



Surcharge Land Tax NSW

Get in quick to avoid Land Tax Surcharge

The 2016 NSW Budget introduced a surcharge on Land tax to be paid by foreign persons owning land in NSW.

The **State Revenue Legislation Further Amendment Act 2020** received assent on 24 June 2020 and has just come into force to extend the surcharge to discretionary trusts which do not prevent foreign person from being a beneficiary under a trust owning residential land.

The Act amends the **Land Tax Act 1956** and the **Land Tax Management Act 1956** to clarify that a trustee of a discretionary trust is a foreign person if the terms of the trust don't prevent foreign person being a beneficiary. For full details of being a foreign person see revenue ruling G009 – <https://www.revenue.nsw.gov.au/help-centre/resources-library/g009>.

How to avoid being liable to the surcharge unintentionally

As the legislation can apply to new and old trusts, it contains transitional provisions to allow amendments to be made to Trust deeds to exclude foreign beneficiaries but these amendments have to be made before 31 December 2020.

We at **Eakin McCaffery Cox** are well versed in checking trust deeds and have amendment text which can be used in Deeds of variation.

If you use a discretionary trust, are a trustee of a discretionary trust or a beneficiary under a discretionary trust you are urged to check and/or seek advice as to whether the relevant trust requires amendment to avoid falling foul of the new surcharge provision.

Feel free to contact *Greg Ross (ross@eakin.com.au)* or your usual Eakin McCaffery Cox contact if you want any assistance in any way about the surcharge arrangements as affecting discretionary trust deeds and/or has to amending discretionary trust deeds to avoid the surcharge.



Gregory Ross 14 10 2020

*The above was prepared for and is intended to provide a broad general overview of issues only.
It is not intended, and or must not be relied upon, as definitive legal advice.
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