



How surcharges can apply to discretionary trusts

	QLD		NSW	VIC		ACT	SA	WA	TAS	
	Absentee (land tax) ¹	Foreign person (land tax and duty)	(land tax and duty)	Foreign purchaser (duty)	Absentee (land tax)	(Land tax)	(Duty)	(Duty)	(Duty)	(Land tax)
Type of land	All	All for land tax, residential for duty	Residential	Residential	All	Residential	Residential	Residential	Residential & primary production	Residential & primary production
Clawback of duty if intend to change to residential	N/A	No	No	Yes	N/A	N/A	No	No	Yes	N/A
Clawback of duty if trust becomes foreign	N/A	Yes	No	No	N/A	N/A	Yes	No	Yes	N/A
Person who can make the trust foreign /absentee	Individual	Taker(s) in default with 50% or more interest	Any named or potential beneficiary	Trustee ³ or any named or potential capital Beneficiary	Any named beneficiary ⁴	Any named capital beneficiary	Trustee, appointor, named beneficiary or taker in default	Trustee ⁵ or taker(s) in default with 50% or more interest	Named or potential capital beneficiary ⁶	TBD
Excluded beneficiary clause required to be irrevocable	N/A	No	Not until Bill commences ⁷ in current form	Not currently required on website	N/A	N/A	N/A	N/A	N/A	TBD
Residency requirement not to be foreign ⁸	Ordinarily resides in Australia	No	200 days	No	Ordinarily resides in Australia	No	No	No	No	TBD
	OR			OR						
Need to be in Australia on taxing date ⁹	Yes	Yes	No	N/A	Yes	N/A	N/A	N/A	N/A	TBD
	AND			AND						
Residency requirement	More than 6 months	N/A	N/A	N/A	More than 6 months	N/A	N/A	N/A	N/A	TBD

¹ Does not apply to trustees, but is included to demonstrate the different residency rules in Qld.

² Yet to commence.

³ The Commissioner can also determine a person has a significant interest if they have sufficient capacity to determine or influence the outcome of decisions about the administration and conduct of the trust even if the practice or behaviour involves a breach of trust.

⁴ An "absentee corporation" is separately included in the definition of absentee. Despite that, we understand that the State Revenue Office does not separately test whether a trustee corporation as an absentee.

⁵ Includes a person in a position to influence, either directly or indirectly, the vesting of capital or income of the trust.

⁶ Note that all trusts are taken to be foreign unless the Commissioner is satisfied otherwise, unless and until the Duties Amendment Bill 2019 (Tas) is passed in its current form, in which case taxpayers will have 6 months to change the trust deed (if it is a foreign trust at the time) to limit capital distributions to foreign person(s) to less than 50% of the trust capital.

⁷ State Revenue Legislation Further Amendment Bill 2019 (NSW).

⁸ Residency test does not apply to Australian citizens (all jurisdictions), permanent residents (other than NSW) or NZ citizens with a special category Visa (other than Qld absentee and NSW). Residency also does not prevent a non-permanent resident from being foreign (other than Qld absentee, Vic absentee and NSW).

⁹ Practical requirement for all NZ citizens with a special category Visa (other than NSW).