

Foreign surcharge provisions deemed inconsistent with tax treaties

22 February 2023

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NSW Revenue announced on 21 February that individuals from New Zealand, Finland, Germany and South Africa will no longer be liable to pay surcharge purchaser duty and surcharge land tax in relation to NSW residential property, due to inconsistencies with international tax treaties entered into between the Australian Government and those countries.

Surcharge purchaser duty is currently applied at a rate of 8% on top of any transfer duty payable on purchases of NSW residential property.

Foreign persons who own NSW residential property may also be liable for surcharge land tax, which is calculated as an additional surcharge based on the land value of the property. The surcharge is payable on top of any general rate of land tax payable and may apply even where general land tax is not payable. From 1 January 2023, the surcharge land tax rate has increased to 4% (previously 2%).

Individuals who are citizens of these countries and have paid surcharge purchaser duty or surcharge land tax on or after 1 July 2021 will be eligible for a refund of these amounts and any penalties or interest which may have applied in relation to these amounts from NSW Revenue.

In addition to individuals, foreign companies and trusts which have acquired NSW residential property may also be eligible for a refund of any surcharge purchaser duty or surcharge land tax paid if they were considered foreign persons because the interests were held in those entities by a person from New Zealand, Finland, Germany or South Africa.

The reasoning behind why these countries may now be excluded from the surcharge provisions relates to the inclusion of an article in their treaties that provides their citizens will not be subjected to taxation or other requirements which are more burdensome than the taxation or requirements for Australian citizens.

Interestingly, Australia's treaties with New Zealand, Finland, Germany and South Africa have been in effect well before 1 July 2021, which is the date NSW Revenue has adopted as the earliest date a taxpayer can request a refund.

Application to other states and territories

Victoria, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory all currently have similar foreign surcharge provisions that require foreign purchasers and owners of residential property to pay duty surcharge and/or land tax surcharge rates.

As yet, there have been no announcements from other states and territories as to whether they will seek to provide refunds of surcharge amounts to citizens of New Zealand, Finland, Germany and South Africa. This news will likely provide scope for the surcharge provisions to be challenged in future.

What to do if you are eligible?

NSW Revenue have stated they will proactively be contacting all taxpayers to whom refunds may apply. If you think you may be eligible for a refund, we strongly recommend initiating this process with NSW Revenue, rather than waiting for them to make contact.

If you have any questions in relation to this article or would like assistance with assessing your eligibility or requesting a refund, please contact Partner [Michael Patane](#), or a member of [HopgoodGanim's Taxation team](#).

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