Foreign Landholder Duty

Chapter 3A of the *Duties Act 2008*

22 October 2026

A person who acquires an interest in a corporation or unit trust that holds land assets in Western Australia (WA) may be liable to pay landholder duty under the *Duties Act 2008* (Duties Act).

A foreign person who acquires an interest in a corporation or unit trust that holds residential property in WA may also be liable to pay foreign landholder duty.

Residential landholder

A corporation or unit trust is a residential landholder if it is a landholder and it, or a linked entity, is entitled to residential property. For information about the meaning of a landholder, see the Landholder Duty fact sheet.

Residential property

Residential property is land in WA that is

- capable of being (or intended to be) used solely or dominantly for residential purposes or
- vacant or substantially vacant land zoned solely for residential purposes.

It includes an estate or interest in land and anything that is fixed to land.

Examples of properties that are capable of being (or intended to be) used solely or dominantly for residential purposes include

- established homes and apartments
- commercial property that a person intends to convert into a residence
- land on which a person intends to construct a residence
- land which a person intends to develop into residential properties or subdivide to enable another person to construct a home or apartment on the land or
- partially constructed residences which a person intends to complete.

Excluded residential property

In determining whether an entity is a residential landholder, the following is not residential property

- land that is intended to be used solely or dominantly as an aged care facility, retirement village or commercial residential premises
- an easement
- a security interest
- a carbon right or carbon covenant
- things fixed to land that are to be permanently removed
- a mining tenement or an estate or interest in a mining tenement
- a pastoral lease or
- a derivative mining right.

Foreign person

A *foreign person* can be an individual, a corporation or a trustee.

To determine whether a corporation or a trustee is foreign, the relevant interests in the corporation or trust held by foreign persons and all their associates will be aggregated, regardless of whether the associates are foreign persons or are associates of one another.

Foreign individual

A foreign individual means an individual who is not:

1. an Australian citizen as defined in the *Australian Citizenship Act 2007* (Commonwealth) section 3 or
2. the holder of a permanent visa or special category visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1).

A permanent visa is a visa to remain in Australia indefinitely without condition. Holders of permanent visas are commonly referred to as Australian permanent residents.

Temporary visas, including those that allow the visa holder to remain indefinitely but are subject to the happening of a certain event (such as assessment of their permanent visa application) or only apply while the visa holder has a specified status, are not permanent visas. Common examples of visas that provide the right to remain indefinitely, but are not permanent visas include:

- Partner (temporary) visa - subclass 820
- Bridging visas A, B, C and E - subclasses 010, 020, 030, 050, 051

If you are uncertain about your visa status, we recommend contacting the Department of Home Affairs to confirm if your visa is a permanent or temporary visa under section 30(1) or 30(2) of the *Migration Act 1958*.

Foreign corporation

A *foreign corporation* is

- a corporation that was incorporated outside Australia or
- a corporation in which foreign persons have a controlling interest.

Foreign persons are taken to have a controlling interest in a corporation if one or more foreign persons or their associates directly or indirectly control at least 50 per cent of the voting or potential voting power, or hold at least 50 per cent of the issued shares in the corporation.

Voting power in a corporation refers to the number of votes that might be cast at a general meeting of a corporation. Potential voting power refers to the voting power based on the assumption that the votes

- may exist in the future because of an exercise of a right and
- if they came into existence, could be cast at a general meeting of a corporation.[1]

[1] For example, a shareholder who holds 30 per cent of the general shares in a corporation and an option to acquire a further 5 per cent is said to have 35 per cent potential voting power (assuming all shares have equal voting rights).

Example 1

XYZ Pty Ltd has five shareholders:

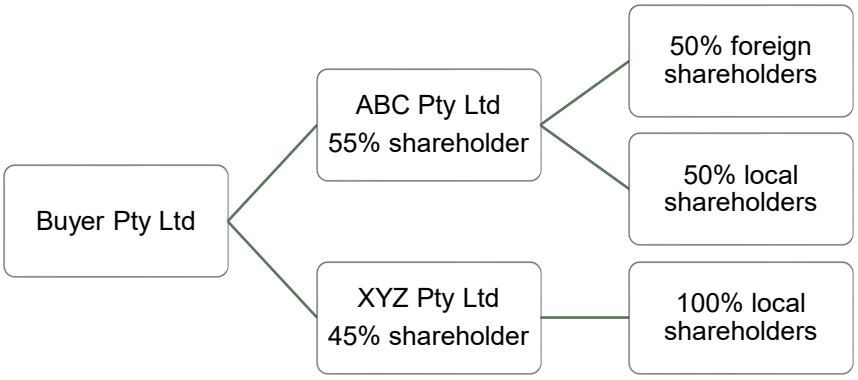
- Shareholder 1 – Local (10 per cent)
- Shareholder 2 – Foreign (15 per cent)
- Shareholder 3 – Local (30 per cent)
- Shareholder 4 – Foreign (25 per cent)
- Shareholder 5 – Local (20 per cent)

The interests of the foreign shareholders are aggregated to determine if XYZ is a foreign corporation.

The aggregated interest of shareholders 2 and 4 is 40 per cent. As shareholders 3 and 5 are spouses of shareholders 2 and 4, they are associates and their 50 per cent interest must also be aggregated.

XYZ Pty Ltd is a foreign corporation because the aggregated interest of foreign persons and their associates is 90 per cent.

Example 2



Buyer Pty Ltd has acquired a 100 per cent interest in a corporation which holds residential land in WA valued at $5 million.

Buyer Pty Ltd's majority shareholder, ABC Pty Ltd, has 50 per cent foreign ownership and is a foreign corporation.

Because ABC Pty Ltd is a foreign corporation that owns 55 per cent of the shares in Buyer Pty Ltd, Buyer Pty Ltd is also a foreign corporation.

Foreign trustee

A *foreign trustee* is an individual or corporation acting as trustee for a foreign trust, even if they are not a foreign person in their own capacity.

A *foreign trust* is

- a discretionary trust controlled by a foreign person or
- a discretionary trust where one or more foreign persons that are takers in default, together with their associates, hold at least 50 per cent interest in the discretionary trust or
- a trust other than a discretionary trust where one or more foreign persons, together with their associates, hold beneficial interests in at least 50 per cent of the income or property of the trust.

A person controls a discretionary trust if they are in a position to directly or indirectly influence the vesting of the capital of the trust property or the distribution of income from the trust property.

Example 3

John Smith, an Australian citizen, is trustee for the Smith Family Trust. He is also one of the takers in default of the trust. John's wife, Jean Smith, is a foreign individual and is the other taker in default.

John's father, who is also foreign, is the appointor of the trust and controls the appointment of new trustees. This means John can directly or indirectly influence how the trust's capital or income is distributed.

The trust is a foreign trust because:

1. Jean, as one of the takers in default of the trust, is a foreign individual who holds 50 per cent of the interest in the trust.
2. John is an associate of Jean because they are husband and wife. Together they hold 100 per cent of the interest in the trust.
3. John's father is a foreign person who controls the discretionary trust.

Any one of the above factors would make the trust a foreign trust.

Example 4

John Smith, an Australian citizen, is trustee for the Property Investment Unit Trust which has 100 units.

Sixty units are held by foreign persons and their associates, which gives them a beneficial interest in 60 per cent of the trust's income and property.

John Smith acquires an interest in a residential landholder on behalf of the trust.

John Smith is a foreign trustee because foreign persons and their associates hold beneficial interests in at least 50 per cent of the trust income or property. Foreign landholder duty is chargeable on the acquisition.

Associates

A person is an *associate* of another person if they are

- family members
- partners in the same partnership
- related corporations
- trustees of trusts with common beneficiaries
- a corporation and an individual who is a majority shareholder, director or secretary of that corporation or a related corporation
- a trustee of a trust and an individual who is a beneficiary of that trust or
- a trustee of a trust and a corporation, if the corporation or majority shareholder, director or secretary of that corporation, or a related corporation, is a beneficiary of that trust.

If a beneficiary of a trust, other than a unit trust or a discretionary trust, is an associate of a person, the trustee of the trust is also treated as an associate of that person.

Example 5

ABC Pty Ltd has two shareholders; Jane Smith who holds 45 per cent of the shares and David Clark who holds 55 per cent of the shares as bare trustee for John Smith. Jane Smith and John Smith are husband and wife. As Jane and John are associates, David as trustee for John is also an associate of Jane.

Foreign landholder acquisitions

The acquisition of an interest[2] in a residential landholder is chargeable with foreign landholder duty if it is a foreign landholder acquisition.

An acquisition is a *foreign landholder acquisition* if the acquirer is a foreign person or if a foreign related person[3] holds an interest in the residential landholder after the acquisition, and

- the acquirer does not have a significant interest before the acquisition, but has a significant interest after the acquisition or
- the acquirer has a significant interest before the acquisition and their interest increases after the acquisition or
- the combined interest of the acquirer and any related persons is not a significant interest before the acquisition, but is a significant interest after the acquisition or
- the combined interest of the acquirer and any related persons is a significant interest before the acquisition and their combined interest increases after the acquisition.

Example 6

ABC Pty Ltd is an unlisted corporation that is a residential landholder. Foreign Investor Pty Ltd is a foreign corporation that does not hold any shares in ABC Pty Ltd and is unrelated to any of its shareholders.

Foreign Investor Pty Ltd buys 50 per cent of the issued shares in ABC Pty Ltd. As this is a significant interest, the acquisition is a foreign landholder acquisition.

Example 7

XYZ Investment Trust is a unit trust that is a residential landholder.

Foreign Investor Pty Ltd is a foreign corporation that owns 30 per cent of the units in the XYZ Investment Trust and is unrelated to any other unitholder.

Ms White is an Australian permanent resident who is a director of Foreign Investor Pty Ltd. Ms White buys 30 per cent of the units in XYZ Investment Trust from an unrelated unitholder.

This will be a foreign landholder acquisition because

- Ms White is related to Foreign Investor Pty Ltd
- the combined interest of Ms White and Foreign Investor Pty Ltd is now 60 per cent, which is a significant interest and
- a foreign person is related to the acquirer and holds an interest in the residential landholder.

Example 8

DEF Pty Ltd is a corporation that is a residential landholder. Smith Pty Ltd holds 50 per cent of the shares in DEF Pty Ltd as trustee of the Smith Family Trust, which is a foreign trust.

DEF Pty Ltd issues additional shares to Smith Pty Ltd as trustee for the Smith Family Trust, increasing its interest to 75 per cent. This is a foreign landholder acquisition.

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2 A person's interest is equal to their entitlement to surplus property when the landholder is wound up. This is usually based on the number of shares or units they hold.

3 Section 162 of the Duties Act lists which persons are related for landholder duty purposes.

Calculation of foreign landholder duty

The value of a residential landholder is determined by combining

- the value of the landholder's residential property and the associated chattels and
- the value of any linked entity's residential property and the associated chattels to the extent of the landholder's interest in that entity.[4]

Foreign landholder duty is calculated by

- applying a rate of seven per cent to the value of the residential landholder to the extent of the interest acquired by the foreign person or a related person who is foreign and
- reducing this amount by seven per cent of the value of the residential landholder to the extent of any excluded interest held by the foreign person or a related person who is foreign, immediately before the acquisition occurred.

This is represented by the following calculation

(7% x value of the residential landholder x interest of foreign person and foreign related persons) less

(7% x value of the residential landholder x excluded interest of foreign person and foreign related persons).

An *excluded interest* is the total of

- an interest held more than three years before the foreign landholder acquisition
- an acquired interest on which foreign landholder duty applied
- an interest acquired before the residential landholder (or any linked entity) had an entitlement to residential property in WA and
- an interest held immediately before 1 January 2019.

An excluded interest does not include the interest acquired by the relevant acquisition.

Example 9

ABC Pty Ltd is a landholder that holds residential land valued at $10 million. Ms Jones, who is foreign, acquires 100 per cent of the shares in ABC Pty Ltd from an unrelated party.

Foreign landholder duty = 7% x $10 million x 100%

= $700,000

Example 10

ABC Pty Ltd is a landholder that holds residential land valued at $10 million. Ms Jones, who is foreign, acquires 40 per cent of the shares in ABC Pty Ltd from an unrelated party on 1 July 2018. On 1 July 2019, Ms Jones increases her interest to 60 per cent.

The 40 per cent interest acquired on 1 July 2018 is an excluded interest because it was held before 1 January 2019.

Foreign landholder duty = (7% x $10 million x 60%) – (7% x $10 million x 40%)

= $420,000 - $280,000

= $140,000

[4] For more information on linked entities, see the Landholder Duty fact sheet.

Exempt acquisitions

A foreign landholder acquisition may be fully or partly exempt from foreign landholder duty if

- a direct transfer of the landholder's residential property to the acquirer would be fully or partly exempt from foreign transfer duty or liable for nominal duty
- the foreign landholder acquisition is between members of a corporate family[5] or
- the acquisition occurs to facilitate a court-approved compromise or arrangement with creditors.

An agreement or acquisition statement must be lodged with the Commissioner even if the foreign landholder acquisition is exempt.

Example 11

XYZ Pty Ltd is a landholder that owns 60 per cent of the issued units in a property development unit trust. The trust holds several residential properties and some furniture used in those properties. The combined value of the land and furniture is $6 million.

Mr Tan, who is foreign, acquires 50 per cent of the shares in XYZ Pty Ltd from an unrelated person.

Foreign landholder duty = 7% x (60% x $6 million) x 50%

= $126,000

Example 12

Jack Brown is an Australian permanent resident who holds 100 per cent of the shares in Brown Pty Ltd, a corporation that holds residential properties with a value of $10 million.

Jack dies, leaving all of the shares to his sister, Jane, who is a foreign person. The executor of Jack's estate transfers the shares to Jane under the terms of the will.

If the acquisition had been a direct transfer of residential property from the executor to Jane, it would have been exempt from foreign transfer duty. The acquisition is therefore exempt from foreign landholder duty.

Residential developer exemptions

An exemption from foreign landholder duty may be applied if the landholder, linked entity or associate constructs, refurbishes or subdivides property to create ten or more residential dwellings, or lots on which ten or more dwellings can be constructed.

- If the acquisition was entered into on or before 6 May 2026 - foreign landholder duty may be reassessed and the amount refunded to the taxpayer or
- If the acquisition was entered into on or after 7 May 2026 - an upfront exemption may be applied.

See the foreign buyers duty webpage for links to the relevant application forms, each of which contains full eligibility conditions and details of required supporting documents.

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5 For more information, see the Entity Restructuring fact sheet.

Contact RevenueWA

Web enquiry	www.osr.wa.gov.au/DutiesEnquiry	**Website**	WA.gov.au
Office	200 St Georges Terrace Perth WA 6000	**Phone**	(08) 9262 1100 1300 368 364 (WA country landline callers)
Postal	GPO Box T1600 Perth WA 6845		

Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.