

Revenue Ruling

Stamp Duties Act 1923

SDA012

FOREIGN OWNERSHIP SURCHARGE EX GRATIA RELIEF GUIDELINES FOR SIGNIFICANT DEVELOPMENTS

Introduction

Under the *Stamp Duties Act 1923* (the “Act”), foreign persons (being natural persons or corporations) or foreign trusts that acquire an interest in residential land in South Australia are required to pay a foreign ownership surcharge (“surcharge”) of 7% of the value of the interest in residential land.

Information regarding the surcharge can be found on the RevenueSA [foreign ownership surcharge](#) page.

The Treasurer has approved an *ex gratia* scheme to provide relief from the surcharge for acquisitions of residential land for the purpose of undertaking significant developments of new residential homes.

This Revenue Ruling sets out guidelines regarding the *ex gratia* scheme.

In this Revenue Ruling:

- ▶ an “acquisition” refers to a conveyance, transfer or acquisition of an interest or, in the case of an acquisition under Part 4 of the Act, a notional acquisition of an interest in residential land; and
- ▶ foreign persons (being natural persons or corporations) and foreign trusts are referred to as “foreign purchasers”.

Discussion

The Treasurer has approved, on a case-by-case basis, the provision of *ex gratia* relief from the surcharge on acquisitions of residential land for the purpose of undertaking significant developments of new residential homes which contribute to the supply of housing in South Australia, either through new developments or through redevelopment.

The provision of an *ex gratia* payment, equivalent only to the amount of the surcharge payable, will be contingent on the payment of the remaining duty that is otherwise payable on the acquisition.

Ex gratia relief from the surcharge will be provided if the following requirements are satisfied:

1. The development must be a significant development

It is a requirement that the acquisition will result in a “significant development.”

An acquisition will constitute a significant development if:

- ▶ the residential land is acquired for the purposes of undertaking a development or redevelopment of 20 or more allotments or lots to be used for residential purposes (“residential homes”); or
- ▶ the development or redevelopment will otherwise make a significant contribution to the region in which it is occurring (the “regional significance test”). Factors considered here may include:

- the nature of the development or redevelopment;
- the contribution made by the development or redevelopment to housing stock and infrastructure in the region;
- the economic and/or social impacts of the development or redevelopment for that region; and
- whether, in the absence of the development or redevelopment by the foreign purchaser, such outcomes for the region would otherwise eventuate.

The regional significance test does not apply to the Metropolitan Adelaide area (as defined in the *Development Act 1993*).

In establishing the number of residential homes developed or redeveloped it is not the number of homes acquired, but rather the number developed or redeveloped. For example, the development of 20 residential homes from a single allotment would count as 20 homes.

Evidence of a significant development may include Lands Titles Office evidence of lot creation, development approvals and project plans.

2. The foreign purchaser must meet its regulatory requirements

The foreign purchaser must meet its regulatory requirements, including those required under:

- ▶ the *Corporations Act 2001* or equivalent legislation that may be applicable to the foreign purchaser; and
- ▶ South Australian taxation laws and whether the foreign purchaser has any outstanding liabilities under those laws.

Examples of evidence that may be taken into account include:

- ▶ information sourced from the ASX or another securities exchange on a foreign purchaser; and
- ▶ Australian Securities & Investments Commission’s information on a foreign purchaser.

3. The foreign purchaser must meet any Foreign Investment Review Board requirements

The foreign purchaser must meet any Foreign Investment Review Board (FIRB) requirements regarding the acquisition of the residential land. Factors that may be taken into consideration include:

- ▶ the nature of the approval that has been provided by the FIRB; and
- ▶ whether the FIRB has imposed any conditions on the foreign purchaser and the nature of those conditions.

Examples of evidence that may be taken into account include:

- ▶ a copy of the FIRB approval and correspondence from the FIRB concerning FIRB compliance by the foreign purchaser; and



- ▶ where conditions apply to the FIRB approval, evidence the conditions have been met, or a statement of how the conditions will be met, will also be required.

How to apply

To apply for *ex gratia* relief from the surcharge, an application with supporting documents is to be lodged with RevenueSA for either:

- ▶ in principle pre-approval, with draft acquisition documents (e.g. draft sale and purchase agreement) and supporting information; or
- ▶ final *ex gratia* approval, with a copy of any in principle pre-approval (if applicable), executed acquisition documents, other documents required for an assessment of duty on the acquisition and supporting information.

An application should be addressed to:

stamps@sa.gov.au

RevenueSA
GPO Box 1353
ADELAIDE SA 5001

Changes of circumstance

Any *ex gratia* relief provided in relation to an acquisition is subject to a condition that either the applicant or recipient will advise RevenueSA in writing if:

- ▶ the actual acquisition, development or redevelopment, or any circumstances relating thereto, differs materially from the proposed acquisition, development or redevelopment, or any circumstances relating thereto, as specified in the *ex gratia* relief application; or
- ▶ any information relevant to the acquisition, development or redevelopment, or any circumstances relating thereto, differs materially from the information specified in the *ex gratia* relief application.

Example

An *ex gratia* relief application advises that a proposed acquisition will result in the development of 20 residential homes. Following the provision of *ex gratia* relief and the acquisition, it becomes apparent to the recipient of the relief (the developer), that only 15 residential homes will be developed. In view of the development differing materially from the proposed development, the developer must advise RevenueSA in writing accordingly.

RevenueSA reserves the right to recover any *ex gratia* payment where the applicant or recipient does not comply with any of the above conditions (e.g. a development materially differs from what was originally intended).

Further Information

RevenueSA Online Participants can refer to the [Stamp Duty Document Guide \(Self Determination\)](#) for further information and obligations if self-stamping a document on RevenueSA Online.

Website www.revenuesa.sa.gov.au

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Telephone (08) 8226 3750

History

This Revenue Ruling is effective from 7 December 2018.

This is the first Revenue Ruling issued on this topic.

Julie Holmes
COMMISSIONER OF STATE TAXATION

7 December 2018