



## Legal Update

### Additional Foreign Acquirer Duty – Foreign Buyers Beware

As of **1 October 2016**, “additional foreign acquirer duty” (AFAD) is being imposed on direct and indirect purchases of Queensland residential real estate by foreign buyers. Specifically, foreign buyers of residential property will be subject to a 3% surcharge, in addition to the transfer duty payable on the transaction.

#### When does AFAD apply?

AFAD applies:

- to transactions in residential land, directly or indirectly, which are liable to transfer duty, landholder duty and corporate trustee duty under the *Duties Act 2001*;
- where that liability arises on or after 1 October 2016 (that is, to contracts signed on or after 1 October 2016); and
- if the buyer is a foreign person.

#### Residential Land

“*Residential land*” is land that is, or will be, solely or primarily used for “residential purposes” and where:

- there is, or will be, a building on the land designed or approved for human habitation by a single family unit;
- there is a building on the land which a person will refurbish, renovate or extend so that it becomes such a building; or
- the land is being developed so that it will become land referred to above.

#### Foreign Person

A “foreign person” is:

- a foreign individual, being anyone other than an Australian citizen, a New Zealand citizen living in Australia, or a permanent resident of Australia;
- a foreign corporation, being any corporation incorporated outside Australia or a corporation in which a foreign person (together with related persons) holds at least 50% of the voting power / shares in the corporation; or
- a foreign trust, being any trust in which foreign persons (together with related persons) hold at least 50%.

## Indirect Interests

Any acquisition by a foreign person of an interest in a landholder which has an interest in residential land will be subject to the surcharge where the acquisition is otherwise dutiable.

## Obligation to Notify



A foreign person who acquires AFAD residential land must lodge an AFAD statement in the approved form within 30 days of the duty liability date.

## Preparing for the surcharge

Foreign Buyers of residential land in Queensland should carefully consider whether AFAD will apply to the transaction and take this into account when considering the total costs of a transaction involving residential land.

For further information contact [Luke Steptoe](#) or [Paul McHugh](#) of our office.

October 2016

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