



Avoid Surcharge Land Tax in NSW

Exclude foreign beneficiaries from your discretionary trust.

What is surcharge land tax?

In NSW, **land tax** is a tax on land you own at midnight on 31 December of the previous year.

Surcharge land tax applies to residential land owned by a foreign person at midnight on 31 December of the previous year. Revenue NSW administers and collects land tax. There have been a lot of major reforms to super in recent times.

Why is it relevant to my discretionary trust?

Many people own land through a discretionary trust.

However, discretionary trusts are usually considered to be **foreign** for land tax purposes. Why? Because **every** beneficiary that can potentially benefit from the trust is deemed to have the maximum percentage interest in the income or assets of the trust that may potentially be distributed by the trustee to them. This covers **all** beneficiaries of the trust – not just those beneficiaries who are specifically named.

Therefore, if any beneficiary is a foreign person, the trust will be considered foreign for land tax purposes. Depending on the definition of 'beneficiary' in your trust deed, this might include a British cousin, a company incorporated in Singapore that your uncle owns shares in or a foreign charity.

Who is a foreign person?

For land tax purposes, a person is a **foreign person** if they come within the meaning of 'foreign person' as it is defined in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth), as modified by section 104J of the *Duties Act 1997* (NSW) (which specifically excludes Australian citizens from the definition of foreign person, even if they are not residing in Australia).

What next?

We can help you to avoid the surcharge by amending your trust deed to exclude foreign beneficiaries. We know that you might be worried about amending your trust deed. Rest assured that we are trust and tax experts. Our tailored documents minimise the risk of you experiencing any unexpected consequences as a result of the changes to your deed.

If you fail to confirm changes to your trust with Revenue NSW by 31 December, your discretionary trust may be assessed as a foreign trust and be liable for surcharge land tax – a liability that would be applicable to both future and prior year land holdings.

If you would like to speak to someone about amending your trust deed, call us on **1300 654 590** or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.