

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 at www.revenuesa.sa.gov.au/FOS.

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 or the foreign purchaser must be a significant developer

It is a requirement that either:

- ▶ the acquisition will result in a “significant development”; or
- ▶ the foreign purchaser be a “significant developer”.

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 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*).

A foreign purchaser will be a significant developer if they acquire land (including residential and non-residential land) for the purposes of developing or redeveloping 20 or more residential homes in a year within South Australia. The year to be considered will be a 12 month period that includes the dates of the acquisitions, with averaging for a maximum of five years allowed. Subject to meeting the requirements for the provision of relief, a significant developer will be eligible for relief for surcharge amounts paid in a 12 month period prior to applying for relief.

Example

An acquisition of residential land will result in the development of 12 residential homes. One month prior to the acquisition, the foreign purchaser elsewhere acquired non-residential land to develop two other residential homes and will elsewhere acquire residential land to develop a further six residential homes within nine months following the acquisition.

Accordingly, the foreign purchaser will have acquired in one year land for the purposes of developing 20 or more residential homes and will be eligible for relief on all the acquisitions. Subject to meeting the requirements for relief, the foreign purchaser will be eligible for relief for any surcharge amounts paid prior to applying for relief.

In establishing the number of residential homes developed or redeveloped in any of the above contexts:

- a) In calculating the number of residential homes, it is not the number of land acquisitions, but rather the number of residential homes to be developed or redeveloped. For example, the development of 20 residential homes from a single lot would count as 20 residential homes.
- b) The advised number of residential homes to be developed or redeveloped within a timeframe can be included, even if the specific development or redevelopment does not complete or commence in the year. If projected residential homes developed or redeveloped in the same development

or redevelopment are relied upon in subsequent applications for relief for other acquisitions, the Treasurer may take into account the actual number of developments or redevelopments in considering whether the average development or redevelopment of 20 residential homes per year is in fact achieved.

- c) For the purposes of being considered a significant developer, if a foreign purchaser is wholly owned by a parent entity, then developments or redevelopments within the required one year timeframe by the parent entity and/or a wholly owned entities of the parent entity may also be included in calculating the number of residential homes.
- d) Other than the cases above, only developments or redevelopments in which the foreign purchaser has a direct ownership interest in the land developed or redeveloped are to be counted.

Evidence of a development or developer being significant 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

Email stamps@sa.gov.au

Telephone (08) 8226 3750

History

This Revenue Ruling is effective from 29 January 2020 and replaces:

Document	Issue Date
SDA012 [V1]	7 December 2018

Julie Holmes
 COMMISSIONER OF STATE TAXATION

29 January 2020