



RESIDENTIAL REAL ESTATE - EXEMPTIONS

This Guidance Note details the circumstances under which certain foreign persons, or certain acquisitions, are exempt from the requirement to apply for and receive foreign investment approval before purchasing residential real estate in Australia.

EXEMPT PERSONS

Persons that meet certain criteria do not need foreign investment approval before purchasing residential real estate in Australia. This includes:

- an Australian citizen;
- a New Zealand citizen;
- the holder of an Australian permanent resident visa;
- an individual purchasing property as joint tenants with their Australian citizen spouse, New Zealand citizen spouse or Australian permanent resident spouse;
 - ~ This exemption does not include purchasing property as tenants in common.
- an Australian corporation that would not be a foreign person if interests directly held in it by Australian citizens living abroad, Australian permanent visa holders or New Zealand citizens were disregarded;
- the trustee of a resident trust, if at the time of the acquisition, the trustee would not be a foreign person if interests directly held in it by Australian citizens living abroad, Australian permanent visa holders or New Zealand citizens were disregarded; or
- a charity operating in Australia primarily for the benefit of persons ordinarily resident in Australia.

Example 1

Gus is an Australian citizen who has been living in the United Kingdom for the past five years and intends to continue living abroad. Gus wants to purchase an established dwelling in Australia.

While Gus is not ordinarily resident in Australia and so is a foreign person under the foreign investment framework, Gus is exempt when purchasing residential real estate in Australia because he is an Australian citizen. Gus does not need to apply for foreign investment approval.

Example 2

Maxine is an Australian permanent resident who wants to purchase an established dwelling in Australia as joint tenants with her de facto partner, Claude, who is a temporary resident. Claude is considered to be her spouse under Australian law.

As an Australian permanent resident Maxine does not need to seek approval to purchase residential real estate in Australia, and Claude, as her spouse, is also exempt when purchasing residential real estate with Maxine as joint tenants.

EXEMPT ACTIONS

Foreign persons, regardless of citizenship or residency, do not require foreign investment approval to acquire an interest in residential real estate that is:

- a new (or near-new) dwelling purchased from a developer that holds a new (or near-new) dwelling exemption certificate that allows the developer to sell dwellings in the specified development to foreign persons;
 - ~ The foreign person should ask for a copy of the exemption certificate for the development in which they are intending to purchase and then consider if it covers their intended purchase. For more information, see Guidance Note 8.
- an aged care facility, retirement village or certain student accommodation provided the interest is not above the relevant threshold. For more information, see Guidance Note 15.
- a time share scheme where the foreign person's total entitlement (including any associates) to access the land is no more than four weeks in any year;
- acquired by will or devolution of law;
- acquired directly from the Commonwealth, a State, a Territory, or local governing body, or an entity wholly owned by the Commonwealth, a State, a Territory or a local governing body; and
- an interest in certain residential real estate in designated Integrated Tourism Resorts. For more information, see Guidance Note 16.

The foreign investment framework provides for some other exemptions, however, these are not outlined here. Not all exemptions are available to foreign government investors.

Example 3

Jin is a foreign person who inherits a dwelling in Australia through the operation of his grandmother's Australian will. As the dwelling has been left to Jin in a will, the acquisition is exempt under the foreign investment framework and Jin does not need to apply for foreign investment approval before acquiring the dwelling.

NOT SURE IF YOU ARE EXEMPT?

Persons who are unsure whether they need to apply for foreign investment approval to purchase residential real estate should seek independent legal advice or contact the Australian Taxation Office.

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.

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au 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.