



CIRCULAR 17 DUTIES ACT 2008
FOREIGN BUYERS DUTY

The *Duties Amendment (Additional Duty for Foreign Persons) Bill 2018* ('the Bill') was second read into Parliament on 13 June 2018. The Bill operates to amend the *Duties Act 2008* ('Duties Act') to impose additional duty on certain transactions involving foreign persons or entities acquiring residential property in Western Australia.

These amendments are subject to the passing of the Bill by Parliament and the granting of Royal Assent. The changes are proposed to come into effect on 1 January 2019.

The information provided in this circular is not an exhaustive explanation of the amendments, and reference should be made to the Bill and the Explanatory Memorandum available on the [Western Australian Parliament website](#).

ADDITIONAL DUTY FOR FOREIGN PERSONS

The proposed amendments impose an additional duty of 7% on direct acquisitions (foreign transfer duty) and indirect acquisitions (foreign landholder duty) of *residential property by foreign persons*.

A foreign person is:

A *foreign individual* who is not an Australian citizen, permanent resident, or special category visa holder.

A *foreign corporation*:

- A corporation incorporated outside Australia; or
- A corporation in which foreign persons control at least 50% of the voting power or hold 50% of the shares in the corporation.

A *trustee of a foreign trust*:

- A discretionary trust controlled by a foreign person;
- A discretionary trust for which foreign persons and their associates hold at least a 50% interest as takers in default; or
- A non-discretionary trust for which foreign persons and their associates hold beneficial interests in at least 50% of the income or property of the trust.

Residential property includes:

- land that is capable or intended to be used solely or dominantly for residential purposes; or
- vacant land zoned solely for residential purposes.

Examples include established homes and apartments, vacant land zoned residential, land for residential developments, and land or buildings intended to construct or convert to residential property.

Aged care facilities, commercial residential premises such as hotels or boarding houses and retirement villages are excluded from the definition of residential property. Additional duty will not apply to purchases of commercial, industrial or mixed used properties used primarily for commercial purposes.

FOREIGN TRANSFER DUTY

Foreign transfer duty generally follows the transfer duty framework set out in Chapter 2 of the Duties Act with modifications. Transactions subject to foreign transfer duty are described in section 205H and includes transfers and agreements to transfer residential property acquired by a foreign person.

Foreign transfer duty is charged on 7% of the dutiable value of the residential property acquired by the foreign person, determined by the greater of the consideration paid or unencumbered value of the residential property.

Most dutiable transactions that are eligible for a nominal rate of duty or an exemption from duty will be exempt from foreign transfer duty, except if:

- the exemption for transfer between spouses where the transferee is a foreign person and foreign transfer duty was not paid when the transferor acquired the property; and
- a vesting of trust property and transactions involving apparent purchasers where foreign transfer duty was not paid by the trustee or apparent purchaser on a previous transaction for the residential property.

Where duty is not charged on a dutiable transaction as a result of the No Double Duty provisions, the transaction will not be charged with foreign transfer duty. An exception exists where a non-foreign purchaser on an agreement to transfer residential property substitutes their interest to a person, or is acting as an agent for a person, who is a foreign person.

FOREIGN LANDHOLDER DUTY

Foreign landholder duty is imposed on *foreign landholder acquisitions*. A foreign landholder acquisition occurs where a foreign person:

- acquires a significant interest in a *residential landholder*, or
- has a significant interest in a *residential landholder* and acquires a further interest.

A residential landholder is a landholder who is entitled to residential property directly or indirectly through a linked entity.

A foreign landholder acquisition also occurs where a relevant acquisition in a residential landholder results from the aggregation of a foreign person's interest with interests of related persons, regardless of whether the other persons are also foreign.

To be a residential landholder the total value of all land in Western Australia must be \$2 million or greater and the land includes residential property. There is no minimum threshold on the portion of the value attributed to residential property.

Foreign landholder acquisitions will generally be charged 7% additional duty on the unencumbered value of the residential property that the residential landholder is entitled to, based on the foreign person's interest.

EXEMPTIONS FOR RESIDENTIAL DEVELOPMENTS

An exemption from foreign transfer duty and foreign landholder duty for residential developments applies where foreign transfer or landholder duty was paid on the transaction and the foreign person, residential landholder, linked entity or associate:

- constructs or refurbishes 10 or more dwellings on the residential property; or
- subdivides the residential property so that 10 or more dwellings can be constructed on the property.

To qualify for the exemption, the construction, refurbishment or subdivision of the residential property must commence, or in certain circumstances be completed, within five years of the completion date of the transaction.

Applications for reassessment must be made in the approved form within the later of:

- 12 months of the relevant commencement or completion date of the construction, refurbishment or subdivision of the residential property¹; or
- five years from the completion date of the transaction subject to foreign transfer duty or the date of the acquisition subject to foreign landholder duty.

The five year reassessments timeframes provided for in the *Taxation Administration Act 2003* apply to all other transactions charged with additional duty unless otherwise specified.

TRANSITIONAL ARRANGEMENTS

Foreign transfer and foreign landholder duty will apply to transactions entered into from 1 January 2019. Some transactions entered into prior to 1 January 2019 may be chargeable with foreign transfer duty where a purchaser substitutes their interest in residential property to a foreign person after 1 January 2019.

For further information on foreign transfer duty or landholder duty please visit our website at www.osr.wa.gov.au, or contact the Office of State Revenue on 08 9262 1100 or via web enquiry at www.osr.wa.gov.au/DutiesEnquiry.

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¹ Refer to sections 205ZA(3) and 205ZO(3) of the *Duties Amendment (Additional Duty for Foreign Persons) Bill 2018* for further information on the commencement or completion dates.