



## RESIDENTIAL REAL ESTATE – FOREIGN NON-RESIDENTS

Non-resident foreign persons generally need to apply for and receive foreign investment approval before purchasing any residential property in Australia.

This Guidance Note sets out the factors that will be considered when assessing an application and the conditions that will normally apply to an approval.

### WHO NEEDS TO APPLY

Foreign non-residents are individuals not ordinarily resident in Australia (except Australian citizens), including a holder of a visa that permits the individual to remain in Australia for only a limited period.

For the purposes of Australia's foreign investment framework, the following are also subject to the same treatment as a foreign non-resident when purchasing residential real estate:

- corporations that meet the definition of a foreign person under Australia's foreign investment rules (for more information, see Guidance Note 5);
- trustees of a trust that meet the definition of a foreign person under Australia's foreign investment rules (for more information, see Guidance Note 5);
- a general partner of a limited partnership that meets the definition of a foreign person under Australia's foreign investment framework; or
- foreign governments (for more information, see Guidance Note 23).

Persons who are unsure whether they need to apply for approval under Australia's foreign investment framework should seek independent legal advice or contact the Australian Taxation Office.

#### Example 1

Three brothers establish a company in Australia with the intention of redeveloping property. Each brother holds an equal share of the company. One brother is an Australian citizen, one is an Australian permanent resident, and one is not ordinarily resident in Australia and is not an Australian citizen. The company is a foreign person for the purposes of Australia's foreign investment framework because an individual who is not ordinarily resident in Australia and who is not an Australian citizen holds a substantial interest in the company (that is, an interest of at least 20 per cent). The company therefore needs to apply for and receive approval for any proposed purchase of residential land.

**Example 2**

A discretionary trust is established in Australia and the trustee is an Australian citizen. Four individuals are potential beneficiaries of the trust. One of those individuals is not ordinarily resident in Australia and is not an Australian citizen, and the others are Australian citizens. The trustee of the trust is a foreign person for the purposes of Australia's foreign investment framework. This is because the trustee has the discretion to distribute the income or assets of the trust such that one person, who may be a foreign person, can be paid all the income of the trust or receive all the assets of the trust. The trustee therefore needs to apply for and receive approval for any proposed purchase of residential land.

For more information on the use of trusts to purchase residential property, see Guidance Note 5.

**FACTORS CONSIDERED BY PROPERTY TYPE****New dwellings**

Foreign non-residents will normally be allowed to purchase new dwellings in Australia without being subject to any conditions. There is no limit on the number of new dwellings a foreign non-resident may purchase, but approval is generally required prior to each acquisition.

A new dwelling is a dwelling that will be, is being, or has been built on residential land, has not been previously sold as a dwelling, and has either:

- not been previously occupied; or
- if the dwelling is part of a development (50 or more dwellings) and was sold by the developer of that development, has not been previously occupied for more than 12 months in total.

New dwellings do not include established residential property that has been refurbished or renovated.

A single dwelling that has been built to replace one or more demolished established dwellings would generally not be treated as a new dwelling for the purposes of Australia's foreign investment framework.

**Example 3**

Jon is a foreign non-resident and wants to purchase a recently built dwelling. The owner of the property had demolished an existing dwelling on the property and built a single dwelling in its place. The owner has not occupied the dwelling and the property has not been sold since the dwelling was rebuilt.

In this case, the dwelling does not represent a genuine increase in Australia's housing supply. To ensure the sale of the property is consistent with the national interest, the dwelling will not be treated as a new dwelling, under Australia's foreign investment framework. Jon, as a foreign non-resident, would generally not receive approval to purchase the property.

## Exemption to purchase a new (or near-new) dwelling in a development

Developers may hold a new (or near-new) dwelling exemption certificate that allows them to sell new (or near-new) dwellings in the development specified in the certificate to foreign persons. Where a developer has this certificate, the foreign resident may not require a separate approval. The foreign non-resident should ask the developer for a copy of the exemption certificate for the development in which they are intending to purchase. If the exemption certificate covers their intended purchase, they do not need to seek separate foreign investment approval. For more information, see Guidance Note 8.

## Vacant land

Foreign non-residents will generally be allowed to purchase vacant land for residential dwelling development subject to conditions. The conditions usually imposed are:

- the development must be completed within four years from the date of approval; and
- evidence of completion of the dwellings is submitted within 30 days of being received. This could include a final occupancy or builder's completion certificate.

In exceptional circumstances where the development cannot be completed within the specified four years, the foreign non-resident could apply for a variation to the condition. The application for a variation must be made at least two months prior to the end of the period. A fee will apply for this. Variations will be considered on a case-by-case basis. For more information, see Guidance Note 19.

Vacant land that previously had a dwelling on the land will generally not be treated as vacant for the purposes of Australia's foreign investment framework. As such, foreign persons will generally not be eligible to purchase vacant land that previously had a dwelling built on it (unless they are proposing to construct multiple dwellings on the land which will increase the housing stock).

## Established dwellings for redevelopment

Foreign non-residents will normally be allowed to purchase an established dwelling for redevelopment in Australia provided the redevelopment genuinely increases the housing stock. Such proposals are normally approved subject to conditions that:

- the existing dwelling cannot be rented out prior to demolition and redevelopment;
- the existing dwelling is demolished and construction of the new dwellings are completed within four years of the date of approval; and
- evidence of completion of the dwellings is submitted within 30 days of being received by the applicant. This could include a final occupancy or builder's completion certificate.

Foreign non-residents will generally not be approved to purchase an established dwelling to redevelop into a single new dwelling.

For more information, see Guidance Note 6.

## Established dwellings

An established dwelling is a dwelling on residential land that is not a new dwelling.

Commercial residential premises such as hotels, motels and caravan parks are not included in the definition of an established dwelling. In addition there are different rules for acquisitions of

aged care facilities, retirement villages and certain student accommodation. For more information, see Guidance Note 15.

Foreign non-residents cannot purchase established dwellings as homes, for use as a holiday home or to rent out.

Foreign persons that operate a substantial Australian business may apply to purchase established dwellings to house their Australian based employees. Eligible applications are normally approved subject to conditions, including that the dwelling is sold if it is expected to remain vacant for more than six months. Whether a business is eligible to purchase established dwellings to house their Australian-based employees is subject to a number of factors. For more information, see Guidance Note 7.

### **Exemption certificates for residential land (other than established dwellings)**

Foreign persons may apply for a residential land (other than established dwellings) exemption certificate which will allow them to purchase one unspecified property (except established dwellings) including new (and near-new) dwellings and vacant residential land.

This certificate means that foreign persons don't have to seek individual approval for each property they are interested in and only pay one fee on application for the certificate. The residential land can be purchased by any method (such as auction, ballot, private offer, expression of interest or tender). No agreements (even conditional agreements) can be entered into before the exemption certificate is given.

All exemption certificates will normally be subject to the same conditions that apply to ordinary approvals, and require the foreign person to report on any purchase made.

For more information, see Guidance Note 49.

### **FEES**

An application for approval to purchase residential property will not be considered until the relevant application fee has been paid in full.

For more information on fees, see Guidance Note 29.

### **PENALTIES**

Strict penalties (including civil and criminal penalties and disposal orders) may apply for breaches of Australia's foreign investment rules. For more information, see Guidance Note 11.

Cases of non-compliance with Australia's foreign investment framework may also be brought to the attention of law enforcement agencies and other Commonwealth departments such as the Department of Immigration and Border Protection.

### **HOW TO APPLY**

If you would like to apply for foreign investment approval for:

- A new dwelling
- Vacant residential land
- A second hand or established dwelling

- An exemption certificate for established dwellings
- An exemption certificate for residential land (other than established dwellings)

Please use the [Australian Taxation Office's foreign investment application form](#).

Foreign persons should take care to ensure they supply the correct details and all required information as part of their application, as changes to details such as name or property address after an approval has been granted may require foreign persons to seek a new approval and to pay further fees.

## **FURTHER INFORMATION**

Further information is available on the FIRB website at [www.firb.gov.au](http://www.firb.gov.au) or by contacting 1800 050 377 from Australia or +61 2 6216 1111 from overseas.

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**Important notice:** This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.