Changing landscape for foreign buyers of Australian property

AUSTRALIA

John Corcoran
Russell Kennedy Lawyers, Melbourne
jcorcoran@rk.com.au

Lillian Graystone
Russell Kennedy Lawyers, Melbourne
lgraystone@rk.com.au

Recent changes to Australian laws and policies have led to a five-year low in foreign investment in the Australian property market. Australian federal and state governments have moved away from policies encouraging foreign investment in property in favour of those that attempt to reduce residential inflation and high vacancy rates. It is important that foreign purchasers of property in Australia are aware of these developments.

Vacant residential property and land tax

The Australian Federal Government imposes an annual vacancy fee on residential dwellings purchased by foreign investors after 9 May 2017 that are not residentially occupied for more than six months a year.

On top of that, state governments have increased land tax, which is calculated as a percentage of the total taxable value of a person's land holdings, for vacant residential property and foreign buyers.

In Victoria, vacant residential properties attract an absentee owner land tax surcharge of 1.5 per cent and (if in Melbourne's inner and middle suburbs) vacant residential land tax from 1 January 2018.

In New South Wales, the land tax surcharge for foreign owners of residential land has increased from 0.75 to two per cent for the 2018 land tax year.

Increases to land transfer (stamp) duty

Both the New South Wales and Victorian governments have increased stamp duty for foreign purchasers of residential property to reduce housing inflation.

In New South Wales, agreements entered into by foreign purchasers on or after 1 July 2017 attract an increase in surcharge duty from four to eight per cent of the dutiable value of the property.

Foreign purchasers of residential property in Victoria must pay the State Revenue Office stamp duty of up to 12.5 per cent (ie, Foreign Purchaser Additional Duty of seven per cent on top of the maximum standard land transfer duty rate of 5.5 per cent). As of 1 July 2017, Victoria removed the stamp duty concession for off-the-plan purchases previously available to foreign investors.

Foreign resident capital gains withholding regime

Under the foreign resident capital gains withholding regime, when a foreign resident sells Australian property with a market value of at least AU$750k after 30 June 2017 the purchaser must withhold and remit 12.5 per cent of the purchase price to the Australian Tax Office. This regime was introduced to improve public perception that foreign vendors of Australian property are complying with their capital gains tax liabilities.

Foreign Investment Review Board

The Foreign Investment Review Board process continues to be the most restrictive element of Australia's foreign investment regime, limiting foreign investment in residential property to new (as opposed to established) housing.

Conclusion

In the last year, a number of changes to Australia's federal and state laws have increased the tax liability of, and compliance requirements for, foreign investors of residential property. While foreign investors still account for a significant number of new home purchases in Australia, this changing landscape is having an impact on the way foreign investors engage with the market.