



**Government
of South Australia**

TRS19D1360

Hon Stephen Mullighan MP
Member for Lee
Unit 1, 62 Semaphore Road
SEMAPHORE SA 5019

Treasurer
Level 8
State Administration Centre
200 Victoria Square
Adelaide SA 5000
GPO Box 2264
Adelaide SA 5001
DX 56203 Victoria Square
Tel 08 8226 1866
treasurer.dtf@sa.gov.au

lee@parliament.sa.gov.au


Dear Mr Mullighan

APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 1991

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 21 May 2019.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘Stamp duty – Foreign Ownership Surcharge – Administrative processes’ as described on the Objective document management system, between 12 July 2018 and 21 May 2019.”

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 26 May 2019 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 1 document was identified as answering the terms of your application.

I grant you access in part to 1 document, a copy of which is enclosed.

Document Released in Part

Document 1 is a briefing prepared by DTF for my information, about the administrative processes arising from the foreign ownership surcharge.

Clause 12(1) of Schedule 1 to the FOI Act states that a document is exempt from release if ‘it contains matter the disclosure of which would constitute an offence against an Act’. This document contains information obtained in relation to the administration or enforcement of the *Taxation Administration Act 1996* (the TAA), the release of which would be an offence in accordance with Part 9, Division 3, Clause 77 of the TAA.

This document also contains information that was obtained in relation to the administration or enforcement of the *Emergency Services Funding Act 1998* (the ESLF Act), the release of which would be an offence in accordance with Part 3, Subdivision 6, Clause 22I of the ESLF Act.

I have therefore determined this document is partially exempt pursuant to clause 12(1).

Exemptions

Clause 12 – Secrecy Provisions

(1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

Clause 77 of the TAA – Prohibition of certain disclosures by tax officers

A person who is or has been a tax officer must not disclose any information obtained under or in relation to the administration or enforcement of a taxation law, except as permitted by this Part.

Clause 22I of the ESLF Act – Prohibition of certain disclosures by relevant persons

A relevant person must not disclose information obtained under or in relation to the administration or enforcement of this Division, except as permitted by this Subdivision.

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the *Freedom of Information Act 1991*.

In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, Section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, Section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely

A handwritten signature in black ink that reads "Rob Lucas". The signature is written in a cursive style with a large initial 'R'.

Hon Rob Lucas MLC
Principal Officer

16 November 2019

RELEASE IN PART

MINUTE

F

FILED	19/10/18
FILE NO.	118/10/13
FILED AT	11/10/2018



MINUTES forming ENCLOSURE

File

To The Treasurer

STAMP DUTY – FOREIGN OWNERSHIP SURCHARGE – ADMINISTRATIVE PROCESSES

Timing: ROUTINE — For information only

Recommendations/Issues: It is recommended that you:

- note the information below in relation to the administrative processes arising from the foreign ownership surcharge.

Noted

Hon Rob Lucas MLC
Treasurer

25/10/2018

Key Points:

- Your office has advised that you have requested a briefing regarding the administrative processes arising from the foreign ownership surcharge (the "surcharge").
- The *Stamp Duty (Foreign Ownership Surcharge) Bill 2017* introduced the surcharge under the *Stamp Duties Act 1923* (the "Act") on foreign purchasers who acquire an interest in South Australian residential property.
- In addition to the normal stamp duty that is payable, from 1 January 2018, foreign purchasers are required to pay a surcharge of 7% of the value of the property.
- A separate minute provides an overview of the legislative operation of the Act (refer to TRS18D1747, which arises from your upcoming meeting with [REDACTED]).
- RevenueSA has recently introduced 'RevenueSA Online', an Internet based system available at <https://www.revenuesaonline.sa.gov.au/>.
- Conveyancers, accountants, lawyers and other representatives ("Participants") are encouraged to use RevenueSA Online to submit self-assessed instruments for recording and review by RevenueSA, and enable



the payment of any applicable stamp duty (including the surcharge) pursuant to the Act.

- Upon accessing RevenueSA Online, Participants are required to identify the property the subject of the transaction and whether they are representing the purchaser, vendor or both.
- Where the Participant represents the purchaser, they are then required to enter details of the purchaser(s). This process requires an acknowledgement of the purchaser's nationality/country of incorporation. Explanatory notes and links to RevenueSA's surcharge webpage guide the Participant through this self-assessment process.
- Where a foreign ownership has been identified, the surcharge will be assessed and added to the other duty assessed on the instrument. The Participant is then required to remit the total funds to RevenueSA in order to have the document appropriately recognised as a stamped instrument.
- If a Participant wishes to gain RevenueSA's opinion on an acquisition of an interest (i.e. not self-determine due to the perceived complexity of the transaction), they are able to seek RevenueSA's opinion through RevenueSA Online. In this instance, the Assessment and Taxpayer Assistance unit ("ATA") are electronically advised that an opinion has been lodged. ATA proceed to access RevenueSA Online as an internal user and confirm the submission of all necessary information. ATA then confirm or amend the submitted opinion and assess the transaction.
- Attached for your information are screen shots of the RevenueSA Online system which Participants are presented with for completion in respect to ownership details which enliven, where necessary, the application of the surcharge.
- Participants are also able to physically lodge documents with RevenueSA, albeit this rarely occurs and more so with respect to land holder transactions (i.e. acquisitions of an interest in a land holding entity, where the entity has a direct or indirect interest in residential property). In such instances:
 - the lodgement form accompanying the documents lodged for assessment requires a signed acknowledgement of whether the surcharge applies to the transaction; and
 - ATA will, if required, request any further relevant material to conduct the assessment inclusive of the surcharge e.g. who are the foreign purchasers, and what percentage in the entity such purchasers have acquired through the relevant transaction.
- RevenueSA's Compliance Services unit will conduct appropriately targeted programs to ensure the accuracy of those self-determined and ATA assessed transactions.

Electronically approved by

Julie Holmes
A/COMMISSIONER OF STATE TAXATION

19 / 10 / 2018

Contact Officer:	Glenn Lodge
Telephone:	8226 0588
Email address:	glenn.lodge@sa.gov.au

ATTACHMENT

The Participant commences a workspace in RevenueSA Online and is required to provide Property Details (representing the purchaser)

Workspace

Please enter the Property Details and either the Consideration or Market Value. If a workspace exists you will be joined. If there is no matching workspace, a new one will be created.

Title Prefix: [dropdown] Volume: [dropdown] Folio: [dropdown] **Search**

Address: [dropdown]

Property Type: Residential Non-Residential

Consideration (\$): 500,000

Market Value (\$): 450,000

No matching workspace was found. Select the party you represent and Continue to create a new workspace.

I Represent: Purchaser Vendor Vendor and Purchaser

Settlement Date: 11/10/2018 **Go**

Continue

The Participant is then required to add details for each purchaser.

Where the purchaser is Australian, no further information is required and the Participant continues within the workspace to process the self-determined instrument.

Purchaser

Property Type: Residential

Given Names: Test

Family Name: User

Capacity: [dropdown]

Date of Birth: [dropdown]

Nationality or Citizenship: AUSTRALIA

Country of Tax Residence: [dropdown]

Where the Participant identifies a purchaser as a foreign party, depending on the nature of the purchaser, a number of different screens are presented for completion as reflected below.

Individual - Overseas (not New Zealand)

Purchaser

Entity Type: Individual

Given Names: Test

Family Name: User

Capacity: [dropdown]

Date of Birth: [dropdown]

Nationality or Citizenship: CANADA

Resident in Previous Residence? Yes No

Party Interest Transferred: [dropdown]

Country of Tax Residence: [dropdown]

Physically Present: [dropdown]

Go

If the purchaser is a holder of a permanent visa under the provisions of Section 24(1) of the Migration Act 1958 (2007) then you are deemed to be Australian for the purposes of this question.

You should indicate that the purchaser is not liable for the Foreign Ownership Surcharge (FOS) by default on the Foreign Ownership Surcharge is applied please refer to the RevenueSA website.

Individual - New Zealand

Individual	
Entity Type:	Individual
Country:	0
Family Name:	0
Given Name:	0
Date of Birth:	0
Nationality or Citizenship:	NEW ZEALAND
Special Category (NZR):	<input type="radio"/> Yes <input type="radio"/> No
Party Interest Transferred:	0
Country of Tax Residence:	0
Residence Number:	0
VIN Number:	0
Overseas Income:	0
Overseas Assets:	0
Overseas Liabilities:	0
What is the purpose of this return?	0
Yes (Copy Date):	<input type="checkbox"/> 0
FIR Application:	0

If the party has made a declaration of partnership with the meaning of Section 211 of the Income Tax Act 1996, the party may be deemed to be a resident for the purposes of the Act if the partner is a resident of New Zealand and a tax resident of another country, subject to the approval of the Commissioner of Inland Revenue.

Company

Company	
Entity Type:	Company
Organisation Name:	0
Country of Incorporation:	0
Is this a Foreign Company?	<input type="radio"/> Yes <input type="radio"/> No
ASN:	0
ADN:	0
ANLN:	0

The Stamp Duties Act 1922 defines when a corporation is foreign for the purposes of the foreign ownership surcharge. Further information in this regard is available here.

Trustee (non-individual)

Trustee (non-individual)	
Entity Type:	Trustee
Trustee Type:	Non-Individual
Organisation Name:	0
Country of Incorporation:	0
Is this a Foreign Trust?	<input type="radio"/> Yes <input type="radio"/> No
ASN:	0
ADN:	0
ANLN:	0
Trust Name:	0

The Stamp Duties Act 1922 defines when a trust is a foreign trust for the purposes of the foreign ownership surcharge. Further information in this regard is available here.

Trustee (individual)

Part 9.3.1

Entity Type*: Trustee v

Trustee Type*: Individual v

Given Name*: Test (i)

Family Name*: User (i)

Capacity*: v (i)

Date of Birth*: (i) (i)

Nationality or Citizenship*: AUSTRALIA v (i)

Is This a Foreign Trust? Yes No

The Stamp Duties Act 1923 defines when a trust is a foreign trust for the purposes of the foreign ownership surcharge. Further information in this regard is available here.

Country of Tax Residence*: v

Trust Name*: _____

Superannuation Fund

Part 9.3.2

Entity Type*: Superannuation Fund v

Organisation Name*: (i)

Country of Incorporation*: v (i)

Is This a Foreign Superannuation Fund? Yes No

The Stamp Duties Act 1923 defines when a trust is a foreign trust for the purposes of the foreign ownership surcharge. Further information in this regard is available here.

ABN: (i)

ACN: (i)

ARSN: (i)

Government Organisation

Part 9.3.3

Entity Type*: Government Organisation v

Organisation Name*: (i)

Country of Incorporation*: v (i)

Is This a Foreign Government Organisation? Yes No

The Stamp Duties Act 1923 defines when a corporation is foreign for the purposes of the foreign ownership surcharge. Further information in this regard is available here.

ABN: (i)

ACN: (i)

ARSN: (i)