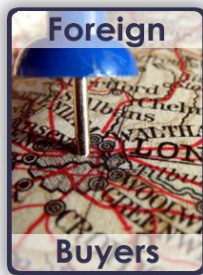


FOREIGN PURCHASERS BEWARE!

From the **1 October 2016**, the Additional Foreign Acquirer Duty ('AFAD') commenced in Queensland. AFAD was introduced to ensure foreign acquirers of residential property who benefit from government services and infrastructure also contribute to their delivery, the same as local buyers.

In short, this means that 'foreign purchasers' of a direct or indirect interest in **residential property** in Queensland will be subject to a surcharge of 7%, in addition to the standard stamp duty rates (or transfer duty as it is commonly referred to now), that is an additional 7% duty of the purchase price payable. If the relevant transaction was entered into prior to 1 July 2018 the applicable rate is 3%.



The surcharge is to apply to contracts and agreements where the liability arises on or after **1 October 2016**. That effectively means the date of the contract. In Queensland, contracts are dated when the last party signs, which is usually the seller.

This new regime incorporates a unique aspect that will require a reassessment of a contract or agreement where the purchaser *becomes* foreign within 3 years after the liability date.



Who is a foreign person?

A **foreign individual** who is an individual other than an Australian citizen or *permanent resident*, a **foreign corporation** that is incorporated outside Australia or a corporation in which foreign persons have a controlling interest, and a trustee of a foreign trust which has at least 50% of foreign interest.

New Zealand citizens may also be exempt. See page 2 of this information sheet.

What is residential land?

AFAD residential land is land in Qld that is or will be used solely or primarily for residential purposes.



However, there must be conditions met and they include:

- Established homes and apartments;
- Vacant land upon which a home or apartment will be built;
- Land for development for residential use;
- Refurbishment, renovation or extension of a building for residential use.

Residential land does not include land used for motel or hotel purposes. Other types of residential property (e.g. retirement villages, manufactured home parks, and student accommodation) may be included as well. They will be assessed on a case by case basis.

Exemptions and Concessions

Normal concessions will continue to apply to the non-AFAD related transfer duty imposed. For example, as a foreign buyer you can still qualify for the first home concession and first home vacant land concession, provided you meet the eligibility criteria. However, you still need to pay the AFAD calculated on the value of the land.

If your relevant transaction is exempt from transfer duty, landholder duty or corporate trustee duty, it will also be exempt from AFAD.¹

If a contract for land is entered into *prior* to 1 October 2016, and transfer duty was paid prior to this date, then AFAD would not apply, even if settlement occurred after this date.

There may be other exemptions available for development however, as the legislation is only relatively new, these types of other exemptions would need to be considered on a case by case basis.

How is the surcharge calculated?

AFAD is payable on the GST inclusive purchase price.

Will AFAD apply if land is acquired for investment purposes?

AFAD may be payable regardless of whether or not you are acquiring for investment or non-investment purposes.

Are New Zealand citizens exempt from AFAD as a foreign purchaser?



An individual who is a **permanent resident** is not a foreign purchaser or acquirer for the purposes of the legislation. What is a permanent resident? A permanent resident means the holder of a permanent visa or a **New Zealand citizen who is the holder of a special category visa as defined under the *Migration Act 1958 (Cth)***. It is our understanding that this special category visa takes effect upon arrival in Australia and ceases to be of effect upon leaving Australian waters.

To clarify when a New Zealand citizen may be liable for AFAD when entering into a transaction:

Example 1:

A New Zealand citizen is residing in Australia and holds a special category visa when he enters into a transaction of AFAD residential land.

In this situation, AFAD will not apply.

Example 2:

A New Zealand citizen residing in New Zealand enters into a transaction for AFAD residential land in Queensland.

AFAD will apply, as the person will not be the holder of a special category visa under the *Migration Act 1958*.

Example 3:

A New Zealand citizen is currently residing in New Zealand but enters into Australia to obtain a special category visa for the purposes of AFAD not applying.

AFAD will apply if evidence indicates that the purpose of entry into Australia is to avoid paying AFAD by obtaining a special category visa.

¹ <https://www.business.qld.gov.au>

Example 4:

A New Zealand permanent resident enters into a transaction for AFAD residential land in Queensland.

AFAD will apply, as a New Zealand permanent resident will not be the holder of a special category visa under the *Migrations Act 1958* and is instead a foreign person for the purposes of AFAD.

Multiple buyers?

AFAD only applies to the extent of the foreign purchaser's interest. For example, if there are 3 individual buyers as equal co-owners of land but only 1 is a foreign acquirer, the AFAD will only apply to the extent of that foreign acquirer's 1/3 interest.

Reassessment

The new regime allows a transaction to be reassessed in circumstances where the purchaser becomes a foreign person within 3 years after the original duty liability date (normally the contract date). This may occur where the original purchaser as a corporate entity, has a change of shareholders or ownership in itself, that causes the change. This raises issues of whether interest or penalty tax would also apply.

If AFAD is applicable what do I need to do?

You will need to submit a statement to the Office of State Revenue in Qld in the approved form within 30 days after the contract date. This may be extended if the contract contains conditions.

Calculating AFAD

Your interest in the residential land is used to calculate the AFAD. Dutiable value will also include the value of any chattels acquired in the transaction.

AFAD applies whether the AFAD residential land is for investment or non-investment purposes. It also applies where the dutiable property is an existing right that

contains AFAD residential land. For example, if you entered into a transaction to purchase a marina berth with residential land, AFD would apply if you were classified as a foreign person. If you only purchased a marina berth on its own, without residential land, AFAD would not apply.

What this means for you

As a foreign purchaser, it is critical you obtain sound legal advice as to the stamp duty consequences when considering buying directly or indirectly residential property in Qld.

Further Enquiries

For further enquiries on how this may effect you, please contact **Despina Priala** of **Priala Legal** for a more detailed discussion.



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