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What You Need to Focus on Before Year End!**Trusts Owning Property In NSW**

The 31st December, 2020 is a very important deadline for owners of NSW residential property. If your trust deed has not been amended, by this date, to exclude foreign beneficiaries then you are locked in, it will be forever be considered a foreign trust and subject to pay surcharge stamp duty (additional 8% on the purchase price) and land tax (additional 2% each year) on residential property in NSW. An amendment to a deed after 31st December, 2020 will not be effective. Never risk using an old trust deed to buy residential property in NSW. Generally, it is a better idea to set up a new trust for every property you buy, anyway.

Trusts that own property in NSW should have already received a letter from the state revenue office warning them to change their deed as this law has been around since 2016, it is just the final date for amendment that is coming up. We originally advised clients about this in Newsflash 317.

If you own NSW residential property in a discretionary trust and haven't yet done so please contact us or your solicitor urgently. Deeds created in the last couple of years should already have the necessary clauses

The problem is that by default, any discretionary trust that owns residential property in NSW, will be considered a foreign trust, unless a trust deed specifically prevents a foreign person from being a beneficiary of the trust.

It is not just enough to exclude any foreign resident from being a beneficiary there must be a clause stating that the deed can never be amended to include a foreign beneficiary in the future.

A foreign resident for this purpose has nothing to do with tax residency it is more about citizenship and right to live here. There is a carve out for New Zealanders on certain visas and an Australian citizen living overseas is not caught out as a foreigner. For full details of a foreigner for this purpose go to <https://www.revenue.nsw.gov.au/help-centre/resources-library/g009>

This problem extends to companies and unit trusts, that own NSW residential property, if their shares or units are owned by a discretionary trust.

Blog - FBT & Christmas Parties

Consider paying your staff a Christmas bonus and allow them to fund their own Christmas party. Looks like a win win unless you are the ATO.

<https://bantacs.com.au/Jblog/tax-on-christmas-parties/#more-389>

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