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Public Ruling Duties Act:

AFAD RESIDENTIAL LAND

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. Under Chapter 4 of the *Duties Act 2001* (the Duties Act), an additional amount of duty (additional foreign acquirer duty, or AFAD) applies to direct or indirect transactions in land that are liable to transfer duty, landholder duty and corporate trustee duty where the land is 'AFAD residential land'¹ and the acquirer under the transaction is a foreign person.² An exemption applies for specified foreign retirees in certain circumstances.³
2. AFAD residential land is land in Queensland that is or will be used solely or primarily for residential purposes, where the building or part of the building that is or will be used for the residential purposes is designed or approved by a local government for human habitation by a single family unit.
3. This public ruling clarifies the Commissioner's interpretation of 'solely or primarily used for residential purposes' and 'designed or approved by a local government for human habitation by a single family unit'.
4. Whether land is AFAD residential land will be considered on a per lot basis. That is, each piece of land the subject of the transaction is tested separately.

For example, if five lots are being acquired by a developer for a mixed use development, each lot the subject of the transaction on which AFAD applies will be considered separately as to whether it is AFAD residential land. If, for example, one of the five lots will be wholly dedicated to commercial premises, then that lot will not be AFAD residential land, even if the other four are.

¹ Section 232 of the Duties Act

² Section 240 of the Duties Act

³ Section 246 of the Duties Act

Ruling and explanation

Residential purposes

5. For AFAD, use for 'residential purposes' involves consideration of the use or intended use of the land for normal home living (not necessarily by the acquirer), in contrast to other uses such as business or commercial purposes. Relevant factors may include, but are not limited to:
 - (a) the zoning of the land
 - (b) whether any buildings or parts of buildings are designed or approved by a local government for human habitation by a single family unit
 - (c) the degree of permanence of the use
 - (d) whether the use is self-contained (for example, contains bathroom and kitchen facilities).

Solely or primarily

6. 'Solely' and 'primarily' are not defined for the purposes of Chapter 4, Part 1 of the Duties Act, and take their ordinary meaning.
7. Land is or will be 'solely' used for residential purposes if the land is or will be 'exclusively' or 'only' used for those purposes.
8. Land is or will be 'primarily' used for residential purposes if the land is or will be 'mainly' or 'principally' used for those purposes.
9. In determining what the 'primary or sole' use of land is or will be, relevant factors may include, but are not limited to:
 - (a) the overall nature and use, or intended use, of the land, including any buildings
 - (b) the proportion of the area that the land and buildings that is or will be used for residential purposes bears to the total area of the land and buildings; for example, the proportion of the gross floor area of a building that is capable of being used for residential purposes
 - (c) the proportion of the construction costs attributable to the land and any buildings that are or will be used for residential purposes compared to total construction costs.
10. The relevance and weight given to each factor will depend on the facts and circumstances of each case.

Building or part of a building designed or approved by local government for human habitation by a single family unit

11. A building or part of a building that is 'designed or approved by a local government for human habitation by a single family unit' refers to self-contained dwellings that are designed or approved for human habitation by a single family unit.
12. This includes a residential building or a part of a residential building in a Priority Development Area—even though buildings in those areas are approved by the Queensland Government—if it is designed for human habitation by a single family unit.⁴
13. The term 'single family unit' will take its ordinary meaning, based on the range of arrangements that would fall under that term in the reasonable expectations of the general public.

Examples of application of AFAD residential land

14. Common examples of where the definition of AFAD residential land will apply include:
 - (a) established homes and apartments (including self-contained studio apartments)
 - (b) vacant land on which one or more homes or apartments will be built
 - (c) land for development for residential use (such as smaller unit block developments, housing subdivisions, and major developments with a residential component)
 - (d) land with buildings to be refurbished, renovated or extended for residential use, such as a disused warehouse that the developer intends to refurbish to create residential apartments or a commercial block that is to be demolished for residential development.
15. Examples of land that will not be considered to fall within the definition of AFAD residential land include:
 - (a) land used for short-term accommodation, such as a hotel or motel
 - (b) dormitory-style student accommodation.
16. Other types of residential property (such as retirement villages, manufactured home parks and student accommodation other than dormitory-style student accommodation) may be AFAD residential land if the use of that property meets the residential test. Whether this test is met will turn on the facts of the matter, and be considered on a case-by-case basis.

Is or will be

17. Whether or not land is AFAD residential land is tested at the time of the potentially liable transaction, on the objectively ascertainable present or future use of the land in the hands of the acquirer (as the liable party).
18. If, for example, at the time of the acquisition of land that is not then residential, there is evidence that the acquirer has plans to develop the land at a future date so that it will become AFAD

⁴ Section 232(b)(i), (iii), (iv) and (v) of the Duties Act

residential land, the transaction may be liable. The timeframe within which that status eventuates is not limited.

19. The question of whether the land 'will be' AFAD residential land is based on the known circumstances at the time of the transaction and is a matter of fact and degree in the individual case. Relevant factors may include, but are not limited to:
- (a) proximity of the time within which the land 'will be' used in a relevant sense
 - (b) the progression of steps already taken at the time of the transaction towards the land being developed for residential purposes.

Date of effect

20. This public ruling takes effect from 1 January 2023.

Amy Rosanowski
Acting Commissioner of State Revenue
Date of issue: 13 December 2022

References

Public Ruling	Issued	Dates of effect	
		From	To
DA232.1.2	13 December 2022	1 January 2023	27 August 2023
DA232.1.1	28 September 2016	1 October 2016	31 December 2022