



Legal Update

Foreign Investment in Australia

Under Australia's foreign investment framework, foreign persons generally need to apply for foreign investment approval before purchasing real estate in Australia. The Foreign investment laws in Australia have recently been reviewed. The Government's policy is generally to channel foreign investment into new dwellings as it creates jobs and helps economic growth. There are some exceptions. Below is a summary of how the foreign investment laws work in relation to acquiring real estate in Australia.

1. Exemptions

Exempt persons

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

- Non-foreign persons - an Australian citizen, a New Zealand citizen or the holder of an Australian permanent visa; or
- foreign persons purchasing property as joint tenants (not tenants in common) with their Australian citizen spouse, New Zealand citizen spouse, or Australian permanent resident spouse.

Exempt acquisitions

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

- a new dwelling purchased from a developer that holds a new dwelling exemption certificate that allows the developer to sell dwellings in the specified development to foreign persons (see below).
- 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;
- an interest in certain residential real estate in designated Integrated Tourism Resorts, and
- Developed commercial real estate under the relevant notification threshold.

2. Approval process

Established dwellings (not new)

Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia.

Temporary resident foreign persons can apply to purchase one established dwelling subject to the condition that they:

- Purchase the property with vacant possession,
- Live in the property and not rent any part of the property, and
- Sell the property within three months of moving out.

Temporary residents are not permitted to purchase established dwellings as investment properties or holiday homes.

Foreign persons who are temporary residents can apply for an established dwelling exemption certificate to allow them to bid at multiple auctions without having to seek individual approval for each property they are interested in.

New Dwellings

Foreign persons generally need to apply and receive foreign investment approval before purchasing new dwellings. Applications to purchase new dwellings are usually approved without conditions.

New Dwelling means a dwelling not previously sold by the developer and not previously occupied for more than 12 months. New dwellings do not include established residential real estate 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 considered a new dwelling for the purposes of Australia's foreign investment framework.

There is no restriction on the number of dwellings that can be sold to a foreign person provided the developer markets locally and overseas.

Vacant land

Foreign persons generally need to apply and receive foreign investment approval before purchasing vacant residential land for development.

Foreign persons will normally be allowed to purchase vacant land for residential dwelling development, subject to conditions that:

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

Vacant land that previously has an established dwelling on the land would generally not be considered as vacant land for the purposes of Australia's foreign investment framework.

Established Dwellings for Re-development

Foreign persons will normally be allowed to purchase an established dwelling for redevelopment in Australia, provided the redevelopment genuinely increases the housing stock. An increase in Australia's housing stock is generally taken to mean that at least one additional dwelling will be created, so for example one existing dwelling is demolished and a duplex is constructed.

Such proposals are normally approved subject to conditions that:

- The existing dwelling(s) must remain vacant prior to demolition and redevelopment;
- The existing dwelling(s) is demolished and construction of the new dwelling is completed within four years of the date of approval; and
- Evidence of completed of the dwellings is submitted within 30 days of being received by the applicant. This could include a final occupancy or builder's completion certification.

Foreign persons will generally not be given approval to purchase an established dwelling to redevelop into a single new dwelling.

Advance Off the Plan Approval for Developers

Property developers and other vendors can apply for an exemption certificate to sell new dwellings in a specified development to foreign persons, without each foreign person purchaser being required to seek their own foreign investment approval.

Developers (either Australian or foreign) can apply for a new dwelling exemption certificate provided that the development:

- will consist of 50 or more dwellings;
- has development approval from the relevant government authority; and
- if applicable, that foreign investment approval was sought to purchase the land and that any conditions are being met.

The certificate, if granted, will be issued for a specified development, with the inclusion of the following conditions:

- the developer must provide a copy of the Certificate to each prospective purchaser, who is a foreign person, of a new dwelling (including those that have been rented for less than 12 months);
- the developer must provide a report annually from the date of the certificate, within 30 days of the end of the period, to the Foreign Investment Review Board which includes all of the information requested in the New Dwelling Exemption Certificate Report form; and
- the developer must ensure that the Development is marketed in Australia.

Vacant commercial land

Foreign persons generally need to notify before acquiring an interest in any vacant commercial land, regardless of the value of the proposed acquisition (\$0 threshold). Approval will normally be granted subject to conditions that the foreign person:

- commences continuous construction of the proposed development on the land within five years of the date of approval; and
- does not sell the land until construction is complete.

Developed commercial land

Foreign persons need to notify before acquiring an interest in developed commercial land only if the value of the interest is more than the relevant notification threshold. The general notification threshold for developed commercial land is \$252 million unless the proposed acquisition is considered to be sensitive, in which case the threshold is \$55 million.

If the foreign person is from an agreement investor country, the threshold is \$1.094 million regardless of whether the land is considered sensitive.

3. Entering into a contract

If an acquisition is not exempt, foreign buyers' must notify the Government **prior** to acquiring the interest. If they enter a contract, it should be **conditional** upon foreign investment approval.

Foreign persons are in breach of the FATA if they enter an unconditional contract to acquire property (or if their conditional contract becomes unconditional) before approval is granted and may be subject to significant penalties.

4. Application fees

Action type	Fee Payable
Acquiring an interest in residential land where the price of the acquisition is \$1 million or less	\$5,000
Acquiring an interest in residential land where the price of the acquisition is more than \$1 million and less than \$2 million	\$10,000
Acquiring an interest in residential land where the price of the acquisition is between \$2 million and less than \$3 million	\$20,000
Acquiring an interest in residential land – further \$1 million increments	\$10,000 per \$1 million
Applying for an exemption certificate for one established dwelling	The same fee that would apply for acquiring an interest in residential land. See above.
Applying for an exemption certificate to sell new dwellings in a development to foreign persons	\$25,000 plus a reconciliation based on the number of, and consideration payable for, dwellings acquired by foreign persons

For further information contact [Paul McHugh](#)

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