

## Trusts, foreign persons & 31 December 2020

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You may have recently received a letter from the Revenue NSW about changes that need to be made to trust deeds of trusts that own residential property in NSW **before midnight on 31 December 2020**. If the changes are not made, then significant stamp duty and/or land tax will apply to the trust, as the trustee will be considered a foreign trustee.

### Summary of measures

A summary of the impact of the measures is below.

<b>Which trusts are affected?</b>	Potentially all discretionary, family, testamentary and some <i>unit</i> trusts, which own <b>residential</b> property in NSW. Other non-land-owning trusts, <b>fixed</b> unit trusts and SMSFs are not directly impacted. Hybrid trusts, however, <i>may</i> be affected. If a trust owns property, that is not residential property then it is not affected.
<b>What change must be made?</b>	All foreign persons must be excluded as beneficiaries, under the trust, in both a theoretical and a practical sense. Thus, in addition to removing foreign persons from the trust deed, in a general sense, all individuals who are actually foreigners must also be removed as beneficiaries and trustees under the trust deed.
<b>Absolute deadline</b>	Midnight on 31 December 2020
<b>Realistic deadline</b>	Now. The earlier you request changes to your trust deed the better. Most lawyers are busy towards the end of the calendar year and will close from 22 December 2020, so if your trust deed needs to be amended you better act quickly.

## Comparison table

**Irrevocable** changes may need to be made to trust deeds because of the different rates of stamp duty and land tax applicable, in NSW, to foreign persons and non-foreign persons, for residential properties only:

NSW	Usual non-foreigner rate	Foreigner rate
Stamp duty	5.5%	13.5%
Land tax	1.6%	3.6%

The rates of stamp duty above are charged on the unencumbered value of property (and include the surcharge for foreign persons). By contrast, the rates of land tax above are charged on the unimproved value of land.

The above stamp duty rates could potentially apply to any property acquired by a trust. The above land tax rates could apply to the 2017, 2018 and 2019 calendar years.

Many land-owning trustees have already been informed about the changes by Revenue NSW to amend their trust deeds, to irrevocably remove foreign persons.

A refund of the higher stamp duty and/or land tax applicable may be available for those trusts that previously paid the higher rate of duty or land tax from the date the higher rates started on 21 June 2016. If the required changes are made to the trust deed of the trust, by midnight 31 December 2020, then a refund of stamp duty and land tax may be applied for to the Revenue NSW. batallion legal can help with applications for a refund.

## Conclusion

Considering we are nearing the end of 2020, it is best to arrange for foreign person beneficiaries to be irrevocably removed now from all discretionary, hybrid and **non-fixed unit** trust deeds, that may own residential property, directly or indirectly through another entity, in NSW in the recent past and in the future.

Email us with a full copy of the signed and stamped trust deed you would like amended (and any variations made to the deed since the date of its set up) you would like amended, for a quote. Our fees are generally **\$339 (GST-inclusive)** for a standard trust deed variation.