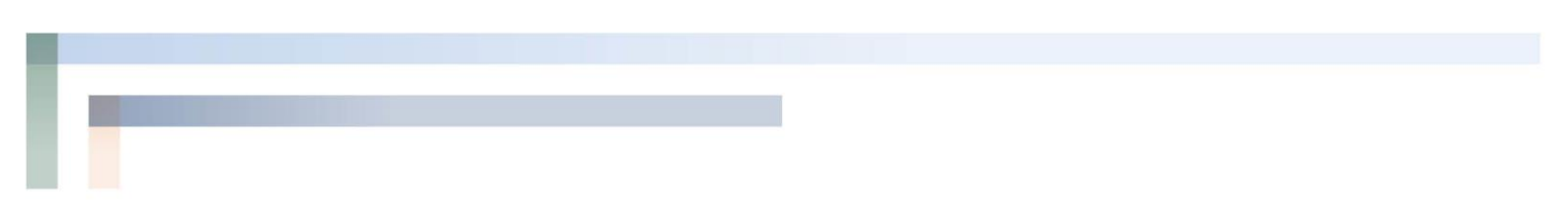




Guidance Note 6

Residential Land

- Foreign persons generally require foreign investment approval before acquiring an interest in residential land, regardless of its value.
 - The Government’s policy is to channel foreign investment into new dwellings, as opposed to established dwellings, as this helps add to housing supply for Australians, creates additional jobs in the construction industry, and helps support economic growth. It can also increase government revenues, in the form of stamp duties and other taxes, and from the overall higher economic growth that flows from the additional investment. Foreign investment applications are therefore generally considered in light of the overarching principle that the proposed investment should increase Australia’s housing stock.
- Approval for an acquisition of vacant land for residential development will generally be conditional on the construction being completed within four years and the land not being sold until the construction is complete. The Government is focused on ensuring that foreign investors comply with conditions of approval, and enforcement action will be taken to address non-compliance.
- Approval for an acquisition of a new dwelling is not usually subject to any conditions concerning its usage.
 - Property developers looking to sell new dwellings “off the plan” or newly developed dwellings to foreign persons can also apply for foreign investment approval on behalf of their foreign customers. Where a developer holds such an approval, the foreign person will generally not need to seek their own foreign investment approval.
- From 1 April 2025 to 31 March 2027, it is the Government’s policy that foreign persons are generally banned from purchasing established dwellings. However, subject to foreign investment approval, limited exceptions to the policy include:
 - foreign persons who seek to purchase an established dwelling for redevelopment, if the redevelopment will significantly increase Australia’s housing stock by at least 20 additional dwellings.
 - foreign persons who seek to purchase an established dwelling where the acquisition supports the availability of housing on a commercial scale. This includes (but is not limited to) proposals to acquire an interest in one or more established dwellings in multi-unit developments (such as retirement villages, assisted living or aged care facilities, and student accommodation) on a commercial scale.

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- foreign-controlled companies that employ workers from Pacific island countries and Timor-Leste and are required to provide housing for them, including those participating in the Pacific Australia Labour Mobility (PALM) scheme, who seek to purchase an established dwelling to house their Australian-based workers.
 - foreign persons who seek to purchase existing Build to Rent developments, where the development will continue to be operated as Build to Rent.
 - Other limited exemptions from foreign investment screening altogether may also apply – see the *Key Concepts* Guidance Note.
 - Foreign persons must give notice of certain actions relating to residential land to the Registrar of the Register of Foreign Ownership of Australian Assets. For more information, see the Register of Foreign Ownership of Australian Assets Guidance Note.
 - Foreign persons who own residential property will be required to pay an annual vacancy fee if their property is not residentially occupied or genuinely available for rent for more than 183 days (approximately six months) during a year.
 - Approval for an acquisition of residential land to be used for a non-residential purpose (e.g. redevelopment for commercial use) will generally be subject to development conditions, as assessed on a case-by-case basis.
 - Foreign persons must keep records relating to certain actions concerning their foreign investment for up to five years.



Looking for more?

A: When does a proposed investment in residential land require approval?.....	4
B: Acquisitions of vacant residential land	6
C: Acquisitions of new (and near-new) dwellings	8
D: Property developers, and acquisitions of new (and near-new) dwellings.....	11
E: Ban on purchases of established dwellings	15
F: Purchases of established dwellings for redevelopment.....	16
G: Purchases of established dwellings that support the availability of housing on a commercial scale.....	19
H: Purchases of established dwellings for certain Australian-based employees	20
I: Build to Rent developments	22
J: Vacancy fees.....	26
K: Integrated Tourism Resorts – grandfathered treatment of residential land	31
Further information.....	33

A: When does a proposed investment in residential land require approval?

See also the *Overview, Key Concepts, National Security and Fees* Guidance Notes.

Under Australia's foreign investment framework, foreign persons must notify the Treasurer before taking a notifiable action or a notifiable national security action. Some notifiable actions are also significant actions. A foreign person must not take a notifiable and significant action, and/or a notifiable national security action, until they have received foreign investment approval for that proposed action.

- Where a foreign person acquires an interest in residential land,¹ this will be a notifiable and significant action, regardless of the value of the investment.
- Where a foreign person acquires an interest in residential land that is considered national security land,² this will be a notifiable national security action, in addition to a notifiable and significant action.

A foreign person seeking to acquire an interest in residential land that meets one of these conditions must apply for foreign investment approval before taking the action.³ Applications are submitted electronically on the [Australian Taxation Office \(ATO\) website](#),⁴ and are supported by further guidance. A fee is payable for all foreign investment applications.

If a proposed investment is a notifiable and significant action, it will be screened for foreign investment approval under the national interest test (including in circumstances where a proposed investment is also a notifiable national security action). If a proposed investment is a notifiable national security action, and is not also a significant action, it will be screened under the narrower national security test. Regardless of which test the investment is screened under, a foreign person must not take the action until they have received foreign investment approval.

Significant penalties (including infringement notices, civil and criminal penalties) may apply for breaches of the foreign investment law.

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- 1 There are a number of ways in which a foreign person may acquire an interest in residential land (see, for example, section 12 of the *Foreign Acquisitions and Takeovers Act 1975* (the **Act**)). Acquisitions of Australian land are considered on a title-by-title basis.
 - 2 There are a number of ways in which a foreign person may acquire an interest in residential land (see, for example, section 12 of the Act). Acquisitions of Australian land are considered on a title-by-title basis.
 - 3 Foreign persons who want to minimise the risk of an asset they are interested in purchasing being sold to someone else before they receive foreign investment approval can enter into a contract as long as the contract is conditional on receiving foreign investment approval.
 - 4 Applications for foreign investment approval relating to residential land are generally processed by the ATO.



Exemptions from requiring approval

Part 3 of the *Foreign Acquisitions and Takeovers Regulation 2015* (the **Regulation**) provides a number of exemptions, where an acquisition of residential land may not be considered a notifiable action, a significant action, and/or a notifiable national security action, and may thus not need to be notified to the Treasurer. See the *Key Concepts* Guidance Note.

A foreign person is also not obliged to notify the Treasurer that they are proposing to take a significant action unless the action is also a notifiable action or notifiable national security action. However, under the Act the Treasurer has the power to make a range of orders in relation to a significant action that a person is proposing to take or has already taken (even if they do not inform the Treasurer about it).

Certain foreign investments that are not notifiable actions or notifiable national security actions may be reviewable national security actions. Where a reviewable national security action is not notified to the Treasurer (including as a result of one of these exemptions), the action may be called-in for review if the Treasurer considers that the action may pose a national security concern. Foreign persons can choose to extinguish the Treasurer's call-in power by voluntarily notifying of reviewable national security actions. Guidance on investment areas that may raise national security concerns, and where investors are therefore encouraged to voluntarily notify, are outlined in the *National Security* Guidance Note. If a proposed investment is only a reviewable national security action, it will be screened under the narrower national security test.

B: Acquisitions of vacant residential land

Definition of vacant residential land

Vacant land in Australia is considered to be vacant residential land if it is land on which the number of dwellings that could reasonably be built is less than 10, and the land is not being used wholly and exclusively for a primary production business.

Land that previously had a residential dwelling built on it would generally not be treated as vacant residential land. This is because a new dwelling built on the land would not genuinely increase the housing stock (as a dwelling already existed before its demolition). The land is therefore subject to the eligibility and conditions applicable for [established dwellings](#).

Approval conditions⁵

As part of the national interest test, the Treasurer will generally seek to ensure that vacant residential land, once acquired, is put to productive use within a reasonable timeframe and 'land banking' does not occur.

If an application for vacant residential land is approved, it will generally be approved subject to:

- the purchase price being no greater than the value specified in the approval;
- at least one residential dwelling being built on the land;
- construction of all dwelling(s) being completed within four years from the date of notice of approval;
- evidence of the completion of the dwelling(s) being submitted to the Government within 30 days of being received;⁶ and
- the foreign person not selling, transferring, or otherwise disposing of their interest in the land prior to construction of all dwelling(s) being completed.

Once developed, there are generally no ongoing conditions on the foreign person's use of the property – for example, they may residentially occupy the property, or rent it out.

There is no limit on the number of vacant land parcels that a foreign person can acquire for residential development.

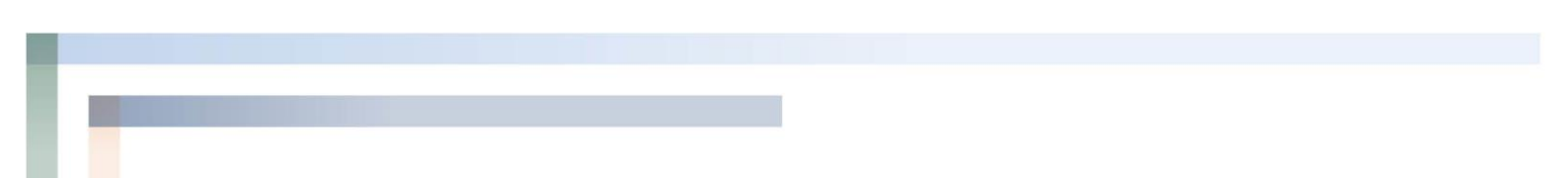
Exemption certificates

See also the *Overview* and *Exemption Certificates* Guidance Notes.

Foreign persons may apply for approval to purchase vacant residential land through either a no objection notification (when seeking approval for a specified title of land), or through an

⁵ The Treasurer has the ability to impose any condition(s) that the Treasurer considers necessary to protect the national interest (or national security, as the case requires). While this section outlines some of the more common conditions applied for these types of investments, all investments are considered on a case-by-case basis, and thus the actual conditions imposed may vary from these. See the *Principles for Developing Conditions* Guidance Note.

⁶ Evidence could include a certificate of fitness for occupancy or use, or final occupancy or builder's completion certificate.



exemption certificate under section 43B of the Regulation (when an exact title of land has not yet been identified).

A *Residential Land (other than Established Dwelling) Exemption Certificate* will allow a foreign person to acquire any vacant title of residential land, within the parameters of the certificate, without having to apply for individual approval for each title of land they attempt to purchase. It can significantly streamline the approval process for those foreign persons that may have several unsuccessful attempts at purchasing a title of land (e.g. being outbid at auction) before finally securing one.

If an application for a *Residential Land (other than Established Dwelling) Exemption Certificate* is approved, it will generally be approved subject to:

- the foreign person purchasing only one title of vacant residential land;
- the land being located in the state or territory specified in the certificate; and
- the purchase price being no greater than the value specified in the certificate.

The certificate will generally be valid for 12 months from the date of approval.

The standard conditions applying to acquisitions of vacant residential land (such as completing construction within four years) will also still continue to apply, regardless of whether the land was acquired through a no objection notification or exemption certificate.

Example 1

A foreign person wants to purchase a vacant residential land title up to the value of \$2 million in Sydney to develop a house on. They apply for a *Residential Land (other than Established Dwelling) Exemption Certificate* to allow them to purchase any parcel of vacant residential land valued at \$2 million or less. The foreign person is granted an exemption certificate that is valid for 12 months, for a single purchase up to \$2 million.

The foreign person attends multiple auctions, and is unsuccessful. They then make a private offer on a title of vacant residential land for \$1.5 million, and the offer is accepted. When the foreign person uses the exemption certificate to purchase one title of vacant residential land they are no longer able to use that exemption certificate to acquire any other vacant residential land titles.

C: Acquisitions of new (and near-new) dwellings

Definition of new (and near-new) residential dwellings

A **new dwelling** is a dwelling that:

- will be, is being, or has been, built on residential land;
- has not been previously sold as a dwelling; and
- has not been previously occupied.⁷

A **near-new dwelling** is a dwelling that:

- will be, is being, or has been, built on residential land;
- is part of a residential development;⁸
- was previously sold⁹ by the developer of that development, but the transaction failed to settle; and
- has not been previously occupied for more than 12 months in total.

For the avoidance of doubt, new (and near-new) dwellings do not include established residential dwellings that have been refurbished or renovated, or a single dwelling that has been built to replace one or more demolished established dwellings. This is because the refurbished or renovated dwelling, or a new dwelling built on the land, does not genuinely increase the housing stock (as a dwelling already existed before its refurbishment/demolition). The land in these situations is therefore subject to the eligibility and conditions applicable for [established dwellings](#).

Example 2

Bryce decided to demolish the existing dwelling on his property and rebuild a new single dwelling. When construction was completed, Bryce decided that he wanted to sell the property. Bryce has not occupied the dwelling or rented it out.

In this case, the rebuilt dwelling does not represent a genuine increase in Australia's housing supply (even if it is larger or of higher quality than the original dwelling), and so will be treated as an established dwelling, and not a new dwelling, under Australia's foreign investment framework.

7 Section 4 of the Act.

8 Section 4 of the Act (and section 15 of the Regulation) defines a **development** as one or more multi-story buildings with at least 50 independent self-contained dwellings (other than townhouses).

9 A property is considered "sold" once a binding purchase agreement has been entered into, regardless of whether the sale is completed (or settled).

Approval conditions¹⁰

If an application for a new (or near-new) residential dwelling is approved, it will generally be approved subject to the purchase price being no greater than the value specified in the approval.

Once acquired, there are generally no ongoing conditions on the foreign person's use of the property – for example, they may residentially occupy the property, or rent it out. However, the foreign person will be required to lodge an annual vacancy fee return. See the Vacancy Fee section in this Guidance Note.

There is no limit on the number of new (or near-new) dwellings that a foreign person can acquire.

Exemption certificates

See also the *Overview* and *Exemption Certificates* Guidance Notes.

Foreign persons may apply for approval to purchase new (or near-new) residential dwellings through either a no objection notification (when seeking approval for a specified property), or through an exemption certificate under section 43B of the Regulation (when an exact property has not yet been identified).

A *Residential Land (other than Established Dwelling) Exemption Certificate* will allow a foreign person to acquire any new (or near-new) residential dwelling, within the parameters of the certificate, without having to apply for individual approval for each property they attempt to purchase. It can significantly streamline the approval process for those foreign persons that may have several unsuccessful attempts at purchasing a property (e.g. being outbid at auction) before finally securing one.

If an application for a *Residential Land (other than Established Dwelling) Exemption Certificate* is approved, it will generally be approved subject to:

- the foreign person purchasing only one new (or near-new) residential dwelling;
- the property being located in the state or territory specified in the certificate; and
- the purchase price being no greater than the value specified in the certificate.

The certificate will generally be valid for 12 months from the date of approval.

The standard conditions applying to acquisitions of new (or near-new) residential dwellings (such as registration on the foreign ownership register) will also still continue to apply, regardless of whether the property was acquired through a no objection notification or exemption certificate.

¹⁰ The Treasurer has the ability to impose any condition(s) that the Treasurer considers necessary to protect the national interest (or national security, as the case requires). While this section outlines some of the more common conditions applied for these types of investments, all investments are considered on a case-by-case basis, and thus the actual conditions imposed may vary from these. See the *Principles for Developing Conditions* Guidance Note.

Example 3

A foreign person wants to purchase a new dwelling in Queensland to rent out. They apply for a *Residential Land (other than Established Dwelling) Exemption Certificate* to allow them to purchase one unspecified new dwelling for \$1 million or less, and is granted an exemption certificate that is valid for 12 months.

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

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

D: Property developers, and acquisitions of new (and near-new) dwellings

See also the *Exemption Certificates* Guidance Note.

Property developers (and other vendors) can apply for a *New (or Near-New) Dwelling Exemption Certificate*. Where a developer holds such a certificate, a foreign person purchasing a new (or near-new) dwelling in that development will not generally be required to seek their own individual foreign investment approval. This can significantly streamline the sale process of dwellings in a new development.

Foreign persons who seek to rely on the developer holding such a certificate when purchasing residential land should check the certificate to ensure that it covers their intended action(s).

A *New (or Near-New) Dwelling Exemption Certificate* will generally only provide approval for a foreign person to purchase up to \$3 million worth of dwellings in a single development.¹¹ Should the foreign person wish to acquire interests with a cumulative value greater than \$3 million in a development, the foreign person will be required to seek their own individual foreign investment approval.

Example 4

Lauren is a foreign person who wants to acquire a new dwelling off-the-plan worth \$2 million from a developer that holds a *New (or Near-New) Dwelling Exemption Certificate*. If the developer provides Lauren with a copy of the certificate, then she does not need to seek separate foreign investment approval for the proposed acquisition.

Lauren then decides she would like to acquire another dwelling worth \$1.3 million off-the-plan in the same development. This would bring the total value of dwellings acquired by Lauren to \$3.3 million. As this would take her total interest in the development above the \$3 million threshold for purchases in the same development, Lauren would be required to seek separate foreign investment approval (including paying the relevant application fee), to acquire the \$1.3 million dwelling.

Example 5

Mitchell is a foreign person who wants to acquire a new dwelling worth \$3.5 million off-the-plan from a developer that holds a *New (or Near-New) Dwelling Exemption Certificate*. As the value of the single dwelling is above the \$3 million threshold for acquisitions in the specified development, Mitchell would be required to seek separate foreign investment approval to purchase the dwelling and pay the relevant application fee.

¹¹ In working out if this threshold is met; sum up the consideration for the current proposed investment, along with the considerations paid for any other interests acquired in the development under the same certificate.

Developer eligibility

Developers (either Australian or foreign) can apply for a *New (or Near-New) Dwelling Exemption Certificate* for a specified development, if the development:¹²

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

A project meeting the above definition will be considered to be a 'development' where it comprises one or more multi-storey buildings that will be, are being, or have been, built under one development approval. For the purposes of a *New (or Near-New) Dwelling Exemption Certificate*, a 'development' does not include house and land packages.

If the developer does not have unconditional approval to commence development from the relevant government authority, for example because further approval or action is required, the developer may not be eligible for a *New (or Near-New) Dwelling Exemption Certificate*.

Applications for a *New (or Near-New) Dwelling Exemption Certificate* will be considered on a case-by-case basis. Consideration will be given to a number of factors, including:

- a marketing or advertising schedule that outlines when, where, and how, the development will be marketed in Australia, including dates and budgeted expenditure;
- a schedule of the number of dwellings to be built in the development, or stage of the development. *New (or Near-New) Dwelling Exemption Certificate* for developments with multiple stages may not be approved for all stages of the development in the first instance, even if development approval has been granted for the entire development;
- information on the specific units to be built in the development or stage of the development, such as the unit number, number of bedrooms in each unit, allocated car spaces and the expected sale price of each unit;
- ownership information of the development, including shareholders and beneficiaries, as applicable;
- architectural plans and artists impressions of the proposed development; and
- compliance standing – if an applicant, or any related person or entity, has held an exemption certificate previously (such as those previously known as an 'advanced off-the-plan' certificate) and has not complied with its conditions, this compliance history will be taken into account when assessing the application.

¹² *Development* is defined in section 4 of the Act.

Approval conditions¹³

If an application for a *New (or Near-New) Dwelling Exemption Certificate* is approved, it will generally be approved subject to the developer:

- marketing the dwellings for sale in Australia;
- selling no more than 50 per cent of the total number of dwellings in the development to foreign persons under the certificate;
- selling no more than \$3 million worth of dwellings in the development to a single foreign person under the certificate;
- providing a copy of the certificate to each foreign purchaser;
- reporting to the Government, every six months (until all dwellings in the development are sold), on the dwellings sold to foreign persons under the certificate, including the purchaser details and the value of the sales;
- notifying the Government, within 30 days, if the number of dwellings in the development is reduced to less than 50; and
- paying a [fee for each dwelling sold](#) under the certificate.

¹³ The Treasurer has the ability to impose any condition(s) that the Treasurer considers necessary to protect the national interest (or national security, as the case requires). While this section outlines some of the more common conditions applied for these types of investments, all investments are considered on a case-by-case basis, and thus the actual conditions imposed may vary from these. See the *Principles for Developing Conditions* Guidance Note.

Example 6

City Builder Co. is a developer who wants to construct a 100 dwelling apartment complex. The local government authority has issued City Builder Co. with a permit for the development subject to the condition that the developer receives approval from the State transit authority. The developer may not commence development until the approval from the State transit authority has been submitted to the local government authority, and the local government authority has issued a development approval. City Builder Co. may not meet the eligibility criteria for a *New (or Near-New) Dwelling Exemption Certificate* prior to receiving the development approval which will enable City Builder Co. to commence development.

Example 7

Sam's Building Co. is a developer who wants to construct a 200 dwelling apartment complex in two stages. Sales for the first stage, which will consist of 90 dwellings, are likely to commence in the next six months, and Sam's Building Co. wants to obtain a *New (or Near-New) Dwelling Exemption Certificate* to be able to sell new dwellings in the development to foreign persons. Sam's Building Co. applies for a *New (or Near-New) Dwelling Exemption Certificate* and supplies detailed plans for the first stage, however, is unable to provide details for the second stage, which is still waiting on local government approval. Sam's Building Co. is granted an exemption certificate for stage one of the development and can apply for an exemption certificate for stage two in the future.

Fees per sale

See also the *Fees* Guidance Note.

Consistent with all other applications for foreign investment approval, developers will need to pay a fee when applying for a *New (or Near-New) Dwelling Exemption Certificate*.

If the certificate is granted, a separate fee will also be payable for each dwelling sold to a foreign person under the certificate. These fees must be paid within 30 days of the end of each six month period (until all dwellings in the development are sold), covering all of the dwellings sold under the certificate during that period (referred to as the reconciliation period).

While developers are nominally liable to pay these fees, it is possible for the developer and the foreign person to reach an agreement about who will pay the fee. Where a foreign person agrees to pay the fee directly to the ATO, they can do so using the payment reference number listed on the certificate.

E: Ban on purchases of established dwellings

From 1 April 2025 to 31 March 2027, it is the Government's policy that foreign persons are generally banned from purchasing established dwellings in Australia. This includes acquisitions of interests in land entities which hold established dwellings. However, subject to foreign investment approval, limited exceptions to the policy include:

- foreign persons who seek to purchase an established dwelling for redevelopment, if the redevelopment will significantly increase Australia's housing stock by at least 20 additional dwellings.
- foreign persons who seek to purchase an established dwelling where the acquisition supports the availability of housing on a commercial scale. This includes (but is not limited to) proposals to acquire an interest in one or more established dwellings in multi-unit developments (such as retirement villages, assisted living or aged care facilities, and student accommodation) on a commercial scale.
- foreign controlled companies, that employ workers from Pacific island countries and Timor-Leste and are required to provide housing for them, including those participating in the Pacific Australia Labour Mobility (PALM) scheme, who seek to purchase an established dwelling to house their Australian based workers.
- foreign persons who seek to purchase existing Build to Rent developments, where the development will continue to be operated as Build to Rent.

All applications to purchase established dwellings are considered on a case-by-case basis. If you have queries about the application of the Government's policy to your commercial investment proposal, please contact Treasury at ForeignInvestmentEnquiries@treasury.gov.au.

The acquisition of an established dwelling may be permitted under either a no objection notification or an exemption certificate. The conditions applying to the acquisition of established dwellings will apply regardless of whether the property was acquired through a no objection notification or exemption certificate. See also the *Overview and Exemption Certificates* Guidance Notes.

Transitional arrangements

Applications made prior to 1 April 2025 for purchases of established dwellings will be considered under the guidance published in the *Residential Land* Guidance Note, version 2 (1 July 2023).

Where a person has acquired an interest in residential land without prior foreign investment approval in breach of the Act, they may apply for retrospective approval. Retrospective applications will be considered in accordance with the national interest test at the time of application. For established dwellings, this means that retrospective applications made on 1 April 2025 or later will be considered against the Government's policy regarding the purchase of established dwellings by foreign persons from 1 April 2025.

F: Purchases of established dwellings for redevelopment

It is the Government's policy that foreign persons are generally banned from purchasing established dwellings in Australia. However, approval may be granted if a proposal to redevelop an established dwelling will significantly increase Australia's housing stock.

'Significantly' increase Australia's housing stock means that a redevelopment proposal would create at least 20 additional dwellings on the land. The foreign person will generally need to provide evidence regarding the actions taken in respect of development and construction to satisfy any development conditions.

A residential land (established dwelling) application fee will apply. See the *Fees Guidance Note* for further information.

Approval conditions

The Treasurer may impose any condition(s) that the Treasurer considers necessary to protect the national interest (or national security, as the case requires). While this section outlines some of the more common conditions applied for these types of investments, all investments are considered on a case-by-case basis, and thus the actual conditions imposed may vary from these. See the *Principles for Developing Conditions Guidance Note*.

Established dwelling being retained

If an application for redevelopment – involving an established dwelling being retained – is approved, it will generally be approved subject to:

- the purchase price being no greater than the value specified in the approval;
- the property being vacant at settlement;
- at least 20 additional dwellings being built on the land;
- no part of the existing dwelling being occupied from the date of settlement until construction of the additional dwellings is complete;
- construction of all additional dwellings being completed within four years from the date of notice of approval;
- evidence of completion of the dwellings being submitted to the Government within 30 days of it being received;¹⁴
- the foreign person not selling, transferring, or otherwise disposing of their interest in the land prior to construction of all dwellings being completed; and
- once construction of the new dwellings is complete, one or more of the dwellings on the land being made available for use by independent third parties (e.g. by renting out or selling the dwellings).

¹⁴ Evidence could include a certificate of fitness for occupancy or use, or final occupancy or builder's completion certificate.

Established dwelling being demolished

If an application for redevelopment – involving an established dwelling being demolished – is approved, it will generally be approved subject to:

- the purchase price being no greater than the value specified in the approval;
- the property being vacant at settlement, and no part of the existing dwelling being occupied from the date of settlement to the commencement of demolition;
- the demolished dwelling(s) being replaced with at least 20 additional dwellings;¹⁵
- construction of all new dwellings being completed within four years from the date of notice of approval;
- evidence of completion of the dwellings being submitted to the Government within 30 days of it being received;¹⁶ and
- the foreign person not selling, transferring or otherwise disposing of their interest in the land prior to construction of all dwellings being completed.

Parcel of vacant land that previously had a dwelling on it

If an application for development – involving a parcel of vacant land that previously had a dwelling on it – is approved, it will generally be approved subject to:

- the purchase price being no greater than the value specified in the approval;
- at least 20 additional dwellings being built on the land;
- construction of all the dwellings being completed within four years from the date of notice of approval;
- evidence of completion of the dwellings being submitted to the Government within 30 days of it being received;¹⁷ and
- the foreign person not selling, transferring or otherwise disposing of their interest in the land prior to construction of all dwellings being completed.

¹⁵ For the avoidance of doubt, the requirement is that 20 *additional* dwellings are created, when compared to the number of established dwellings that are demolished. See Example 8 below.

¹⁶ Evidence could include a certificate of fitness for occupancy or use, or final occupancy or builder's completion certificate.

¹⁷ Evidence could include a certificate of fitness for occupancy or use, or final occupancy or builder's completion certificate.

Example 8

Gina, a foreign person, wants to purchase three established dwellings on adjacent blocks to demolish and redevelop into a 23 dwelling complex. She applies for approval to purchase each property and redevelop them, and pays the relevant application fee for each property. As the redevelopment will significantly increase the housing stock, that is, when compared to the three existing dwellings, an additional 20 dwellings will be created (for a total of 23), Gina is given approval for the purchase, subject to conditions for redevelopment into multiple dwellings.

Example 9

James wants to purchase one established dwelling to retain and build an additional dwelling on the property. The additional dwelling is planned to be a separate, standalone house located on the back of the block and be similar in size to the existing dwelling. James plans to make both dwellings available for rent when the redevelopment is complete.

The proposal does not significantly increase the housing supply by an additional 20 dwellings and will generally not be permitted.

G: Purchases of established dwellings that support the availability of housing on a commercial scale

It is the Government's policy that foreign persons are generally banned from purchasing established dwellings in Australia. However, established dwelling acquisition proposals that support the availability of housing on a commercial scale will be considered on a case-by-case basis. This includes (but is not limited to) proposals to acquire an interest in one or more established dwellings in multi-unit developments (such as retirement villages, assisted living or aged care facilities, and student accommodation) on a commercial scale.

Foreign persons who seek to purchase established dwellings on the basis that it will support the availability of housing supply on a commercial scale should contact Treasury regarding the submission process, by email to ForeignInvestmentEnquiries@treasury.gov.au.

A residential land (established dwelling) application fee will apply. See the *Fees* Guidance Note for further information.

Example 10

A fund, which is a foreign person, is proposing to acquire a 60 per cent interest in an Australian land entity that is a residential aged care operator, via the holding entity of the Australian land entity.

The residential aged care facility has been operated as such for many years and contains 100 dwellings, comprising of different levels of aged care. The fund will continue to operate the facility as an aged care facility, providing housing to older Australians.

This acquisition of interests in the Australian land entity supports the availability of housing supply on a commercial scale, and approval for this acquisition is likely to be considered favourably.

H: Purchases of established dwellings for certain Australian-based employees

It is the Government's policy that foreign persons are generally banned from purchasing established dwellings in Australia.

However, the Government recognises that employers who employ people from Pacific island countries and Timor-Leste, including those participating in the Pacific Australia Labour Mobility (PALM) scheme, may be obliged to provide or arrange accommodation for these people.

Employers can apply to purchase established residential dwellings for use by these employees, where they are obliged to provide accommodation or arrange (for example, through labour hire firms) accommodation. A PALM scheme employer is an employer with a current PALM scheme deed and PALM workers are citizens of participating countries who are engaged by those employers as part of the PALM scheme.

A residential land (established dwelling) application fee will apply. See the *Fees* Guidance Note for further information.

Eligibility

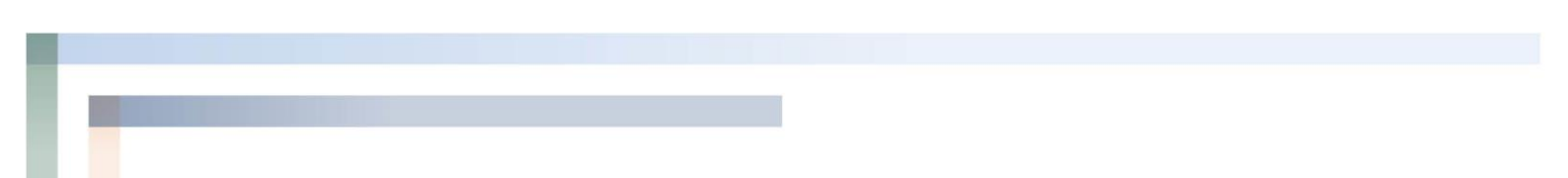
Foreign persons who employ people from Pacific island countries and Timor-Leste, including those participating in the PALM scheme, and are required to provide housing for them, will be required to show that they are operating a substantial Australian business to be eligible for approval to purchase one or more established dwellings under this category.

To determine whether a business is substantial, consideration will be given to the turnover, profit and asset base of the business, as well as the number of Australian based employees (both Australian and foreign) employed by the business.

Foreign persons would not be eligible to purchase an established dwelling under this category where the dwelling would represent a significant proportion of its Australian assets.

In making an application, foreign persons that operate a substantial Australian business will be required to demonstrate a genuine need to purchase one or more established dwellings to house Australian based employees. Consideration will be given to a number of factors, including:

- The type of business being operated.
- The location of the business operations. For example, businesses operating in rural and remote areas are more likely to demonstrate a genuine need for established dwellings to house employees.
- Difficulty in obtaining suitable rental accommodation on an ongoing basis.
- Difficulty in obtaining new dwellings or vacant land, or securing builders to build new dwellings.
- Difficulty in attracting and retaining suitable employees in the absence of suitable rental accommodation on an ongoing basis.
- The location of the dwelling, including its proximity to the business operation.

- 
- The scale of the business operations. Larger operations requiring a substantial number of employees are more likely to demonstrate a genuine need for established dwellings for housing.
 - The duration of the need for housing for Australian-based employees. Businesses will generally need to demonstrate a longer-term operational plan requiring employees and employee housing on an ongoing basis.
 - The foreign person's operating history in Australia and compliance standing.

Approval conditions¹⁸

If an application for an established dwelling for Australian based employees is approved, it will generally be approved subject to:

- the property being used solely to accommodate workers from Pacific island countries and Timor-Leste; and
- the foreign person selling, transferring or otherwise disposing of the property within six months from when it is first expected to remain vacant for six months or more, or has remained vacant for six months or more, whichever occurs first.

¹⁸ The Treasurer has the ability to impose any condition(s) that the Treasurer considers necessary to protect the national interest (or national security, as the case requires). While this section outlines some of the more common conditions applied for these types of investments, all investments are considered on a case-by-case basis, and thus the actual conditions imposed may vary from these. See the *Principles for Developing Conditions* Guidance Note.

I: Build to Rent developments

Foreign persons are banned from purchasing established dwellings in Australia. However, to encourage foreign institutional investment in rental stock and affordable housing, foreign investors may be permitted to purchase established Build to Rent (BTR) developments (the **BTR exemption**).¹⁹

Investments in established BTR developments (or acquisitions of residential or agricultural land for new BTR developments²⁰) may also qualify for lower application fees at commercial land rates. See the Fee waivers and remissions section of the *Fees Guidance Note* for further information.

The BTR exemption and concessional fee treatment under the foreign investment framework are aligned with and complement the concessional tax treatment of BTR developments to support investment in Australia's BTR sector under the Government's housing agenda.²¹ This guidance will be updated as appropriate to maintain this alignment.

Eligibility

To be considered for the BTR exemption and concessional fee treatment, the development should meet the following criteria:

- be a BTR development (see definition below), and
- remain a BTR development:
 - for land acquisition for new BTR developments, the shorter of:
 - : the period during which you hold an interest in the development, or
 - : 15 years after the certificate of occupancy is issued for the completed BTR development,
 - for acquisitions of established BTR developments, the period during which you hold an interest in the development.

The acquisition of a partial interest in a BTR development will be considered for the BTR exemption and concessional fee treatment on a case-by-case basis.

If the development you are proposing to acquire an interest in involves BTR and non-BTR elements (for example, mixed-use developments), you may still qualify for the BTR exemption. However, the purchase of established dwellings for non-BTR purposes will not be permitted (unless other limited exemptions apply, see the exceptions in this Guidance Note).

¹⁹ Announced as part of the 2024-25 Commonwealth Budget.

²⁰ Announced as part of the 2023-24 Mid-Year Economic and Fiscal Outlook.

²¹ For further information, see <https://www.ato.gov.au/businesses-and-organisations/assets-and-property/build-to-rent-development-tax-incentives>.

Definition of a BTR development

A BTR development is a development:

- that will consist of, or does consist of, 50 or more dwellings; and
- where each dwelling will be or is available for rent or is rented by the general public:
 - developments that are not rented or available for rent by the general public are not eligible. This means retirement villages, student accommodation, and land lease communities are excluded; and
- where each dwelling will be or is offered for lease terms of at least 5 years (tenants may request to enter into lease terms less than 5 years, but must have the option to enter into a lease term of at least 5 years); and
- where all of the dwellings in the development (and common areas that are part of the development) will be or are directly owned together by a single entity at all times; and
- where at least 10 per cent of the dwellings in the development will be or are affordable dwellings (as defined in the *Income Tax Assessment Act 1997*).

You should provide evidence with your application addressing these criteria that enables verification of the development's BTR characteristics and the intent for it to remain a BTR development. Treasury may request further information as required.

How to apply

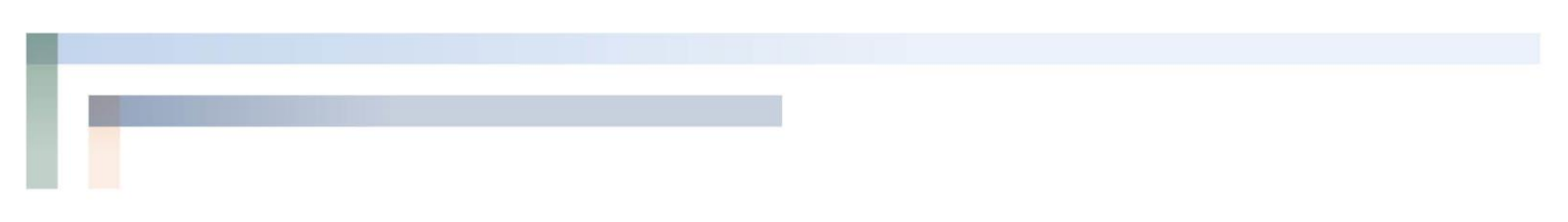
Investment proposals that seek the BTR exemption (and any fee waiver request) should be submitted to Treasury through the Application Portal, even if they only involve the purchase of residential land. Exemption certificate applications should request an exemption certificate under section 58 of the Act.

Your application cover letter should address the BTR definition and eligibility criteria above, and include an express request for a BTR fee waiver consideration. These applications should not be submitted to the ATO.

Conditions

If your proposal to acquire a BTR development is approved, it will generally be approved subject to conditions. The conditions imposed are considered on a case-by-case basis, including the nature of the interest being acquired.²²

²² The Treasurer may impose any condition(s) that the Treasurer considers necessary to protect the national interest (or national security, as the case requires). While this section outlines some of the more common conditions applied for these types of investments, all investments are considered on a case-by-case basis, and thus the actual conditions imposed may vary from these. See the *Principles for Developing Conditions* Guidance Note.



The BTR conditions will usually require:

- commencement of construction of the development within 5 years (for land purchases),
- that the development meets the definition of a BTR development while you hold an interest in it, and
- reporting information to be provided for the calculation of any applicable vacancy fees.

Other conditions, such as periodic reporting on compliance with specific conditions, may also be imposed.

Maintaining strong compliance with Australia's foreign investment framework is a priority for the Australian Government, to ensure that foreign investment is not contrary to the national interest, or national security. You may be liable for significant penalties, including infringement notices, and civil and criminal penalties, if you engage in conduct that contravenes a condition included in your no objection notification, notice imposing conditions, or exemption certificate.

Example 11

A foreign person submits a foreign investment proposal to purchase 80 per cent of the shares in an entity that has a BTR development under construction, and provides sufficient evidence of the development's characteristics as a BTR development.

A decision is made to allow the purchase subject to conditions, including requiring that the development remains a BTR development until the foreign person ceases to hold an interest in it (via the 80 per cent stake in the company) or for a minimum of the first 15 years after the certificate of occupancy for the development is issued, whichever occurs first. The approval is also subject to other conditions, including ensuring the development has a minimum number of affordable dwellings, that all dwellings and the common areas are owned by a single entity, and all the dwellings are available for rent by the general public and have an option of a five year lease.

During the relevant period, the company is required to annually report to Treasury in accordance with the imposed reporting conditions.

Example 12

A foreign investor proposes to acquire residential land on which to construct a new BTR development consisting of 80 market-rate and affordable rental units. A no objection notification is given with conditions. The conditions include that the development must remain a BTR development until either the foreign person ceases to hold an interest in it or for the first 15 years following the certificate of occupancy being issued for the completed BTR development, whichever occurs first. The conditions also require that during the relevant period, the investor must ensure the development contains 50 or more dwellings, with at least 10 per cent being affordable rental dwellings, and that all the dwellings be owned by a single entity.

The investor constructs the BTR development, and after five years, the investor sells 40 dwellings to individual purchasers.

The investor is in breach of the condition that the BTR development contains 50 or more dwellings and that all the dwellings are owned by a single entity. Significant civil and criminal penalties could apply.

J: Vacancy fees

See also the *Fees* Guidance Note.

In accordance with Part 6A of the Act, an annual vacancy fee is levied on foreign owners of residential property if their property is not residentially occupied or genuinely available on the rental market for at least 183 days (approximately six months) in a 12-month period.

The fee is intended to encourage foreign owners of residential property to make their properties available for rent when they are not occupied as a residence, and so increase the number of properties available for Australians to live in.

The vacancy fee applies to:

- foreign persons who made a foreign investment application for residential land on or after 7:30PM (AEST) on 9 May 2017; and
- foreign persons who purchased a dwelling in a development under a *New (or Near-New) Dwelling Exemption Certificate* that was applied for by the developer on or after 7:30PM (AEST) on 9 May 2017.

Foreign owners of residential property that meet the above criteria must lodge an annual vacancy fee return.

What does residentially occupied or genuinely available for rent mean?

For the purpose of the vacancy fee, foreign owned residential property is considered residentially occupied, or genuinely available on the rental market, if it can be proven²³ that:

- the property owner, or a relative of the owner, genuinely occupied the property as a place of residence; or
- the property was genuinely occupied as a place of residence subject to a lease or licence with a term of at least 30 days; or
- the property was made genuinely available as a place of residence on the rental market, with a contract term of at least 30 days.

Properties made available for short-term leases of less than 30 days (including via web-based vacation rental sites) are not considered residentially occupied or genuinely available on the rental market.

²³ Examples of supporting evidence may include: tenancy agreement(s); income tax returns or notices of assessment; title search or certificate of title showing the date that title was transferred; bank statements; insurance certificates for tenant's or landlord's insurance; and/or evidence of the property being genuinely available for rent.

Example 13

Maria purchases a new apartment in St Kilda. She intends to spend significant time there for work and her family enjoy coming to Australia to holiday from overseas.

Maria finds herself spending more and more time away from Australia and decides to place the apartment on an online short-stay accommodation rental site. She feels that this will provide the flexibility to use the property through the year as the apartment is generally rented via an online rental site for less than one week at a time. Maria ends up spending only six weeks in Australia over the 12 month period after the purchase of the apartment settled. She lodges her vacancy fee return with the ATO and is advised that she is liable to pay the vacancy fee.

In this situation, Maria is liable for the vacancy fee as this type of rental has not made the apartment genuinely available as a rental property for a continuous period of 30 days or more throughout the vacancy year. While the total number of days that the property was occupied is over 183 days, the holiday rentals were not for a continuous period of 30 days or more.

The vacancy fee year, and lodging on-time

A foreign person's liability for the vacancy fee is reassessed annually, based on the use of the property over the preceding 12 months (the vacancy year). The first assessable vacancy year starts on the first day that the person acquires the right to occupy the property (for example, the date of settlement or receipt of an occupancy certificate).²⁴

Foreign owners need to lodge their vacancy fee return – outlining the use of their property in the previous 12 months – within 30 days of the end of each vacancy year.

²⁴ See section 115C(3) of the FATA.

Example 14

André and Marc purchase a new apartment in Sydney. They will be entitled to occupy the apartment on 23 September 2018. In this case, the first occupation day is 23 September 2018, and their vacancy fee year will end on 22 September 2019. They have 30 days from the end of the vacancy fee year to submit their first vacancy fee return.

Example 15

Mateo is a temporary resident and sought approval to purchase an established dwelling for redevelopment in Northern Sydney in January 2017. Foreign investment approval is granted subject to conditions.

Mateo settles on the property on 1 June 2017 and completes the construction of two new dwellings 17 months later. Occupancy certificates are issued on 1 November 2018. Mateo then sells one dwelling and uses the other as his residence.

On 1 June 2018, Mateo is not liable for the vacancy fee because the new dwelling has not been completed. Mateo's use of the dwelling he owns will be assessed, for the purpose of the vacancy fee, on 1 November each year, as this is the date which Mateo was first able to occupy the property. The first year he must submit a return will be for the vacancy fee year 1 November 2018 to 31 October 2019.

Example 16

Sophia and Frederick decide to buy a new house close to their Australian relatives in Brisbane to use when they visit each year. Prior to purchasing, Sophia and Frederick submit a foreign investment application on 30 May 2017. An approval is granted and the purchase of the property is settled on 22 August 2017.

In the year following settlement, Sophia and Frederick live in their Brisbane property for three months over the summer. At the end of summer, Sophia and Frederick leave Australia and do not return until August 2018. Their Brisbane property is not lived in or made available for rent while Sophia and Frederick are not in Australia.

Sophia and Frederick's vacancy year is the 12 month period following the occupation date (settlement date) which is the period 22 August 2017 to 21 August 2018.

Within 30 days from 21 August 2018, Sophia and Frederick must lodge a vacancy fee return advising whether the property was residentially occupied, or genuinely available for rent, for at least 183 days in the past 12 months. Following lodgement of the vacancy fee return, Sophia and Frederick are advised that they are liable to pay the vacancy fee.

Vacancy fee returns are lodged electronically on [the ATO website](#).²⁵

²⁵ To lodge a vacancy fee return, the foreign ownership of the property needs to have been registered on the [Register of Foreign Ownership of Residential Land](#) (for pre-July 2023 approvals) or the [Register of Foreign Ownership of Australian Assets](#) (for approvals in July 2023 and onwards). This registration is a requirement of purchasing residential land in Australia. The registration will create a Register reference number, which is then needed to complete the vacancy fee return.

Where a property is jointly owned:

- In the case of joint tenants; only one return needs to be lodged, and if liable, only one fee will be payable.
- For tenants in common; each tenant will need to lodge a return, and if liable, the fee payable will be equal to the foreign investment application fee that was payable by each individual tenant.
- Where a property is co-owned by a foreign person and non-foreign person; the non-foreign person will have no liability to pay a vacancy fee.

After completing the lodgement, the confirmation page will indicate any liability for a vacancy fee and the amount payable. A notice of liability of the vacancy fee payable will also be provided to the foreign owner via email after lodgement. The notice will provide information on the reason the fee is being charged, the fee payable, payment details, and the due date.

Where a vacancy fee return is not lodged on time (i.e. within 30 days of the end of the vacancy year), the foreign owner of the property may be deemed to be liable to pay the vacancy fee, regardless of the number of days during the vacancy year in which the dwelling was residentially occupied or genuinely available for rent.

Example 17

Nikolai is an Estonian national who has received foreign investment approval to acquire a new dwelling in Perth. Nikolai residentially occupies the property for 250 days during his vacancy year whilst he is in Australia. However, Nikolai does not lodge his vacancy fee return on the ATO website within 30 days of the end of his vacancy year. As such, despite the property being adequately occupied during the vacancy year, Nikolai may still be liable to pay a vacancy fee for that year.

Exemptions from paying the vacancy fee

There are a number of situations where a foreign person may be exempt from being liable for a vacancy fee. Some of these situations are listed in the table below.

Where a foreign person meets one of the exemptions, they will still be required to lodge an annual vacancy fee return and make a declaration specifying the exemption that applies. In order to benefit from an exemption, foreign investors may be required to provide acceptable supporting evidence that they were unable to occupy the dwelling for one of the following reasons.

Exemption	Examples of acceptable evidence
Legal ownership of the property changed during the year.	<ul style="list-style-type: none"> Title search or certificate of title showing the date that title was transferred
The property is undergoing substantial repair, for example, due to fire, malicious damage or natural disaster.	<ul style="list-style-type: none"> Evidence of the reason for repairs, such as an insurance claim or police report
The property is undergoing substantial renovations or is deemed to be too unsafe to occupy.	<ul style="list-style-type: none"> Building permit details Building certificate or other third party report evidencing a safety issue
The resident of the property is receiving long-term, in-patient, medical or residential care.	<ul style="list-style-type: none"> Contact information for care facility Letter from care facility confirming you or your tenant is under medical/residential care away from the property
Legal restrictions by an order of a court or tribunal, or a law of the Commonwealth, a state or a territory.	<ul style="list-style-type: none"> Court orders or documents outlining the legal restrictions
The registered owner is deceased and administration of the estate is pending.	<ul style="list-style-type: none"> Death certificate of registered owner

Should a foreign owner of residential property cease to be a foreign person during a vacancy year, the vacancy fee obligations will cease to apply, and the person does not need to lodge a vacancy fee return. However, if the property was registered on the Register of Foreign Ownership of Australian Assets, a register notice may be required to be given. For more information, see the *Register of Foreign Ownership of Australian Assets* Guidance Note.

How much is the fee?

See the *Fees* Guidance Note.

K: Integrated Tourism Resorts – grandfathered treatment of residential land

Foreign persons seeking to purchase vacant residential land, a new dwelling, or an established residential dwelling, within a resort that was designated as an Integrated Tourism Resort (ITR)²⁶ prior to September 1999 are exempt from the need to apply and receive foreign investment approval.

For resorts designated as ITRs on or after September 1999, foreign persons are exempt from the need to receive foreign investment approval for purchases of developed residential property in the resort that is:

- subject to a lease of 10 years or more to the resort operator;
- available as tourist accommodation when it is not occupied by the owner; and
- the acquisition is consistent with any conditions imposed on the ITR at that time.

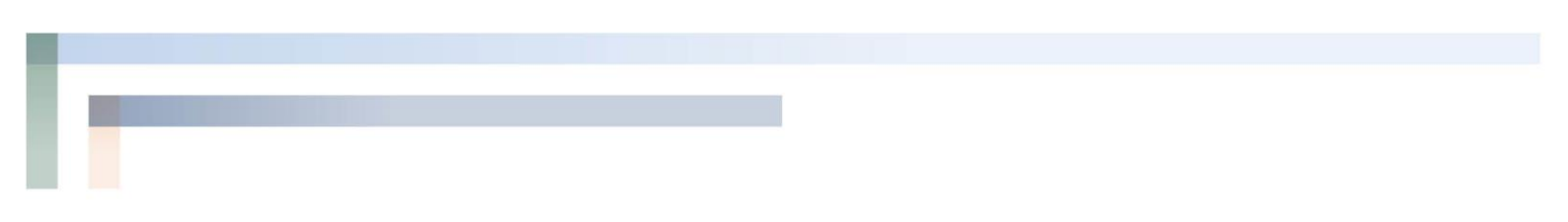
These exemptions from needing foreign investment approval only apply to residential land located within the original designated boundaries of the ITR.

List of Integrated Tourism Resorts

The following resorts were designated as integrated tourism resorts before September 1999:

- Hamilton Island Resort, Whitsunday Passage, Queensland
- Hope Island Resort, Hope Island, Queensland
- Hyatt Regency Resort, Coolum, Queensland
- Kooralbyn Valley Resort, Queensland
- Laguna Quays Resort – Stage 1, Repulse Bay, Queensland
- Mirage Port Douglas Resort, Port Douglas, Queensland
- Palm Cove Travelodge Resort, Queensland
- Royal Pines Resort, Ashmore, Queensland
- Sanctuary Cove, Hope Island, Queensland
- Joondalup Resort, Western Australia
- Wirrina Cove Resort, South Australia

²⁶ An integrated tourism resort was a development that held a mix of accommodation, recreation and commercial facilities that was planned and constructed by a single developer on single or adjoining sites within a well-defined area. The development normally included a hotel or hotels that supplied a substantial amount of the total accommodation, as well as recreational facilities such as swimming pools, gyms and/or sporting facilities within the boundaries of the resort. Integrated developments might also host commercial zones for retail, restaurants and entertainment facilities.



The following resorts were designated as integrated tourism resorts on or after September 1999:

- Heritage Golf and Country Club, Chirnside Park, Victoria
- Hunter Valley Golf and Country Club Resort, New South Wales
- Kingfisher Bay Resort Village, Fraser Island, Queensland

In 2015 the Act was amended, and no longer includes a mechanism to approve new integrated developments as ITRs. The treatment of existing ITRs has been grandfathered to minimise adverse impacts on current foreign investors.²⁷

²⁷ See item 8(1) of the *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015*.



Further information

Further information is available on the [Foreign Investment 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.