Foreign Transfer Duty

22 October 2026

Transfer duty is charged on dutiable transactions over dutiable property. The person liable to pay duty is generally the purchaser, transferee or person receiving the property.

Additional duty of 7% applies when foreign persons purchase residential property from 1 January 2019.[1]

In most cases, liability for duty arises on the date the document evidencing the transaction is signed. For example, liability arises on an agreement to transfer property, such as a contract for sale, when the contract is signed by all parties. Some transactions may be exempt from foreign transfer duty if they are exempt from transfer duty or qualify for nominal duty.

Each purchaser must complete a foreign transfer duty declaration if the transaction involves land, including commercial land.

See the transfer duty web page for information about dutiable property and transactions.

Foreign person

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

Foreign individual

A foreign individual means an individual who is not:

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

[1] Duties Act Chapter 3A inserted by the *Duties Amendment (Additional Duty for Foreign Persons) Bill 2018*.

Foreign corporation

A foreign corporation is a corporation:[2]

- that was incorporated outside Australia or
- 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.[3]

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 in a corporation refers to the voting power based on the assumption that the votes:[4]

- may exist in the future because of an exercise of a right and
- if they came into existence, would be capable of being cast at a general meeting of a corporation.[5]

Example 1

XYZ Pty Ltd has five shareholders:

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

To determine if a corporation is a foreign corporation, the interests of all foreign shareholders are combined. The total interests of foreign shareholders 2 and 4 in XYZ Pty Ltd is 50 per cent.

XYZ Pty Ltd is a foreign corporation because the total interest of foreign persons and their associates is 50 per cent.

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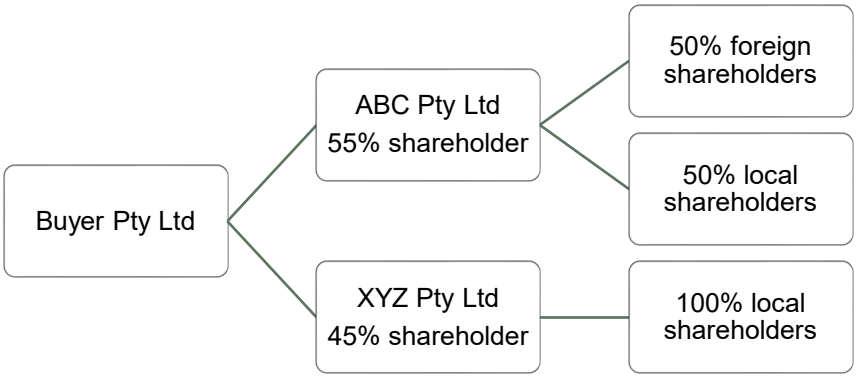
2 Duties Act s 205C(2).

3 Duties Act s 205C(1).

4 As defined in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) s 4.

5 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 2



Buyer Pty Ltd has purchased vacant land zoned solely for residential purposes.

To determine whether Buyer is a foreign corporation, the Commissioner will consider whether its shareholders are foreign. Buyer's majority shareholder, ABC Pty Ltd, has 50 per cent foreign ownership and is considered a foreign corporation.

Because ABC is a foreign corporation and owns 50 per cent of the shares in Buyer, Buyer is also considered to be a foreign corporation.

Foreign trustee

A foreign trustee is a trustee of a foreign trust.[6] An individual or corporation acting as trustee for a foreign trust is considered a foreign trustee, even if they are not a foreign person in their own capacity.

A foreign trust is:[7]

- a discretionary trust controlled by a foreign person or
- a discretionary trust in which 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.[8] This includes the trustee of a trust.

Example 3

John Smith, a foreign individual, is trustee for the Smith Family Trust. John and his wife, who is also foreign, are the primary beneficiaries and takers in default of the Trust.

John's father, who is also foreign, is the appointor of the trust.

The trust is a foreign trust because:

- John and his wife hold 100% of the interest in the trust.
- the appointor who controls the appointment of new trustees is a foreign individual.

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

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6 Duties Act s 205C.

7 Duties Act s 205D(1).

8 Duties Act s 205D(2).

Example 4

Max Jones, an Australian citizen, is trustee for the Property Investment Unit Trust which has a total of 100 units.

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

Max enters into a contract to buy a residential property on behalf of the trust.

Max is considered to be 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 transfer duty is chargeable on the transaction.

Associates

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 combined, regardless of the foreign status of the associate.

A person is an associate[9] of another person if they are:

- family members[10] or
- related corporations[11] or
- trustees of trusts sharing any common beneficiary or
- an individual and a corporation where that individual is a majority shareholder, director or secretary of the corporation (or a related corporation)[12] or
- a trustee and a beneficiary of the same trust or
- a corporation and a trustee of a trust where the corporation or its majority shareholder, director or secretary is a beneficiary or
- a corporation and a trustee of a trust where a related corporation is a beneficiary or
- partners in the same partnership.

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

Example 5

ABC Pty Ltd has two shareholders, Jane Smith who holds 45% of the shares and David Clark who holds 55% of the shares as bare trustee for John Smith. Jane Smith and John Smith are husband and wife. Therefore, David is treated as an associate of John.

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9 Duties Act s 205B.

10 Duties Act s 100.

11 Related corporation has the same meaning as related body corporate, as defined in the *Corporations Act 2001* (Cth) s 50.

12 Duties Act s 3.

Example 6

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

Andrew's father, who is also foreign, is the appointor of the trust.

The Trust is a foreign trust because:

- Jean holds 50 per cent of the interest in the trust.
- Andrew is an associate of Jean because they are husband and wife. Together they hold 100 per cent of the interest in the trust.
- The appointor who controls the appointment of new trustees is a foreign individual.

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

Example 7

Sarah, an Australian citizen, is trustee for the Property Investment Unit Trust which has a total of 100 units. The holdings in the unit trust are:

- 20 units are held by Mark Adams, a foreign person
- 30 units are held by Samantha Adams, an Australian citizen
- 20 units are held by Mary Johnson, a foreign person
- 30 units are held by Bradley Johnson, an Australian citizen.

Mark and Samantha, and Mary and Bradley, are husband and wife. They are entitled to the income and property of the trust in their respective proportions.

Sarah enters into a contract to buy a residential property on behalf of the Trust.

Sarah is a foreign trustee because Samantha is an associate of Mark, and Bradley is an associate of Mary. Foreign transfer duty is chargeable on the transaction because foreign persons and their associates hold beneficial interests in at least 50 per cent of the trust income or property.

Residential property

Residential property is land which is:[13]

(a) currently used, capable of being used, or intended to be used solely or dominantly for residential purposes or

(b) vacant (or substantially vacant) and zoned solely for residential purposes,

and includes any estate or interest in land or anything that is part of the land as a fixture.

The value of any chattels transferred with residential property will be combined with the value of the property if the chattels are directly linked to or are incidental to the use of the property.[14] Examples include white goods, furniture, appliances, air conditioners, gardening equipment and portable pools.

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13 Duties Act s 205E(1).

14 Duties Act s 205E(2).

Example 8

ABC Pty Ltd has three shareholders:

- Peter Williams, an Australian Citizen holding 45 per cent shares
- Jane Stone, a foreign person holding 20 per cent shares and
- Jack Hill holding 30 per cent shares, as bare trustee for John Stone.

Jane and John are husband and wife. Therefore, Jack is an associate of Jane.

ABC Pty Ltd is a foreign corporation because Jane and Jack hold 50 per cent of ABC Pty Ltd.

Example of properties 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.

Example 9

PetCare Pty Ltd, a foreign corporation, has entered into a contract to purchase a four bedroom house that is zoned residential.

The contract is conditional on the property being successfully approved for commercial/mixed-use before settlement as PetCare intends to turn the property into a local veterinary clinic.

At the time liability for duty arises, the house is capable of being used solely or dominantly for residential purposes and is considered to be residential property. The transaction is chargeable with foreign transfer duty.

If multiple lots are acquired, each lot will be considered separately to determine if the lot is residential property.

See Commissioner's Practice DA 44 'Residential Property for the Purposes of Foreign Transfer Duty' for information about the application of foreign transfer duty.

Excluded property

Certain property is specifically excluded from foreign transfer duty because it is not residential property.[15] These are:

- land that is intended to be used solely or dominantly for the purposes of an aged care facility[16]
- land intended to be used solely or dominantly for the purposes of commercial residential premises[17]
- land intended to be used solely or dominantly for the purposes of a retirement village[18]

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15 for the purposes of section 205E(1) of the Duties Act.

16 as defined in the *Land Tax Assessment Act 2002* s 38A(1).

17 Includes hotels, motels, inns, hostels and boarding houses. *A New Tax System (Goods and Services Tax) Act 1999* (Cth) s 191-1.

18 as defined in the *Retirement Villages Act 1992* section 3(1).

- an easement
- a security interest
- a carbon right or carbon covenant registered under the *Carbon Rights Act 2003* and
- things fixed to the land that will be permanently removed.

Exempt transactions

If a dutiable transaction is exempt or partially exempt from transfer duty or chargeable with nominal duty, it will generally be exempt or partially exempt from foreign transfer duty.

> *Example 10*
>
> Under the terms of the will, Jill and Jack are entitled to a half share each in a residential property. Jack is a foreign individual.
>
> Jill and Jack sign a deed of family arrangement where Jack will receive the whole property in exchange for paying Jill 50 per cent of the property's market value. The residential property is transferred to Jack.
>
> Nominal duty is chargeable on the transfer of the 50 per cent of the property Jack is entitled to under the will. Foreign transfer duty is exempt for that portion. The other 50 per cent transferred to Jack is chargeable with both transfer duty and foreign transfer duty.

However, foreign transfer duty applies to certain transactions exempt from duty, or charged with nominal duty, if:[19]

- the transferee is a foreign person and
- foreign transfer duty was not charged when the property was originally acquired, unless the property was originally acquired by the transferor before 1 January 2019.[20]

When the transferee is not a foreign person

An agreement to transfer residential property will be exempt from foreign transfer duty when the purchaser on the agreement is a foreign person but the transferee on the transfer is not and no double duty applies to the transfer because:

- the transferee is related to the purchaser[21] or
- the purchaser was acting as agent for the transferee[22] or
- the purchaser is a trustee for a related beneficiary[23] or
- the purchaser enters into an agreement to acquire property with the intention of transferring it to a corporation which was in the process of being incorporated, or a dormant corporation which was in the process of being acquired.[24]

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19 Duties Act s 205Y(3).

20 Foreign transfer duty may not apply where the property was acquired before 1 January 2019 – Schedule 3, clause 43(4) Duties Act.

21 Duties Act s 42(2).

22 Duties Act s 42(4).

23 Duties Act s 42(4B).

24 Duties Act s 42(5).

Foreign transfer duty is also exempt on an agreement to purchase residential property if a purchaser who was a foreign person at the time of executing the agreement is no longer a foreign person at the time the property is transferred to them. Complete and submit Form FDA42 'Foreign Transfer Duty - Change in Foreign Status'.

Example 11

James, a foreign individual, enters into an agreement to purchase a residential property off the plan, to be completed in two years' time. The agreement is assessed for transfer duty and foreign transfer duty.

Before the transfer of the property, James becomes a permanent resident. He applies for a reassessment on the basis that he is no longer a foreign individual.

The agreement is reassessed with a foreign transfer duty exemption.

Residential developer exemptions

An exemption from foreign transfer duty may apply if the foreign person 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 transaction was entered into on or before 6 May 2026 - foreign transfer duty may be reassessed and the amount refunded to the taxpayer or
- If the transaction was entered into on or after 7 May 2026 - an upfront exemption may apply.

For transactions entered into on or after 7 May 2026, an upfront build-to-sell exemption may apply to property purchased by foreign persons who will add at least one additional dwelling to the housing supply by:

- constructing a new dwelling or dwellings on the land for sale or
- creating a new dwelling or dwellings on the land for sale by substantially refurbishing an existing building, or part of a building, that is not capable of being used solely or dominantly as a place of residence.

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.

Transfers between spouses or de facto partners

The transfer of certain residential property between spouses or de facto partners is exempt from transfer duty.[25]

If a person acquires property on or after 1 January 2019 and later transfers a 50 per cent interest to a spouse or de facto partner who is a foreign person, foreign transfer duty is chargeable on the 50 per cent transfer unless it was paid on the original acquisition.

[25] Duties Act s 97.

Example 12

Allen, a foreign individual, purchased residential property on 4 January 2019. Transfer duty and foreign transfer duty were paid before settlement. Allen and his de facto partner Gina (also a foreign individual) used the property as their primary residence.

Six months later, Allen transferred a half share of the property to Gina so they could hold the property as joint tenants. Allen applied for an exemption from transfer duty for transfers between spouses.

Because foreign transfer duty was paid on the original purchase, the transfer of 50 per cent to Gina is exempt from both transfer duty and foreign transfer duty.

If Allen was a permanent resident and therefore foreign transfer duty was not chargeable at the time of purchasing the property, the transfer to Gina would be charged with foreign transfer duty on 50 per cent of the unencumbered value.

Vesting of a discretionary trust

Nominal duty applies to an eligible transfer of property to a taker in default of a discretionary trust on the vesting or termination of the trust.[26]

If the trust purchased residential property on or after 1 January 2019, foreign transfer duty will apply to the transfer of the property from vesting or terminating the trust if the taker in default is a foreign person and did not pay foreign transfer duty on the original purchase.

Transfers of dutiable property to a beneficiary of a trust

Nominal duty applies to transfers of trust property to a beneficiary of the trust.[27]

If the trust acquired residential property on or after 1 January 2019, foreign transfer duty will apply to the transfer of the property to a beneficiary who is a foreign person if the trustee did not pay foreign transfer duty on the original purchase.

Transfers to a real purchaser

Nominal duty applies to certain transactions where property was held by an apparent purchaser and is transferred to the real purchaser who provided the funds for the purchase.[28]

If the apparent purchaser acquired the property on or after 1 January 2019, foreign transfer duty will apply to the transfer of the property to a foreign real purchaser if the apparent purchaser did not pay it on the original purchase.

Example 13

Jane, an Australian Citizen, enters into an agreement on 20 January 2019 to purchase a residential property. The agreement is assessed and endorsed for transfer duty. Settlement occurs and the property is transferred into Jane's name.

Four weeks later, Jane transfers the property to her sister Mary with evidence that Mary provided the funds for the purchase and was the real purchaser under the agreement. Mary is a foreign individual.

The transfer of land is chargeable with nominal duty. The transfer is also charged with foreign transfer duty because it was not charged when the property was originally acquired.

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26 Duties Act s 114.

27 Duties Act ss 115 and 116.

28 Duties Act s 117.

No double duty

Foreign transfer duty will not be charged on two or more dutiable transactions relating to the same transaction.[29] This applies to the transfer of, or declaration of trust over, residential property if the agreement has already been endorsed for foreign transfer duty and the transfer or declaration is in conformity with the agreement.

If a transfer to a foreign person is not in conformity with an agreement because the transferee is different to the purchaser, foreign transfer duty will not be chargeable on the transfer if the agreement has already been endorsed for foreign transfer duty and:

- the transferee is related to the purchaser[30] or
- the purchaser was acting as agent for the transferee[31] or
- the purchaser is a trustee for a related beneficiary[32] or
- the purchaser enters into an agreement to buy property to transfer it to a corporation which was in the process of being incorporated, or a dormant corporation which was in the process of being acquired[33] or
- the purchaser enters into an agreement for the transfer of the property that results in the property becoming scheme property for a managed investment scheme.[34]

For more information, see the 'No Double Duty Transactions' fact sheet.

Example 14

Jodie enters into a contract to purchase a residential property in her own name. Before settlement, Jodie decides the land should be held by both herself and her de facto partner Adam. Both Jodie and Adam are foreign individuals. They lodge a transfer of land for duty endorsement naming Jodie and Adam as the transferees.

Foreign transfer duty is chargeable on the contract and is paid in full.

Because transfer duty and foreign transfer duty were paid on the contract to purchase the property, the subsequent transfer of land is endorsed for no double duty.

If Jodie was an Australian citizen, foreign transfer duty would not have been chargeable on the contract. The subsequent transfer to Adam as a foreign person would be endorsed for no double duty, and foreign transfer duty would be chargeable in relation to the 50 per cent acquired by Adam.

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29 Section 205Q of the *Duties Act* applies Chapter 2 Part 4 Division 6 (sections 41-43) to foreign transfer duty.

30 Duties Act s 42(2).

31 Duties Act s 42(4).

32 Duties Act s 42(4B).

33 Duties Act s 42(5).

34 Duties Act 2 42(7).

First home owners

When the first home owner rate of duty is applied to a transaction and one or more of the purchasers are foreign persons, the transaction will be chargeable with foreign transfer duty on the dutiable value of the foreign person's interest in the property.

Example 15

Kate Richards and her de facto partner, Simon, are first home buyers and enter into an agreement, as joint tenants, to purchase a home for $400,000. Kate is an Australian citizen and Simon is a foreign person.

Kate and Simon are eligible for the first home owner rate of duty on the agreement to purchase the property. Transfer duty is not payable on the contract as it is below the first home owner rate thresholds.

The foreign transfer duty chargeable on Simon's 50% joint tenant interest in the property is $14,000 ($200,000 x 7 per cent).

Contact RevenueWA

Web enquiry www.osr.wa.gov.au/DutiesEnquiry

Website WA.gov.au

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