



On 29 March 2020, the Treasurer announced that due to the impacts of the coronavirus outbreak, all monetary thresholds will be temporarily reduced to \$0, and that the FIRB will work with applicants to extend the timeframes for decision making to up to six months. Further information on these temporary changes can be found in 'Guidance Note 53: Temporary measures announced in response to coronavirus outbreak', available on the FIRB website at [www.firb.gov.au](http://www.firb.gov.au).

All other guidance material, including this note on residential land fees, should be read in light of those temporary changes. Within this note, the temporary changes may have particular impact on matters related to, but not exclusively including:

- the remittance of fees for applications withdrawn as a result of the impacts from the coronavirus outbreak.

Where there is any inconsistency between this note and Guidance Note 53, the information in Guidance Note 53 takes precedence.

### FEES - RESIDENTIAL LAND

Last updated: 1 July 2020

The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Fees Act) and *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Fees Regulation) set the fees for foreign investment applications and notices made under the *Foreign Acquisitions and Takeovers Act 1975* (Act) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Regulation).

This Guidance Note provides information on fees for foreign investment notices and applications for residential land.

#### WHEN DOES A FEE APPLY AND WHEN IS IT PAID?

Foreign persons are required to pay a fee for each application made, or notice given, under the Act and the Regulation (limited exceptions apply).

The fees that are payable for residential land applications depend on the price for the acquisition of the interest. Fees payable can also be affected by regulations prescribing circumstances when a lower amount may be payable.

A single fee applies for foreign persons purchasing residential land as joint tenants.

#### HOW IS THE FEE PAID?

Fees for residential real estate applications are payable when the application is lodged. Information on how to pay the fee will be provided as part of the application process. It is important to use the correct 'Payment Reference Number' provided to you for payment of your application. Missing or incorrect payment reference numbers may cause a delay to the processing of your application.

To ensure we receive your fee payment, provide your payment reference number (PRN) exactly as it appears on the application confirmation page. Do not add spaces, names, hyphens or other text with this number. Adding these will cause delays in processing your application.

Payment options include [Government EasyPay](#), [BPay](#), [Direct Credit](#) and [transfer from an overseas bank account](#). Fees paid by cheque will not be accepted. When paying the fee, ensure that monies are in Australian dollars and all applicable transaction fees are accounted for, as a shortfall will delay application processing.

## FEE SCHEDULE

Action type	Fee Payable
Acquiring an interest in residential land where the price of the acquisition is \$1 million or less <b>(\$0 - \$1,000,000)</b>	\$5,800
Acquiring an interest in residential land where the price of the acquisition is more than \$1 million and less than \$2 million <b>(\$1,000,001 - \$1,999,999)</b>	11,700
Acquiring an interest in residential land where the price of the acquisition is between \$2 million and less than \$3 million <b>(\$2,000,000 - \$2,999,999)</b>	\$23,500
Acquiring an interest in residential land where the price of the acquisition is between \$3 million and less than \$4 million <b>(\$3,000,000 - \$3,999,000)</b>	\$35,200
Acquiring an interest in residential land where the price of the acquisition is between \$4 million and less than \$5 million <b>(\$4,000,000 - \$4,999,999)</b>	\$47,000
Acquiring an interest in residential land where the price of the acquisition is between \$5 million and less than \$6 million <b>(\$5,000,000 - \$5,999,999)</b>	\$58,800
Acquiring an interest in residential land where the price of the acquisition is between \$6 million and less than \$7 million <b>(\$6,000,000 - \$6,999,999)</b>	\$70,600
Acquiring an interest in residential land where the price of the acquisition is between \$7 million and less than \$8 million <b>(\$7,000,000 - \$7,999,999)</b>	\$82,400

Acquiring an interest in residential land where the price of the acquisition is between \$8 million and less than \$9 million <b>(\$8,000,000 - \$8,999,999)</b>	\$94,300
Acquiring an interest in residential land where the price of the acquisition is between \$9 million and less than \$10 million <b>(\$9,000,000 - \$9,999,999)</b>	\$106,000
Acquiring an interest in residential land where the price of the acquisition is \$10 million or more <b>(\$10,000,000 or more)</b>	Please contact the Australian Taxation Office for a fee estimate (fees are tiered per million)
<b>Exemption certificate</b>	
Applying for an exemption certificate for one established dwelling or for residential land (other than established dwellings)	The same fee that would apply for acquiring an interest in residential land. See above.
Applying for an exemption certificate to sell new (or near-new) dwellings in a development to foreign persons	\$27,100 plus a reconciliation based on the number of, and consideration payable for, dwellings acquired by foreign persons
<b>Variations</b>	
Applying for variation of a no objection notification or an exemption certificate relating to residential land	\$5,300
<b>Fee otherwise would be more than 25 per cent of the consideration (de minimis rule under Section 9 of the Fees Regulation)</b>	
Where the fee for one of the actions specified above would be more than 25 per cent of the consideration for the proposed acquisition.	\$1,000

### Order or no objection notice where the person did not give the Treasurer a notice relating to the action

Where a person is given one of the following by the Treasurer:

- an order prohibiting proposed significant actions;
- an interim order;
- disposal order;
- no objection notification;

and the person did not seek an approval from the Treasurer relating to the action specified in the order or notification

The fee that would have been payable for acquiring the interest in residential land had the person submitted an application for the action.

## GENERAL GUIDELINES

### Statutory timeframe

The statutory timeframe of 30 days for making a decision will not start until the relevant fee has been paid. Applicants should accurately describe their proposed action in their application or notice and determine the expected fee at the time of lodgement.

Understating the consideration or inaccurately describing action(s) for which the application or notice relates may result in the statutory timeframe for considering the application or notice not starting until the full correct fee is paid.

If there has been an overpayment, the statutory timeframe will have started when the fee was paid.

### Waivers and remissions

Under section 115 of the Act the Treasurer may waive or remit the whole or a part of a fee that is payable, if they are satisfied that it is not contrary to the national interest to waive or remit the fee.

If a person wants to apply for a fee waiver or remission, they should clearly set out the circumstances in their application and outline why the Treasurer should consider waiving or remitting the fee.

All applications for fee waivers or remissions will be considered on a case-by-case basis. Applications for fee waivers and remissions will be considered through an internal review process. **All decisions on fee waivers or remissions are final.**

Generally, fees will not be waived or remitted where:

- **a proposal does not get approval by the Treasurer or the investment has been ultimately unsuccessful.** For example, a foreign person will not generally receive a fee waiver or remission following an unsuccessful property acquisition.
- **a lower fee structure is applicable in the ultimate investment, when the applicant applied under a higher fee tier.** For example, if a foreign person receives approval to purchase residential land for over \$1 million but acquires the residential land at auction for under \$1 million, the difference in fees is unlikely to be remitted. Similarly, fees for exemption certificates will generally not be remitted if ultimately no acquisitions are made by foreign persons under the exemption certificate.

- **an applicant changes their mind** about proceeding with the acquisition.
- **an applicant withdraws their application.** However, for applications or notices that are resubmitted and are substantially the same or similar action, the fee for the latter application or notice may be waived. This will be considered on a case-by-case basis, taking into account the extent that the latter application or notice is similar to the withdrawn application or notice.

There are only limited circumstances where a fee waiver or remission will likely be granted. These include:

- **If there would be a different fee outcome compared with if the same acquisition were structured differently.** For example, a fee waiver may be considered for foreign persons who are close relatives (for example, spouses) and are purchasing property as tenants in common. This requires different notices and fees for each foreign person, compared to the situation where the property was being acquired by joint tenants who would require one notice and one fee.
- **Variation fees for non-substantial changes to an existing no objection notification.** For example, if a foreign person purchases a vacant residential block which only has a lot number, the foreign person can apply for a variation so the address can appear on the no objection notification once known, and the variation fee may be remitted.
- **Some actions that are exempt.** If an action is exempt and is notified, there are some circumstances where a fee will be remitted. Applicants should ensure that they assess whether an application or notice is required before making an application or giving a notice.

## LOWER FEE RULES (NOT APPLICABLE FOR INDIVIDUALS)

### 1. Acquisition of 2 or more interests in residential land by foreign business person (Section 15 of the Fees Regulation)

A lower fee will apply where a foreign business person (foreign person, **except an individual**, carrying on a business in Australia or elsewhere) acquires more than one interest in residential land under one agreement. If the one agreement only covers the acquisition of residential land, the fee payable would be the highest of each the applicable residential land fees for the acquisitions under the agreement. If an application involves actions of more than one type, for example, one agreement covers the acquisition of both residential land and agricultural land, then the highest fee across both actions will apply.

#### Example 1

A foreign business person proposes to acquire an interest in agricultural land and residential land as part of a single agreement with one vendor. The highest consideration per title for the agricultural land action is \$2.5 million, which attracts a fee of \$26,700. The highest consideration per title for the residential land action is \$500,000, which attracts a fee of \$5,800. The applicable fee for the agricultural land actions is \$26,700 and for the residential land actions is \$5,800.

The lower fee rule will apply to ensure that only the \$26,700 fee applies.

## 2. Acquisition of interest in securities by foreign business person in Australian land entities (Section 16 of the Fees Regulation)

Where the consideration for the acquisition is \$1 billion or less, a lower fee of \$26,700 will apply if a foreign business person (foreign person, **except an individual**, carrying on a business in Australia or elsewhere) acquires an interest in an Australian land corporation with a dominant land holding in residential land; or an Australian land trust with a dominant land holding in residential land and the amount payable would otherwise be higher if the fee for acquiring an interest in residential land applied. Where the consideration is greater than \$1 billion, a lower fee of \$107,100 will apply. Where a foreign business person is acquiring an interest in an Australian land trust with a dominant land holding in residential land and is also acquiring an interest in securities in the corporation which is the trustee of that land trust they will pay a nil fee for the acquisition of the trustee.

## 3. Majority owners lower fee rule (Section 10 of the Fees Regulation)

A lower fee of \$2,100 will apply where a foreign business person (foreign person, **except an individual**, carrying on a business in Australia or elsewhere) holds an interest of more than 50 per cent in the residential land and the acquisition results in the person increasing the interest.

The conditions required to be met to obtain this lower fee treatment are specified in section 10 of the Fees Regulation. The majority owner lower fee rule does not apply for internal reorganisations.

## RESIDENTIAL LAND

'Residential land' means land where there is at least one dwelling, or vacant land on which less than 10 dwellings could reasonably be built. It does not include land used wholly and exclusively for a primary production business, or on which the only dwellings are commercial residential premises (for more information, see Guidance Note 1).

The fees for residential land applications are set out above. The fee will be the same regardless of whether the residential land has an established dwelling, new (or near-new) dwelling, or is vacant.

### Example 2

A foreign person wishes to acquire a 50 per cent interest in residential land. The price for the overall purchase of the residential land is \$2 million. The price for the acquisition of the 50 per cent interest is \$1 million. The fee is calculated based on the consideration for the acquisition of the 50 per cent interest. The fee payable would be \$5,800 as the price for the acquisition of the interest is \$1 million or less.

Generally, a separate fee is payable for each residential land title for which a notice is given. This means that a foreign person must pay a separate fee for each title of land that is proposed to be acquired.

**Example 3a**

An individual wishes to acquire a property known as 1 Smith Street. The property consists of three separate titles, with an established dwelling on one title and vacant residential land on the other two titles. An application fee would be payable for each title as there will be an acquisition of residential land in relation to each separate title.

**Example 3b**

An individual wants to acquire one dwelling, for which there are two titles over the residential land. The foreign person expects the purchase price will be \$900,000. As the investment involves two titles, the total application fee payable is \$11,600 (\$5,800 for each title valued at \$1 million or less).

**Entering into a contract**

Fees will not generally be remitted because a foreign person is unsuccessful in making the purchase. This includes if the foreign person chooses not to proceed with the purchase (for example, due to failing to obtain finance or unfavourable building or pest reports).

**Example 4**

A foreign person submits an application for the acquisition of 1 Australia Avenue. The foreign person does not enter into a binding contract with the seller. Prior to foreign investment approval being received by the foreign person, the seller sells the property to another person.

The foreign person applies to have the application fee waived. Generally, the fee for the initial application would not be remitted.

Foreign persons that want to minimise the risk of being unsuccessful with their purchase can enter into a contract for the property that is conditional on receiving foreign investment approval. This may minimise the risk of the property being sold to someone else.

Foreign persons should seek independent legal advice on the implications of doing this if they then decide not to honour the contract, as a no objection notification (allowing them to proceed) cannot be revoked and any fees that have been paid are unlikely to be remitted.

**EXEMPTION CERTIFICATES****New (or near-new) dwelling exemption certificate**

Persons such as property developers can apply for an exemption certificate under section 57 of the Act to sell new (or near-new) dwellings in a development to foreign persons, without each foreign person purchaser being required to seek their own approval. For more information, see [Guidance Note 8](#).

The initial application fee for this exemption certificate is \$27,100. A reconciliation fee is payable later for each new (or near-new) dwelling acquired under the certificate by foreign persons. The fee for a near-new dwelling exemption certificate is nil if the person (such as a property developer) had applied for, or been given a new dwelling exemption certificate, provided both exemption certificates cover (or will cover) interests in relation to the same development.

**Example 5**

A developer wants to obtain an exemption certificate to sell new dwellings in its development to foreign persons. The developer applies for the exemption certificate and pays the initial fee of \$27,100. The exemption certificate is granted and foreign persons acquire four new dwellings in the following six months. Three new dwellings are each purchased for \$600,000 and one new dwelling is purchased for \$1.2 million.

For the reconciliation period, the developer pays \$5,800 for each new dwelling acquired by a foreign person valued at \$1 million or less and pays \$11,700 for the new dwelling acquired for \$1.2 million. The total fee payable is \$29,100.

The additional fee that is payable for each dwelling acquired by foreign persons is the amount that would have been payable if the foreign persons sought approval individually as set out in the above. This fee is payable by the developer on a six monthly basis, based on the number of acquisitions made under the exemption certificate over the previous six months. This is referred to as the reconciliation period.

**Exemption certificates for one established dwelling or interest in residential land that is not an established dwelling**

Foreign persons can apply for an exemption certificate under section 59 of the Act to acquire an interest in one unspecified established dwelling. For more information, see [Guidance Note 9](#).

Foreign persons can apply for an exemption certificate under section 43B of the Regulation to acquire an interest in residential land other than established dwellings. For more information, see [Guidance Note 49](#).

The application fee for this exemption certificate is based on the same tiered fee structure as applies to acquire an interest in residential land (see above). If the person applies for both certificates but will only make one acquisition under the two certificates, a single fee of the highest fee payable under the two certificates will apply.

**INDEXATION**

Section 12 of the Fees Act explains how the fees are worked out in financial years following the financial year in which the fee amount was legislated. Where this results in an increase in certain fees for a financial year, the new fees will apply to applications made and notices given as of 1 July of that financial year.

**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 review 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.

**FURTHER INFORMATION**

Further information is available on the [FIRB website](#) or by contacting 1800 050 377 from Australia or +61 2 6216 1111 from overseas.



**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.

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