

## REVIEW AND UPDATE OF TRUST DEED TO REMOVE FOREIGN PERSONS

Family trust deeds tend to be something that people tend to 'set and forget'. They are often set up by accountants using template documents and it is often not until clients are reviewing their estate planning or buying a property that issues with the drafting of the trust deed can become apparent. Sometimes it is a Revenue NSW audit that reveals issues with trust deeds and people find themselves facing unexpected surcharge transfer duty and/or land tax.

It is critical that trust deeds are reviewed prior to a residential property being purchased by a trust to ensure that the trust deed permanently excludes any foreign person from being a beneficiary of the trust. This is because a discretionary trust is deemed to be a foreign trust (and therefore liable, on the purchase of residential property for surcharge transfer duty, and for surcharge land tax) unless the trust deed permanently prohibits the possibility of distributions to foreign persons.

It does not matter if every person named in the trust deed (or within the beneficiary classes) is Australian, the trust will still be deemed to be foreign unless the possibility of a distribution to a foreign person is specifically and permanently excluded.

*Residential land* is defined widely, so a property may not appear to be residential, yet still be caught. There have been cases where a zoning change has resulted in a property 'becoming residential' and therefore liable for surcharge land tax.

Penmans charge a fixed fee of **\$825** (inclusive of GST) to review a trust deed for a discretionary trust (also known as a family trust) and to draft a deed excluding the possibility of distributions to foreign persons.

If your trust has a corporate trustee, we will also need an ASIC search at a cost of \$28.05.

### Next Steps

Please complete our [contact form](#) and let us know that you require a trust deed review and update to exclude foreign persons. A member of our team will be in contact with you.

The information you obtain at this site is not, nor is it intended to be, legal advice. You should consult a Solicitor for individual advice regarding your own situation. Liability limited by a scheme approved under Professional Standards Legislation.

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**Fixed fees current as of October 2025.**

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