Investors with Australian property: Beware

MALAYSIAN property investors with assets in Australia are at risk of facing severe financial repercussions due to complex land tax rates and impending changes in withholding tax regulations. Immediate action is crucial to avoid potential penalties and reassessments, which could amount to tens of thousands of dollars.

The key areas include:

• **Land Tax Surcharges:** Investors in states like Victoria and New South Wales may face land tax surcharges of up to 4%, which could add significant costs to their tax bills, ranging from tens to potentially hundreds of thousands of dollars.

• **Withholding Tax Increase:** Starting January 1, 2025, the withholding tax rate on property sales will increase to 15%. This change will impact all property sales, eliminating the previous A$750,000 threshold and potentially increasing the financial burden on investors.

• **Reassessments and Penalties:** Investors who are not Australian residents but hold property in Australia may be subject to reassessments of their tax obligations. The local State Governments may reassess an investor's status, potentially leading to reassessments of up to five years of back taxes at the absentee rate, which could result in significant penalties.

High land tax rates

If land tax is applicable, investors will be taxed as Australian residents. However, if information sharing reveals that an investor is not an Australian resident, the local State Government may reassess their status and apply higher tax rates. According to TJD Accounting Australia international taxation specialist Dominic Murphy: "If the State Government discovers that an investor is a resident overseas, they will reassess them at a higher rate. For those who've owned the property for some time, they will likely reassess them for the last five years, usually at the absentee rate. That's when significant penalties can kick in."

State revenue offices assess these taxes annually using ownership data as of specific dates, such as December 31 or June 30. Payment deadlines vary by state, and failure to comply can lead to penalties and fines, adding to the already high tax charges. In some instances, this has resulted in distress sales due to excessive tax liabilities.

"We've had clients come to us with reassessment tax bills ranging from A$60,000 to over A$100,000. They are simply shocked as they've been unaware of their tax status for years," he said.

Withholding tax increase

Adding to these challenges, the Australian Tax Office (ATO) will increase the withholding tax from 12.5% to 15% on all property sales starting January 1, 2025. This change eliminates the previous A$750,000 threshold, affecting all investors who choose to sell, including those who attempt to quickly offload their properties due to unbearable land tax and surcharges. The new withholding tax rate will likely create an additional financial burden. Murphy explained: "For instance, if you sell your property for A$600,000 after 2024, A$90,000 of tax will be withheld from you by the ATO."

Murphy advised investors to file tax returns from the property's purchase date to reclaim these withheld taxes. This process involves applying for an Australian Tax File Number and backtracking to file returns for each year of ownership, which can be a tedious process, especially for those unaware of these requirements at the time of purchase.

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■ Up to 4% in land tax surcharges for some states

■ Up to 15% increase in withholding tax rate as of Jan 1, 2025

Growing interest equals growing risks

Data from the ATO shows that foreign investors purchased 5,360 properties worth A$4.9bil in 2022–23, up from 4,228 purchases valued at A$3.9bil in 2021–22. This indicates a growing interest among foreign investors, including Malaysians, in the Australian property market. Foreign investors are drawn to Australian properties due to their steady growth, with annual yields generally ranging from 3% to 8%, depending on location and property type.

However, Murphy reports a growing number of inquiries from Malaysian investors who are confused by unexpected tax payment letters from the ATO. "These investors often don't realize their obligations until they are either audited or decide to sell, and by then, all eyes are on them. The ATO's precise data matching systems ensure compliance is essential."

Widespread Unawareness

According to research by property consultant Stephen Bailey of Blue Crest Property Solutions, 94% of his clients, including those from Malaysia, are unaware of their tax obligations in Australia.

"Our survey of 218 non-resident property investors shows that many are not informed about their tax obligations," Bailey explains. He adds, "For Malaysians who want to buy Australian property, they must first be informed by understanding the type of property they want to invest in and what their long-term goals are. While there are high tax surcharges for foreigners overall, some states offer lower rates or have different requirements."

Solutions for compliance

For those who already own property, Murphy advised that filing annual tax returns, even if it requires backtracking, can benefit investors.

"If they made any losses on the property, they can use those to offset gains and claim more withholding tax back. I've seen first-hand that the financial consequences of non-compliance are severe and immediate. There are options such as setting up trusts in Australia or certain property structures that can reduce taxes. But it's always best to talk to a qualified tax accountant who understands Australian taxation laws for foreigners," he said.

Malaysian investors with properties in Australia are facing significant tax challenges and potential penalties due to complex land tax rates, imminent changes in withholding tax regulations, and a general lack of awareness about their tax obligations.

Murphy urged investors to act quickly by seeking a qualified accountant and conveyancer who understand Australian tax laws to protect their assets, as delays could lead to significant financial consequences.