, unless that person acquires a further interest in that land on or after that date. This is discussed in the section, [Acquiring interests in land pre and post 1 July 2022](#), elsewhere in this guideline.

The surcharge and how it applies

Where applicable, FILTS will apply at two (2) per cent of the assessed land value on the portion of the property which is foreign owned.

FILTS is applied at a fixed rate (that is, the rate does not increase with higher land value), and does not have a tax-free threshold.

Land which is exempt from land tax is not subject to FILTS.

Meaning of a foreign person

A foreign person is:

- a foreign natural person;
- a foreign corporation; or
- a trustee of a foreign trust.

The Commissioner of State Revenue may make a determination that an entity is a 'foreign person' if satisfied with information available or where requested information is not provided.

See following pages for the definitions of foreign persons.

Foreign natural person

A foreign natural person means a natural person who is not:

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

Refer to the Duties [Foreign Investor Duty Surcharge - Meaning of Foreign Person Guideline](#) for more information about:

- Permanent visas; and
- New Zealand citizens with an SCV.

Also use this link, [Visa holders temporarily leaving Australia](#), for more details (set out in this guideline on pages 3 and 4).

Foreign corporation

A corporation is foreign if it is:

- incorporated outside of Australia; or
- a corporation in which foreign persons have a significant interest.

There is a presumption that all corporations are foreign unless proven otherwise. Therefore, for FILTS **not** to apply, the onus is on the land owner to prove the corporation is not foreign when the dutiable transaction is lodged. This requires a careful examination of the corporation's share structure and voting powers tracing back through various corporate or trust structures where necessary.

Important: if the Commissioner is notified that a company is not foreign but later it is established that the company is foreign, FILTS will be charged and interest and penalty tax may be applied.

Refer to the Duties [Foreign Investor Duty Surcharge - Meaning of Foreign Person Guideline](#) for further information about:

- significant interest in a corporation;
- voting power, and potential voting power;
- examples of foreign and non-foreign corporations; and
- frequently asked questions.

Foreign trusts

A foreign trust is a trust in which foreign persons (natural or corporate) have a substantial interest in the trust estate.

There is a presumption that all trusts are taken to be foreign unless proven otherwise. Therefore, for FILTS **not** to apply, it is necessary to prove whether a trust is not foreign on the lodgement of the dutiable transaction. This requires a careful examination of the trust deed and any amendments thereto.

Important: if the Commissioner is notified a trust is not foreign and it is later established the trust is foreign, FILTS will be charged and interest and penalty tax may be applied.

Refer to the Duties [Foreign Investor Duty Surcharge - Meaning of Foreign Person Guideline](#) for more details about:

- what is a foreign trust;
- discretionary trusts;
- family trusts;
- superannuation fund trusts;
- examples of foreign and non-foreign trusts; and
- frequently asked questions.

Changes to discretionary foreign trusts

Where a discretionary foreign trust exists:

- a. as at 1 July, and
- b. the trustee has discretion relating to the distribution of capital, and
- c. the trust deed is amended so the trust is no longer a foreign trust, and
- d. the trust deed amendment occurs within 6 months from the date of issue of the first Notice of Assessment for land tax which includes a FILTS component,

the trustee may apply to the Commissioner in writing for a reassessment and refund of the FILTS paid. A dated copy of the amended Trust deed must accompany the application.

Declaration of nationality

Dutiable transactions

Your solicitor or conveyancer will lodge transfer documents and the following relevant details with the State Revenue Office (SRO):

- Australian citizenship;
- permanent visa;
- New Zealand citizens with an SCV; and
- foreign-person status.

Non-dutiable transactions

Where the nationality of an owner is not known, the SRO will ask you to submit details through an online form. Should the information not be provided, you may be deemed a foreign person and charged FILTS.

Change of nationality

FILTS is assessed on the nationality of the owner(s) as at 1 July of each financial year.

Where an owner's nationality changes, they are required to notify the SRO within 30 days.

Where the change occurs part way through a financial year, a reassessment or pro-rata refund of land tax and FILTS is not available. The change in nationality will be reflected from 1 July of the following financial year for land tax purposes.

Exception: An exception may apply to discretionary trusts that meet certain criteria (refer above to 'Changes to discretionary foreign trusts') where a reassessment will occur for that financial year.

Visa holders temporarily leaving Australia

Some visas categories do not allow automatic re-entry to Australia after travelling overseas. If a permanent resident leaves Australia without a valid visa to return to Australia, they are a 'foreign person' from the date of departure. In that situation, a 'foreign person' as at 1 July will be liable for FILTS for relevant land acquired by the person on or after 1 July 2022.

New Zealand citizens with an SCV

On leaving Australia, even for short periods, the SCV expires. The Commissioner has issued a ruling which provides that a New Zealand citizen will not be considered a foreign person if they leave Australia for short periods (of three (3) months or less). Refer to the Ruling [PUB-LT-2022-1 Section 16H Discretion](#) for details.

Should you remain outside of Australia for a period greater than three (3) months, you are required to notify the SRO as soon as you determine you will not be returning to Australia.

Land subject to FILTS

A relevant foreign owner of land is liable to pay FILTS for a financial year if, at the commencement of the financial year, the land is classified as [General Land](#) under the Act; and:

1. is vacant land on which a building may be lawfully constructed and occupied as a place of residence (so that it will be capable of being lawfully used solely, or primarily, for residential purposes); or
2. includes a building that is capable of being lawfully used solely, or primarily, for residential purposes; or
3. includes a building (or part) which is being or has begun construction, refurbished, renovated or extended, if the work when completed will result in the land being capable of being lawfully used solely, or primarily for residential purposes.

Property that is **not** liable for FILTS includes:

- commercial properties being used as short-term accommodation (including hotels, motels, bed and breakfast, caravan parks, but excluding Airbnb or similar arrangements), hostels, boarding houses, housing provided by or on behalf of educational institutions, residential care facilities, and retirement villages; or
- industrial land; or
- land classified as Principal Residence Land under the Act; or
- land classified as Primary Production Land under the Act.

The Commissioner may make a determination, if satisfied with available information, that 50 per cent of the land is, or will be, capable of being lawfully used for residential purposes.

Meaning of ‘residential purposes’

Although not defined under the Act, ‘residential purposes’ is taken by the Commissioner to include land on which a structure exists (or can be lawfully built) and which may lawfully be used or occupied by a person as their home or place of accommodation. Purposes ancillary to and consistent with a person’s home or place of accommodation would also be considered as ‘residential purposes’.

Converted land

Commercial or industrial land being converted to a residence will be subject to FILTS if:

- the property was acquired by a foreign person on or after 1 July 2022; or
- the property is owned by a company or trust that became foreign on or after 1 July 2022; and
- as at 1 July of the relevant financial year the conversion of the property to residential use had commenced.

Similarly, land which cannot lawfully be used for residential purposes will not be subject to FILTS where the property is rezoned for commercial or industrial purposes.



Multi-purpose properties

Land which is used for multiple purposes will be subject to FILTS where 50 per cent or more of the property (incorporating land and multi-level buildings) is capable of being used for residential purposes.

The 50 per cent test when determining whether land can be used primarily for residential purposes applies even if the land is not currently being used for residential purposes but is lawfully able to be used for that purpose in future. As an example, there may be a building on the land and it is being renovated and therefore will be capable of being lawfully used for residential purposes in future. Land which is or can be used for both residential and non-residential purposes (such as shared joint-use areas) are considered to be residential for the purpose of making a determination.

Example I

The property is zoned
part **Commercial** and part **Residential**.



	First floor area is a residence	300m ²
	Ground level area designated for use as a residential carpark	6m ²
	Total area for residential use	306m²
	Area used for ground level shop	350m ²
	Area used for shop car park	48m ²
	Total area for non-residential use	398m²
	Total area used	704m ²
	Land used for residential	43.0%
	Land used for non-residential	57.0%

In this example, the land contains a shop as well as a residence.

The property would be considered **non-residential** land because more than 50 per cent of it is used for non-residential purposes. It would not normally be subject to FILTS.

Example 2

The property is zoned part **Commercial** and part **Residential**.

	First floor area is a residence	350m ²
	Ground level area designated for use as a residential carpark	18m ²
	Total area for residential use	368m²
	Area used for ground level workshop	180m ²
	Area used for workshop car park	24m ²
	Total area for non-residential use	204m²
	Total area used	572m²
	Land used for residential	64.0%
	Land used for non-residential	36.0%

In this example, the land contains a workshop as well as a residence.

The property would be considered **residential** because at least 50 per cent of the land is being used for residential purposes.

It would typically be subject to FILTS.

Multiple-title properties

The application of FILTS is determined title by title. Titles are issued with an identifier known as a Volume and Folio number. Land is also issued with a PID (for valuation purposes), however a single PID may relate to more than one title.

For PIDs with multiple titles, the valuation of the land is calculated on the total land area meaning it is not title-specific. In such cases you need to calculate the proportion of the titles within the PID that are subject to FILTS.

Multiple titles used for the same purpose

In the following examples, each title is used for the same purpose. The purpose determines if FILTS is applicable to the PID.

Example 1

A warehouse is built over titles 1 and 2 and is used solely for industrial purposes.



FILTS does not apply to the PID.

Example 2

A rental house is built on title 1 and its backyard is on title 2. Both titles are used solely for residential purposes by the tenant.



FILTS applies to the PID.

Multiple titles used for multiple purposes

The usage of each title needs to be assessed individually to calculate the percentage of the property that is subject to FILTS. Please refer to [Factsheet - How to calculate FILTS for multi-title properties](#) for more information.

Acquiring interests in land pre and post 1 July 2022 _____

Where a foreign person acquired an interest in land prior to 1 July 2022, and then acquired an additional interest in the same land on or after 1 July 2022, all of the foreign person's interest in the land is taken to have been acquired from the date of transfer of the second interest.

Example

A married couple purchased a rental property in 2005 as tenants in common. The husband is Canadian and the wife is an Australian citizen.

The couple divorced on 5 July 2022, and the former wife's share of the property transferred to her former husband under the terms of the divorce settlement.

Because the former husband is a foreign person, the property is liable for FILTS from 5 July 2022, and land tax is payable from 1 July 2023.

Does FILTS apply? _____

For single-title properties

Use of land	Percentage of foreign ownership	Percentage of land that can be used for residential purposes	Does FILTS apply?
Single use *	100%	100%	Yes - at 100%
Single use	100%	40%	No - property is not primarily residential.
Single use	40%	100%	Yes - at 40%
Single use	40%	30%	No - property is not primarily residential.
Multi-purpose **	100%	80%	Yes - at 100%
Multi-purpose	100%	30%	No - property is not primarily residential.
Multi-purpose	40%	70%	Yes - at 40%
Multi-purpose	40%	40%	No - property is not primarily residential.

* 'Single use' means the land can be used for one purpose only, for example a house or a shop.

** 'Multi-purpose' means the land can be used for more than one purpose, e.g. a two level building with a shop on the ground level and an apartment above it.

For multiple-title properties

Please refer to the [Factsheet - How to calculate FILTS for multi-title properties.](#)

Land tax and FILTS calculations

(Single title properties)

Example 1

- The Land Tax figure of \$1 400 is based on the 2022-23 rate
- Assessed land value (ALV) is \$400 000
- Property is 100% usable as residential land
- Foreign ownership is 100%
- Rate of FILTS is 2%

Calculating FILTS	
$\$400\,000 \text{ ALV} \times 100\% \text{ residential usage} = \$400\,000$	
▼	
$\$400\,000 \times 100\% \text{ foreign ownership} = \$400\,000$	
▼	
$\$400\,000 \times 2\% \text{ surcharge} = \mathbf{\$8\,000}$	

Land Tax	\$1 400
FILTS	\$8 000
Total payable	\$9 400

Example 2

- The Land Tax figure of \$1 400 is based on the 2022-23 rate
- Assessable land value (ALV) is \$400 000
- Property is 60% usable as residential land
- Foreign ownership is 100%
- Rate of FILTS is 2%

Calculating FILTS	
$\$400\,000 \text{ ALV} \times 60\% \text{ residential usage} = \$240\,000$	
▼	
$\$240\,000 \times 100\% \text{ foreign ownership} = \$240\,000$	
▼	
$\$240\,000 \times 2\% \text{ surcharge} = \mathbf{\$4\,800}$	

Land Tax	\$1 400
FILTS	\$4 800
Total payable	\$6 200

Example 3

- The Land Tax figure of \$1 400 is based on the 2022-23 rate
- Assessable land value is \$400 000
- Property is 70% usable as residential land
- Foreign ownership is 50%
- Rate of FILTS is 2%

Calculating FILTS	
$\$400\,000 \text{ ALV} \times 70\% \text{ residential usage} = \$280\,000$	
▼	
$\$280\,000 \times 50\% \text{ foreign ownership} = \$140\,000$	
▼	
$\$140\,000 \times 2\% \text{ surcharge} = \mathbf{\$2\,800}$	

Land Tax	\$1 400
FILTS	\$2 800
Total payable	\$4 200

For further example calculations for multiple-title properties, please refer to the [Factsheet - How to calculate FILTS for multi-title properties](#).

Jointly and severally liable _____

Where property is owned between a foreign person and a non-foreign person, both persons, whether individuals, companies, or trusts, are jointly and severally liable for land tax and FILTS.

Developers _____

Tasmanian-based foreign developers may apply for a reassessment and refund of FILTS under certain conditions.

A 'Tasmanian-based foreign developer' is a foreign person who operates a business -

- a. that acquires land in Tasmania with the aim of developing the land;
- b. with at least 80 per cent of the wages of management and administration staff of the business being taxable wages within the meaning of the *Payroll Tax Act 2008* in that year; and
- c. that operates in Tasmania for the majority of its business hours in that year.

The developer or their business must have -

- a. been issued with occupancy permits for at least 50 dwellings in that financial year that meet the following criteria:
 - i. the dwelling is situated on land, within Tasmania, that was acquired by the foreign developer after 1 July 2022;
 - ii. laying of foundations (or building commencement in the absence of foundations) occurred on or after 1 July 2022; and
 - iii. the occupancy permit was issued within three (3) years of the developer acquiring the land;
- b. paid (or be liable for) FILTS in respect of the land on which one or more of the newly constructed dwellings are situated; and
- c. complied with all of the requirements of the Foreign Investment Review Board.

Apply by emailing taxhelp@treasury.tas.gov.au and attach copies of the occupancy permits.

Where an application is approved (and the FILTS paid), the Commissioner will issue a refund of the surcharge for relevant land.

Questions and Answers

Q. Do I need to apply to pay FILTS?

A. No. Where relevant, FILTS will be applied to your land tax account based on the Duty information provided by your solicitor or conveyancer to the SRO when you purchased the property. In some circumstances for non-dutiable transactions, the SRO may contact you for further information.

Q. I purchased an investment property on 1 July 2022 which I rent out but I did not receive my Australian residency until 13 August 2022. Do I need to pay FILTS?

A. Yes, for the 2022-23 financial year. However, FILTS is not payable from 1 July 2023 because you became an Australian resident prior to the commencement of that financial year. You are required to advise the SRO of your change in circumstances.

Q. I am foreign and I don't pay land tax on an investment property I rent out because my assessed land value is less than the land tax threshold. Do I have to pay FILTS?

A. Yes. FILTS is not subject to the land tax threshold.

Q. I am a New Zealand citizen with a Special Category Visa and am going overseas for a holiday for two weeks. Do I need to let the SRO know?

A. No. The Commissioner has issued the Ruling, [PUB-LT-2022-1 Section 16H Discretion](#), which provides that New Zealand citizens will not be considered foreign if they leave Australia for periods of three (3) months or less. However, should you remain outside of Australia for more than three (3) months, you are required to notify the SRO of your change in circumstances.

Q. I am a permanent resident and am leaving Australia to travel for 6 months. Do I need to advise the SRO?

A. If your visa conditions allow you to return to Australia, you are not required to notify the SRO.

Q. I emigrated from the United Kingdom to Australia as a child in the 1960s. I have not left Australia since arriving here, and have always worked and paid taxes in Australia. Do I have to pay FILTS?

A. You would need to provide evidence that you are a permanent visa holder. If you do not have such evidence, you would need to contact the Department of Home Affairs. Alternatively, you could apply to the Commissioner for a discretion to be not considered foreign. If you choose not to provide evidence of your permanent visa or are not granted a discretion by the Commissioner, you will be liable to pay FILTS on property you acquire from 1 July 2022.

Q. I have paid FILTS and am selling my property. Can I apply for a pro-rata refund of the FILTS I paid from the SRO?

A. No. However, the Act allows for a proper portion to be recovered by a vendor from a purchaser on the sale of a property. The recovery is a contractual matter between the two parties and should be discussed with your solicitor or conveyancer.

Q. My foreign company owns a property which is exempt from paying land tax. Do I need to pay FILTS?

A. No. Where a property is exempt from land tax, no FILTS is payable.

Q. I am a foreign developer and have had 38 Occupancy Permits issued this financial year. Do I need to pay FILTS?

A. Yes. You must have Occupancy Permits issued for at least 50 properties liable for FILTS which you own within the financial year in order to be eligible for a reassessment.

Q. I am a foreign developer who is 100% Tasmanian based but I'm not registered to pay payroll tax as my total taxable wages are under the payroll tax threshold. Can I apply for a reassessment of the FILTS I paid?

A. Yes. There is no requirement to be registered and pay payroll tax to be eligible for a reassessment of FILTS. You will be required to provide documentary evidence to show 80 per cent or more of the management and administration staff wages are taxable wages as defined by the *Payroll Tax Act 2008*, provided you meet all the other eligibility criteria.

Q. I am a Canadian citizen and I purchased an old warehouse in late July 2022. I have started converting it so that it will be my home when I move to Australia in 2 years' time. Do I need to pay FILTS?

A. Yes, from 1 July 2023. When you move into the property, you can apply for the Principal Residence Land classification, and if approved, FILTS will no longer be payable from the approval date.

Contacting the State Revenue Office _____

Website sro.tas.gov.au

Email taxhelp@treasury.tas.gov.au

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