



GUIDANCE NOTE 15

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 in response to the coronavirus', available on the FIRB website at www.firb.gov.au.

All other guidance material, including this note on accommodation facilities, 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 monetary thresholds for determining if the threshold test is met; and
- the exemptions for acquisitions in an aged care facility, retirement village or certain student accommodation.

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

ACCOMMODATION FACILITIES

Last updated: 6 February 2020

Foreign persons may be required to notify and receive a no objection notification before acquiring an interest in a dwelling that is part of an accommodation facility. Different rules apply depending on whether the proposed acquisition is considered to be an acquisition of developed commercial or residential land, or involves the acquisition of aged care facilities, retirement villages and certain forms of student accommodation.

Overview

Acquisition	Treatment
An interest in a dwelling that is part of the business operations of the commercial residential premises	Developed commercial land
An interest in a dwelling that is physically located within the property of the commercial residential premises, but is for private use	Residential land
An interest in a dwelling in a retirement village, aged care facility or certain student accommodation	Residential land (however exempt below \$60 million or \$275 million)
An interest in a dwelling where the owner or operator of a retirement village acquired an interest in a dwelling in the	Exempt

retirement village as a result of exercising an option or any other right	
An interest in a dwelling that also operates a bed and breakfast or guesthouse business	Case-by-case basis depending on the size and value of the residential part of the land
An interest in a residential dwelling with the intent of converting the dwelling into a bed and breakfast or guesthouse business	Residential land

See below for further information on each of the above

COMMERCIAL RESIDENTIAL PREMISES

Land on which the only dwellings are commercial residential premises is considered developed commercial land.

'Commercial residential premises' has the same meaning as in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and includes:

- a hotel, motel, inn, hostel or boarding house;
- premises used to provide accommodation in connection with a school;
- a marina with berths occupied by ships used as residences;
- a caravan park or camping ground; or
- any other premises similar to those outlined under the GST Act, other than premises used to provide accommodation to students in connection with an education institution that is not a school.

'Commercial residential premises' does not include retirement villages, aged care facilities and certain student accommodation, however, section 38 of the Regulation also treats these premises as commercial for the purposes of the screening thresholds.

Acquisitions of dwellings in serviced apartments will be subject to the same requirements as dwellings that are part of other commercial residential premises.

For more information about the characteristics of commercial residential premises, refer to *GSTR 2012/6 Goods and services tax: commercial residential premises*.

Acquisitions of dwellings as part of ordinary business operations of the commercial residential premises

An acquisition of an interest in a dwelling that is part of the ordinary business operations of the commercial residential premises is considered to be an acquisition of developed commercial land if:

- the dwelling will be leased back to and/or managed by the facility operator as part of the business operation, and be available for rent or use as part of the business; and
- the management agreement limits the rights of the owner to receipt of an income stream, not occupancy.

Conversely, where the owner of the business is a foreign person, an acquisition of an interest in a dwelling that is a buy back or lease back arrangement that is part of the ordinary business operations of the commercial residential premises will be considered to be an acquisition of developed commercial land. Foreign investment approval is only required if the relevant monetary thresholds are triggered.

For more information, see [Guidance Note 14](#).

Example 1

Jane is a foreign person proposing to acquire a dwelling in a serviced apartment complex that is used as short-term rental accommodation under agreement with the business operator. Jane intends on continuing the management agreement with the business operator and will not have a right to occupy the dwelling. The proposal is considered to be an acquisition of developed commercial land and will be subject to the relevant commercial land notification thresholds. For more information, see [Guidance Note 14](#).

Acquisitions of dwellings for private use

An acquisition of an interest in a dwelling that is physically located within the property of commercial residential premises is considered to be an acquisition of residential land if the dwelling is not part of the business operation and is for private use, either as owner-occupied or for private rental by the owner.

Example 2

Ben is a foreign person proposing to acquire a dwelling in a serviced apartment complex from a private vendor. Ben intends on using the apartment for part of each year and privately leasing the apartment out when he is not using it. The proposal is considered to be an acquisition of an interest in residential land and Ben will be required to notify and receive a no objection notification before acquiring the dwelling. Ben will also be subject to the eligibility requirements that would normally apply to an acquisition of an established residential dwelling by a foreign person. For more information, see [Guidance Note 1](#).

AGED CARE FACILITIES, RETIREMENT VILLAGES AND CERTAIN STUDENT ACCOMMODATION

For foreign persons (except foreign government investors) acquisitions of an interest in an aged care facility, a retirement village and certain student accommodation will be subject to the applicable developed commercial land screening thresholds (\$60 million or \$275 million).

The certain student accommodation includes premises that provide accommodation to students in connection with an education institution that is not a school. For other student accommodation, refer to the definition of 'commercial residential premises which may apply to this land.'

In these circumstances the term 'in connection' with is to be given its ordinary meaning. In other words, the accommodation provided must be exclusively for students connected with a particular educational institution. For example, the purchase of a house which is then rented to students is not intended to be captured.

While the Regulation does not set a minimum number of students that must be accommodated or the form of the accommodation, it is only intended to capture premises where the purpose of that premises is for the sole purpose of providing student accommodation and not for any other accommodation. Generally there would need to be some form of formal arrangement in place between the accommodation owner and the educational institution for the accommodation to be considered to be connected to the educational institution.

Example 3

A non-foreign government investor is proposing to acquire an interest in land which is currently used for a retirement village for a consideration of \$70 million. The proposal is considered to be an acquisition of an interest in residential land. However the land will be exempt from notification as the land does not meet the conditions in paragraphs 52(6)(b) and (c) of the Regulation.

For all foreign persons (including foreign government investors) an acquisition of an interest in residential land within a retirement village that the foreign person owns is exempt, provided the foreign person has an existing interest in the land and they are increasing their existing interest in the land by acquiring an interest in a dwelling contained in the retirement village (see subsection 38(6) of the Regulation).

This covers circumstances where the owner or operator of the retirement village acquires a right to buy back an interest in a residential dwelling within the retirement village or acquires such an interest when exercising this right. Such acquisitions are common within retirement villages as they ensure that the owner or operator of the retirement village can maintain its operation as a retirement village on an ongoing basis by facilitating transfers between former and new residents and also allows a former resident to sell-back the dwelling to the operator without necessarily needing to find a new resident to acquire the dwelling.

Example 4

A retirement village operator is proposing to enter an option with the current resident to acquire a single dwelling within the retirement village. The proposal is exempt. For more information, see subsection 38(6) of the Regulation.

BED AND BREAKFAST/GUESTHOUSE BUSINESSES

Bed and breakfast and guesthouse businesses are often closely linked with residential property use through shared facilities for owners or through other non-commercial related accommodation uses.

Proposals to acquire a bed and breakfast or guesthouse facility will be considered to be an acquisition of developed commercial land if the proportion of the land that is residential real estate (and used for residential purposes) is less than 10 per cent of the total area and less than 10 per cent of the total value of the land. If the bed and breakfast or guesthouse does not meet these criteria, it will generally be considered to be residential real estate.

Similarly, proposals by a foreign person to purchase a residential dwelling to convert for use as a bed and breakfast or guesthouse facility will generally be subject to the normal rules and eligibility requirements for acquisitions of interests in residential land.

Example 5

Pablo is a foreign person proposing to acquire a dwelling that currently operates as a bed and breakfast business. Three rooms are available for rent by members of the public and the remainder of the dwelling is currently used by the owners as their private residence. Although Pablo intends to continue operating the bed and breakfast business, the proposal is considered to be an acquisition of residential land. Pablo is required to notify and receive a no objection notification before acquiring the dwelling, and may also be subject to the rules and restrictions that would normally apply to an acquisition of an established residential dwelling by a foreign person.

NOTIFICATION THRESHOLDS

Developed commercial land

Foreign persons will be required to notify and receive a no objection notification for acquisitions of developed commercial land where it meets the relevant threshold.

For commercial land thresholds, see [Guidance Note 14](#).

Residential land

Foreign persons are generally required to notify and receive a no objection notification for any acquisition of residential land, regardless of the value of the proposed acquisitions. Foreign persons are also subject to different rules depending on the type of residential land they are seeking to acquire.

For more information, see [Guidance Note 1](#).

Residential land used for an aged care facility, retirement village and certain forms of student accommodation

Foreign persons will be required to notify where the interest being acquired in the aged care facility, retirement village and certain forms of student accommodation is above \$60 million if the conditions in paragraphs 52(6)(b) and (c) of the Regulation are satisfied, otherwise \$275 million. See above for details

FEES

The fee is payable at the time of application. Processing commences when the correct fee is paid.

For more information on the fees applying to foreign investment applications, see [Guidance Note 29](#) (residential land fees) and [Guidance Note 30](#) (business fees).

PENALTIES

Strict penalties (including civil and criminal penalties) 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 rules 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 +61 2 6263 3795.

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.