



RESIDENTIAL REAL ESTATE - ESTABLISHED DWELLING EXEMPTION CERTIFICATE

Last updated: 4 November 2019

Under Australia's foreign investment framework, foreign persons generally need to apply for and receive foreign investment approval before purchasing any residential real estate in Australia.

Reflecting the fact that foreign persons who are temporary residents need a place to live during their time in Australia, temporary residents can apply to purchase one established dwelling to use as their principal place of residence while they live in Australia.

Foreign persons who are temporary residents can apply for approval to purchase a specific dwelling or may apply for an established dwelling exemption certificate to allow them to purchase a single established dwelling within a specified state or territory to use as their principal place of residence. This certificate will allow a temporary resident to make multiple attempts to acquire one established dwelling by any method (such as auction, ballot, private offer, expression of interest or tender) without having to seek individual approval for each property they are interested in.

The exemption certificate will generally be valid for twelve months from the date of approval and will be subject to conditions that apply once an established dwelling has been purchased. These include that the temporary resident must use the property as their principal place of residence in Australia, and they must sell the property within three months of ceasing to be a temporary resident. The property must be vacant at settlement and cannot be rented out. Temporary residents are not permitted to purchase established dwellings as investment properties, to rent out, or as holiday homes.

This Guidance Note sets out the factors that are considered when assessing an application for an established dwelling exemption certificate and outlines the conditions that will normally apply to such a certificate.

ELIGIBILITY

Who is a temporary resident?

A temporary resident is an individual who:

- holds a temporary visa that permits them to remain in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa); or
- is residing in Australia, has submitted an application for a permanent visa and holds a bridging visa which permits them to stay in Australia until that application has been finalised.

Established dwelling exemption certificates will normally be approved for temporary residents who are eligible to purchase established dwellings as their principal place of residence under Australia's foreign investment rules.

Established dwelling exemption certificates provide a foreign person with approval to:

- purchase one unspecified established dwelling only;
- purchase the established dwelling in the state or territory specified; and
- purchase the established dwelling up to the value specified on the exemption certificate.

However no agreements (even conditional agreements) can be entered into before the exemption certificate is given.

Example 1

Zhong is a temporary resident and wants to purchase an established dwelling in Hobart to live in while she is in Australia. She applies for an established dwelling exemption certificate that will allow her to purchase one unspecified established dwelling for less than \$2 million, and is granted an exemption certificate that is valid for twelve months.

Zhong attends multiple auctions, and is unsuccessful. She then makes a private offer on a dwelling for \$1.5 million, and her offer is accepted. As Zhong has used the exemption certificate to purchase an established dwelling she is no longer able to use that exemption certificate to acquire any other established dwellings.

Example 2

Jaymie is a temporary resident and wants to purchase an established dwelling in Queensland to live in while he is in Australia. He applies for an established dwelling exemption certificate that will allow him to purchase one unspecified established dwelling for \$1 million or less, and is granted an exemption certificate that is valid for twelve months.

Jaymie attends an auction where the bidding reaches \$1.2 million. Jaymie continues to bid on the property, despite reaching the value limit specified on his exemption certificate, and is the highest bidder for the property with a bid of \$1.3 million.

Where the purchase price for an established dwelling is higher than the amount specified in the exemption certificate, the certificate will not be valid for the property purchase. Therefore, Jaymie did not have foreign investment approval to purchase a property over \$1 million. Jaymie has breached the law and may be subject to strict penalties.

CONDITIONS

The certificates will normally be approved subject to the standard conditions that would apply to a temporary resident purchasing a specific established dwelling to live in as their residence (home) in Australia. These conditions are that they:

- use the property as their principal place of residence in Australia;
- do not rent any part of the property, including ensuring that it is vacant at settlement; and
- sell the property within three months from when it either ceases to be their principal place of residence, or they cease to be a temporary resident, whichever occurs first.

The certificates will also include a condition requiring that the foreign person register the property on the Australian Taxation Office's Land Register (registration is available at: www.ato.gov.au) once they have purchased a dwelling under the certificate.

Foreign persons who do not comply with the conditions on the certificate (for example, by purchasing a property above the specified value or purchasing more than one established dwelling) will have breached the foreign investment rules and may be subject to strict penalties.

Foreign persons may apply to vary the conditions of the exemption certificate. A fee will apply for this.

FEES

An application for an established dwelling exemption certificate will not be considered until the relevant application fee has been paid. The application fee is based on the same tiered fee structure as applies if seeking individual approval to purchase a specific established dwelling.

Fees will generally not be waived or remitted if a foreign person purchases a property for a price that is less than the amount specified in the exemption certificate, or if they are unsuccessful in purchasing a property before the exemption certificate expires.

Special fee rules apply where an application is submitted for both an established dwellings exemption certificate and a residential land (other than established dwellings) exemption certificate.

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 Home Affairs.

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 after an approval has been granted may require foreign persons to seek a new approval and be subject to further fees.

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.