Commercial Law - Taxing Times for foreign owners

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In 2016 and continuing in early 2017, we saw many changes to legislation affecting both vendors and purchasers of property. These changes largely came about due to the new Commonwealth Reporting Requirements (CRR).

The CRR places requirements on States and Territories to report transfers of freehold or leasehold interests in land. The information collected is used for data matching by the ATO to ensure compliance with Commonwealth tax laws and for the establishment of the National Register of Foreign Ownership of Land Titles.

For NSW property transactions, purchasers comply with the CRR by completing a Purchaser/Transferee Declaration. The form, required by OSR, must be completed for every property transaction requiring a stamp duty notation (including Transfers of Land and Surrenders or Transfers of Leases).

Some of the recent legislative changes affecting foreign owners include:

NSW Land Tax surcharge

A land tax surcharge of 0.75% (i.e. over and above the usual rate of land tax) applies to foreign owners of residential real estate commencing in the 2017 land tax year.

NSW Stamp duty

A stamp duty surcharge of 4% applies to the acquisition of residential real estate by foreign purchasers.

Note also that the 12 month extension for the payment of duty for off the plan purchases no longer applies unless you intend to reside in the property for a particular period of time following completion.

Foreign Resident Capital Gains Withholding Tax

Purchasers who acquire an interest in land with a value of $750,000 or more are required to withhold 12.5% of the purchase price of the land (or value of the property) and pay it to the ATO unless the vendor provides an ATO Clearance Certificate.

The objective of this requirement is to assist in the collection of foreign resident's CGT obligations. Foreign vendors are eligible to claim a credit for the 12.5% withholding tax however they must hold an Australian TFN and lodge a tax return. By lodging a tax return, the ATO can

ensure other potential tax liabilities of the foreign person are met.

If you are buying or selling residential or commercial land or strata units, the commercial law team at Matthews Folbigg can assist. Contact us!