



Legal Update

Additional Foreign Acquirer Duty (AFAD)

What is AFAD?

AFAD is an additional amount of duty that applies to particular transactions liable for transfer duty, landholder duty or corporate trustee duty.

When does it apply?

AFAD applies if all of the following conditions are met:

1. You are a foreign person (see below) acquiring property;
2. Your transaction involves residential land (i.e. land that will be used solely or primarily for residential purposes, including: homes and apartments, vacant land on which a home is to be built, land for residential development, buildings renovated for residential use);
3. The liability for the transaction arose on or after 1 October 2016.

Note: AFAD will apply regardless of whether the residential land is acquired for investment or non investment purposes.

If there are multiple parties acquiring an interest in the property, AFAD will only apply to the interest acquired by foreign persons.

How much is it?

AFAD payable for transfer duty is 3% of the dutiable value of the AFAD residential land, based on the foreign acquirer's interest.

In determining the dutiable value, a GST-inclusive purchase price is used, and the value of all included chattels is included.

Any AFAD payable will be added on top of the normal transfer duty payable for the transaction.

Am I a Foreign Person?

For the purposes of AFAD, a foreign person includes the following:

Foreign Individuals - You are not an Australian citizen or permanent resident.

You are considered a permanent resident if you hold a permanent resident visa or are a New Zealand citizen with a special category visa, as defined in the Migration Act 1958 (Cth).

New Zealand citizens:

New Zealand citizens are afforded a special category visa (subclass 444) when entering Australia once the relevant eligibility criteria are satisfied. This visa is free of charge and allows you to stay and work in Australia as long as you remain a New Zealand citizen. The visa is valid until you depart Australia.

A New Zealand citizen holding a special category visa who enters into a transaction involving AFAD Residential Land will not be liable for AFAD.

A New Zealand citizen residing in New Zealand who enters into a transaction for AFAD Residential Land will be liable for AFAD.

A New Zealand citizen currently residing in New Zealand who enters Australia for the purposes of obtaining a special category visa simply to avoid paying AFAD, will be liable for AFAD, if evidence shows this is the case.

Foreign Corporations - A corporation that was either incorporated outside of Australia or one in which foreign persons (or related persons of foreign persons – including partners in a partnership) have a controlling interest of at least 50%.

Foreign Trusts - A trust where at least 50% of the trust interests are interests of foreign individuals, foreign corporations, trustees of a foreign trust or related persons.

Even if your foreign status changes to that of an Australian citizen or permanent resident at a later date, AFAD will apply to the transaction since duty is imposed on a relevant transaction at the time the liability for the duty on the transaction arises.

Can I still claim concessions and exemptions?

Yes, as a foreign person you can still claim first home concessions, first home vacant land concessions, and home concessions if you satisfy the necessary criteria.

However, the concession will only apply to the calculation of transfer duty, you will still be liable for AFAD calculated on the dutiable value of the AFAD residential land.

If the transaction is exempt from transfer duty, landholder duty or corporate trustee duty, then an exemption from AFAD will also apply.

For more information

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