

Key Australian taxation changes for New Zealand citizens.

Are you a New Zealand citizen (or member of a related entity) that has purchased residential-related property or land in New South Wales (NSW)? Are you a New Zealand citizen that is considering becoming an Australian citizen?

If so, there are certain new/revised measures and interpretations of the law and associated guidance which may have a significant impact on your Australian taxation position.

First, the good news for NSW land

If you are a New Zealand citizen, effective immediately, you will no longer have to pay:

- surcharge purchaser duty; and
- surcharge land tax,

on the purchase of residential-related property or certain land in New South Wales, Australia.

These changes came about through a determination by Revenue NSW that the surcharge purchaser duty and land tax legislation and provisions in NSW were inconsistent with the international tax treaty entered into by the Australian Government with New Zealand.

Broader application

These changes are not applicable just to individuals i.e. corporations, trusts or partnership purchase structures may also be affected.

Further, if you have already paid surcharge purchaser duty and/or surcharge land tax refunds on or after 1 July 2021 on applicable transactions, you may be eligible for a refund.

Other jurisdictions

It is noted for completeness that these surcharge purchaser duty and land tax concessions also apply to citizens of Finland, Germany and South Africa who enter into such transactions.

What is the less positive news?

On 22 April 2023, the Australian Government announced a new direct pathway to Australian citizenship for eligible New Zealand citizens.

These were welcome changes after certain amendments in 2001 that made it more difficult for New Zealanders in Australia to attain citizenship.

Whilst this is certainly welcome news, the less positive news comes in the form of changes that have the potential to trigger significant Australian (and potentially, New Zealand) residency and taxation implications for affected individuals.

Some tax considerations

The change in Australian citizenship pathways may have a wide-ranging spectrum of Australian income tax implications such as and including:

- affected individuals may go from being temporary residents to Australian residents for Australian taxation purposes.
 - As a result, the tax profile and methodology for preparing and lodging income tax returns will change for these individuals.
 - There is potential for the loss of reporting and financial concessions available to temporary residents e.g. a requirement to report New Zealand or other worldwide income in the Australian tax return (e.g. trust income, rental income from New Zealand property, etc) may arise;
- capital gains tax (CGT) implications including the use of the CGT discount, main residence exemption, etc;
- the potential requirement to report and pay tax on New Zealand trust distributions;
- the potential ability for New Zealand trusts to become Australian resident trusts for income tax purposes;
- controlled foreign company and section 99B ITAA36 'receipt of trust income not previously subject to tax' issues;
- etc.

The above is a small subset of potential income tax implications that may arise and as such, careful consideration of these implications should be undertaken by affected New Zealand citizens if they are considering becoming Australian citizens.

How we help clients

If you would like to discuss these measures or the implications of the measures for dual New Zealand and Australian projects, operations or activities, or your personal circumstances, please contact the MCW team for a discussion.

Mindful that taxation should never be the driver of a commercial or personal decision, we are also able to assist with the following issues that may be key considerations if you are a New Zealand citizen:

- Financial modelling and legal/commercial considerations of the application of surcharge purchaser duty and/or surcharge land tax on your current or proposed NSW transactions or projects.
- On current or future NSW transactions, ensuring that surcharge purchaser duty or land tax considerations are adequately considered and advice on whether we can achieve the exemption.
- Similar analysis for other States to assess whether relief of the surcharge purchaser duty and/or surcharge land tax may be available.
- Taxation (and associated) implications of becoming an Australian citizen for:
 - you;
 - your family;
 - your activities and transactions;
 - your trusts, other related entities and associated activities;
- Non-tax considerations (e.g. personal, legal, property, commercial, etc).

With a market-leading taxation law practice, Team MCW would welcome an opportunity to assist you on any aspects of your dual New Zealand and Australian projects, operations or activities, or personal circumstances.