

# ALERT

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## ADDITIONAL STAMP DUTY ON THE PURCHASE OF RENTAL PROPERTIES IN DISCRETIONARY TRUSTS IN VICTORIA

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Recent changes to the stamp duty rules in Victoria may result in Victorian families paying an additional 7% stamp duty on the purchase of rental properties in a discretionary trust structure.

The above is, we would submit, an inadvertent flow-on of the relatively recent additional stamp duty changes on the purchase of residential properties in Victoria by foreign purchasers. You may recall that the Victorian *Duties Act* 2000, ("the Act") was amended in 2015 so as to charge additional stamp duty for the purchase of residential properties in Victoria by non-resident purchasers. What has emerged of late from these rules is that where Australian discretionary trusts, with the ability to distribute to a non-resident beneficiary, (i.e. typically, a distant relative who lives overseas), may also result in the Australian discretionary trust paying the additional 7% duty on the purchase of a residential property in Victoria.

How is this possible you may ask?

Without going into all the technical details, the mere fact that the Australian discretionary trust has the option of distributing to a non-resident beneficiary is sufficient to trigger the additional duty in Victoria. We have confirmed this in discussions with the State Revenue Office of Victoria ("SRO").

Australian discretionary trusts can apply to the SRO to exercise their discretion to apply the lower rate of duty on the acquisition of a residential property in Victoria. In very broad terms, in order for the SRO to exercise their discretion, (and again there is a lot of detail required here), it will be necessary to show that the non-resident beneficiary has no control, influence, or has not contributed in any way shape or form to the acquisition of the relevant Victorian residential property purchased within the discretionary trust.

We believe that a safeguard is to simply amend the discretionary trust deed - assuming you are intending to buy a residential property, (whether as a rental property, or even as the principal place of residence). The amendment required will need to state that:

- a non-resident beneficiary (whether an individual, a trust or corporation), will be restricted to a maximum distribution of no more than 50% of the capital of the trust; and
- such an amendment is an irrevocable change to the trust deed.

These rules apply from 1 July 2015, such that there may already be situations where the foreign purchaser additional duty rules have been triggered, (because, say, a rental property in Victoria has been purchased by a discretionary trust since then and the relevant family has a non-resident relative, who is a potential beneficiary of the trust).

We would strongly recommend that clients considering the acquisition of rental properties in Victoria through an Australian discretionary trust, (whether an existing trust, or a new trust), first ensure that the trust deed is amended such that the Victorian foreign purchaser additional duty rules do not apply. In other words, to ensure that an additional 7% stamp duty liability is *not* inadvertently triggered.

### *Disclaimer*

*The statements herein are not intended to amount to advice and should not be relied upon without first obtaining specific*

*advice applicable to your situation.*

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