

Trusts, foreign persons & 31 December 2019...

信托，外国人士，以及 2019 年 12 月 31 日

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New laws are due to start very soon that could mean that changes need to be made to trust deeds of trusts that own residential property in NSW **by midnight on 31 December 2019**. If changes are not made, then significant stamp duty and/or land tax will apply to the trustee of the trust, as the trustees of discretionary trusts will then be considered foreign trustees.

新法律即将生效，这可能意味着需要在 2019 年 12 月 31 日午夜之前对拥有新南威尔士州住宅物业的信托契据进行变更。如果不进行变更，则将被征收大量印花税和/或土地税，因为全权信托的受托人将被视为外国受托人。

Summary of measures

措施概要

A summary of the impact of the measures is below.

这些措施的影响摘要如下：

<p>Which trusts are affected?</p> <p>哪些信托受到影响？</p>	<p>Potentially all discretionary or family trusts, which own residential property in NSW. Trading trusts, unit trusts and SMSFs are not affected. Hybrid trusts, however, may be affected. If a trust owns property, that is not residential property then it is not affected.</p> <p>所有在新南威尔士州拥有住宅物业的全权信托或家庭信托都可能受到影响。贸易信托，单位信托和 SMSF 均不受影</p>
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	响。但是，混合信托可能会受到影响。如果信托所拥有的财产不是住宅财产，那么它就不会受到影响。
What change must be made? 必须做出什么改变？	<p>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 foreigners must be removed as beneficiaries under the trust deed.</p> <p>无论是从理论上还是从现实操作上，都必须在信托下将所有外国人从受益人范畴中排除出去。因此，除了将外国人从信托契据中除名外，在一般意义上，所有外国人都必须从信托契据受益人范畴中排除出去。</p>
Absolute deadline 绝对期限	<p>Midnight on 31 December 2019</p> <p>2019 年 12 月 31 日午夜</p>
Realistic deadline 现实的截止日期	<p>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 21 December 2019, so if your trust deed needs to be amended you better act quickly.</p> <p>现在。您越早更改信托契约越好。大多数律师在年末比较繁忙，并于 2019 年 12 月 21 日开始休假，因此如果您需要修改信托契约，您最好迅速采取行动。</p>

Comparison table

比较表

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:

在新南威尔士州，外国人和非外国人（仅适用于住宅物业）印花税和土地税税率不同，因此可能需要更改信托契约。

NSW 新南威尔士州	Usual non-foreigner rate 非外国人税率	Foreigner rate 外国人税率
Stamp duty 印花税	5.5%	13.5%
Land tax 土地税	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.

上面的印花税率是按房产物业价值收取的（包括外国人的附加费）。相比之下，以上土地税的税率是根据未改良的土地价值收取的。

The above stamp duty rates could potentially apply to any property acquired by a trust before 31 December 2019 (and after 31 December 2019). The above land tax rates could apply to the 2017, 2018 and 2019 calendar years.

以上印花税率可能适用于信托在 2019 年 12 月 31 日之前（以及 2019 年 12 月 31 日之后）收购的任何财产。以上土地税率可能适用于 2017、2018 和 2019 日历年。

Many land-owning trustees may have already been informed about the changes by Revenue NSW to amend their trust deeds by 31 December 2019.

新南威尔士州税务局可能已通知许多土地托管人有关变更的内容，以便在 2019 年 12 月 31 日之前修改其信托契约。

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 2019, then a refund of stamp duty and land tax may be applied for to the Revenue NSW. If you like, batallion legal can help you with your application for a refund.

从 2016 年 6 月 21 日开始征收较高印花税或土地税之日起，那些先前已缴纳较高印花税或土地税的信托可申请退还较高税额。如果在 2019 年 12 月 31 日午夜之前修改信托契约，可向新南威尔士州税务局申请退还印花税和土地税。如果您愿意，**batalion legal** 可以帮助您申请退税。

Conclusion

结论

The changes proposed to the law regarding making changes to trust deeds have not yet been formally enacted into law. They are currently before NSW Parliament. Once the changes have passed through NSW Parliament though they will become effective from the date they receive Royal Assent. Considering we are nearing the end of the year, however, it is best to arrange for foreign person beneficiaries to be removed now from all discretionary trust deeds, that may own residential property in NSW in the recent past and in the future. While there is a possibility the changes may not pass this year at all, it is better to be safe than sorry and make changes to trust deeds as soon as possible.

关于更改信托契约的法律建议尚未正式颁布为法律。提案目前正在新南威尔士州议会等待决议。一旦新南威尔士州议会通过，它们将从收到皇家同意之日起生效。考虑到我们快要到年底了，最好是安排将外国人受益人从所有近来和将来可能在新南威尔士州拥有住宅物业的所有全权信托契约中删除。尽管提案可能不会在今年通过，但是安全起见，尽快更改信托契约比留下隐患会更好。