

## DRAFT SECOND READING SPEECH

HON PETER GUTWEIN MP

### *Duties Amendment Bill 2019*

*\*check Hansard for delivery\**

Madam Speaker, the Government introduced the Foreign Investor Duty Surcharge in 2018 on acquisitions of residential and primary production property to address the increasing demand from foreign investors for Tasmanian property and to assist local buyers to remain competitive in the housing market.

A year later, the Government has undertaken a review of the definition of foreign person in the *Duties Act 2001* as it relates to the surcharge to ensure that it is consistent with its original policy intent. As part of this review, the Government consulted with key industry stakeholders. The Government has considered the feedback provided and has agreed to amend a number of provisions relating to the definition of foreign person.

Madam Speaker, this Bill amends the *Duties Act 2001* to better reflect the policy intent of the Foreign Investor Duty Surcharge. It will help ensure that only persons, companies and trusts that are genuinely foreign are charged the surcharge.

The changes to the definition of foreign person will apply retrospectively to the start date of the surcharge on 1 July 2018. Taxpayers that are affected by the amendments and have previously paid the surcharge will have the opportunity to apply to the Commissioner of State Revenue for a refund.

Madam Speaker, the first amendment to the Foreign Investor Duty Surcharge provisions is to allow a discretionary trust to be retrospectively considered non-foreign for the purposes of determining a surcharge liability if the trust's deed is amended such that the trustee is not able to

distribute 50 per cent or more of the trust's capital to foreign beneficiaries. The trust deed amendment must be made within six months of the provision commencing or within six months of a transaction on an ongoing basis.

This important amendment will mean that discretionary trusts that inadvertently meet or have met the definition of a foreign trust, including those that have no named foreign beneficiaries, will have the opportunity to amend their trust deed and apply to receive a refund of the surcharge.

Madam Speaker, the Bill also provides the Commissioner with the discretion to determine that a person who would otherwise be considered foreign, is not a foreign person and is therefore not subject to the Foreign Investor Duty Surcharge. As part of these discretionary powers, the Commissioner will have the authority to publish circumstances in which a person will not be considered foreign. A person who has paid the surcharge and who meets the circumstances published by the Commissioner will be able to apply to be considered non-foreign for the purposes of a transaction and receive a refund.

This amendment will afford sufficient flexibility to the Commissioner to ensure that the policy intent of the surcharge is achieved and buyers who should reasonably be considered as non-foreign are classified correctly. It is contemplated that this may include circumstances such as special category visa holding New Zealand citizens that temporarily leave Australia.

Madam Speaker, the Bill provides that the Foreign Investor Duty Surcharge is not payable by, or is to be refunded to, the foreign spouse of a non-foreign individual for the purchase of their principal residence home. A similar provision is also provided in situations where a foreign person and their non-foreign spouse purchase vacant residential land and establish their principal residence on the property. Both provisions are subject to eligibility criteria.

Madam Speaker, the Bill also allows a refund of the Foreign Investor Duty Surcharge if a foreign natural person ceases to be foreign by virtue of becoming an Australian citizen or permanent resident within six months of a transaction for which the surcharge was paid.

This amendment will provide retrospective relief from the surcharge to persons that become Australian citizens or permanent residents within six months of incurring the surcharge.

Madam Speaker, the Bill also increases the rates of the Foreign Investor Duty Surcharge to 8 per cent for residential property and 1.5 per cent for primary production property acquired by foreign persons.

The increased surcharge rates will apply to transactions entered into on or after 1 April 2020. However, for transactions that attract the surcharge and are entered into prior to 1 April 2020, the current, lower surcharge rate will apply.

The Government considers that these rates are fair, reasonable and are consistent with surcharges in other jurisdictions. While the Government welcomes foreign investment in Tasmania, it is important to ensure that foreign investors in Tasmania contribute their fair share and that the property market remains accessible to Tasmanians.

Madam Speaker, I commend this Bill to the House.