



Key Facts

Fees have been introduced to fund the administration cost of processing foreign investor applications

Stricter penalties make it easier to pursue foreign investors who break the rules

The Australian Taxation Office given responsibility to regulate foreign investment in residential property

Third parties who knowingly assist a foreign investor to breach the rules are now subject to civil and criminal penalties



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The Australian Government continues to welcome foreign investment into Australian residential property despite introducing fees to fund the cost of processing foreign investor applications, as well as, state taxes being revised for Victoria (including the capital city of Melbourne).

Foreign Investor Application Fees

The Australian Government continues to welcome foreign investment into Australian residential property. The current rules encourage direct investment into new housing, increasing the housing supply and support local economic activity.

All foreign persons— that is, temporary residents and non-residents— can apply to purchase newly constructed dwellings (never been occupied or owned by another individual/company that isn't the developer) and vacant residential land for development.

Once a property has been selected to purchase, an application must be made to the Australian Foreign Investment Review Board (FIRB). If a foreign person is buying into a major residential apartment project or a house-and-land package within a larger sub-division, the developer may have already gained FIRB approval for the portion

of the properties they intend to sell direct to foreign purchasers. It's highly recommended that an application is submitted prior to the advance of any transaction—to ensure complete legality of the purchase.

Additionally, approval from FIRB is property-specific—one application per property.

From 1 December 2015, all foreign investors must now pay an administration fee before their foreign investment application will be processed and stricter penalties have been ramped up by the Australian Taxation Office (ATO) for those who breach the rules. The fee on application does not provide any assurance of securing the property. If an application falls into a number of categories, the category with the highest fee would apply.

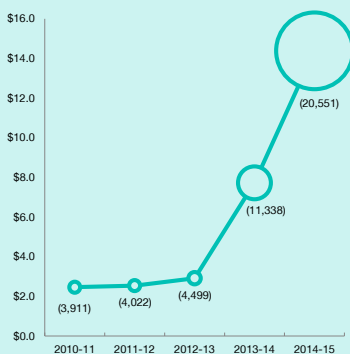
When the application is submitted, FIRB reviews to ensure the property purchase will be in the country's best interest. A decision on the application is made within 30 days— unless complications or alterations occur, in which it may take up to 90 days.

HOW MANY INDIVIDUAL APPLICATIONS WERE SUBMITTED TO FIRB?

Proposed investment in new residential property for individuals rose 86% to reach \$14.4 billion in Australia, comprising of 20,551 approvals in 2014-15.

This was up significantly on 2012-13 when investment approvals were \$2.9 billion and 4,499 individual purchasers were approved, as shown in Figure 1.

FIGURE 1
Investment In New Residential Property – Individual Purchases
\$ billion total value & (number of proposals)



Source: Knight Frank Research, FIRB Annual Report 2014-15

FOREIGN PURCHASER FEES WHEN INVESTING IN RESIDENTIAL PROPERTY IN AUSTRALIA

All foreign investors must pay an administration fee before their foreign investment application will be processed. For more detailed information, or to use the [on-line fee estimator](#), please refer to the FIRB website www.firb.gov.au

TABLE 1
Fees Payable by Foreign Investors, Residential Property
Based on Property Value

Value: AU\$1 million or less	Value: Over AU\$1 million
\$5,000	\$10,000 then \$10,000 incremental fee increase per additional \$1 million in property value; uncapped.

Source: Australian Government, FIRB

FOREIGN PURCHASER STATE TAXES WHEN INVESTING IN RESIDENTIAL PROPERTY IN VICTORIA

The Victorian State Government have revised taxes slated in 2015 applicable to foreign purchasers, including those purchasing in the capital city of Melbourne.

These state-based taxes are in addition to the recently introduced application fee payable to FIRB, as well as, standard local taxes payable to purchase and hold a property in Australia.

Stamp Duty

As of 1 July 2016, foreign investors buying residential property in Victoria will be taxed 7% of the purchase price (in addition to stamp duty tax), whether acquired directly or indirectly, that is, through a company or trust that purchases the residential property.

This tax was first applicable on 1 July 2015 at a rate of 3%.

For off-the-plan sales, the additional 7% duty will be calculated on the whole of the consideration paid. Current off-the-plan concessions will still be available to foreign purchasers when calculating the normal stamp duty rate payable.

Land Tax (Absentee Tax)

An absentee person, considered to be a foreign purchaser not residing in the property (purchased by the foreign investor in Victoria) will be charged an extra 1.5% land tax in addition to the general land tax rates and the surcharge rates for trusts.

This tax is intended to minimise the number of properties that remain vacant for extended periods throughout the year and is applicable from the 2017 land tax year (the land shown on your assessment are/were still owned as at midnight on 31 December of the previous year).

This additional land tax was first applicable on 1 January 2016 at a rate of 0.5%.

For more detailed information please refer to the State Revenue Office Victoria website www.sro.vic.gov.au

At this stage, no other states or territories have announced any steps towards introducing similar taxes.

PENALTIES FOR BREACHING THE RULES WHEN INVESTING IN AUSTRALIAN RESIDENTIAL PROPERTY

The Australian Federal Government is increasing the existing criminal penalties and introducing new civil pecuniary penalties for those who breach the foreign investment rules. For more detailed information please refer to the FIRB website www.firb.gov.au

TABLE 2

Penalty Regime for Foreign Investors, Residential Property

Under Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015



Individual



Company

Breach of Rule	New Penalties
<p>Foreign person acquires new property without approval > where approval would have normally been granted</p> <p>Temporary resident acquires established property without approval > where approval would normally have been granted</p>	<p>Maximum criminal penalty of:</p> <p> 750 penalty units (AU\$135,000) or 3 years imprisonment.</p> <p> 3,750 penalty units (AU\$675,000).</p> <p>Maximum civil penalty is the greater of the following: 10% of purchase price in addition to the relevant application fee; or 10% of market value of the property in additional to the relevant application fee.</p> <p>Tier 1 Infringement Notice > Voluntary complied by coming forward.</p> <p> 12 penalty units (AU\$2,160) plus the relevant application fee.</p> <p> 60 penalty units (AU\$10,800) plus the relevant application fee.</p> <p>Tier 2 Infringement Notice > Identified through compliance activities.</p> <p> 60 penalty units (AU\$10,800) plus the relevant application fee.</p> <p> 300 penalty units (AU\$54,000) plus the relevant application fee.</p> <p>Note: Either an infringement notice or civil penalty would be sought, but not both.</p>
<p>Non-resident acquires established property or temporary resident acquires more than one established property > where not normally approved</p> <p>Temporary resident fails to sell established property when it ceases to be their principal residence > breach of conditional approval</p> <p>Temporary resident rents out an established property > breach of conditional approval</p> <p>Failure to complete construction within 4 years without seeking an extension > breach of conditional approval of vacant land/redevelopment</p>	<p>Maximum criminal penalty of:</p> <p> 750 penalty units (AU\$135,000) or 3 years imprisonment.</p> <p> 3,750 penalty units (AU\$675,000).</p> <p>Maximum civil penalty is the greater of the following: The capital gain made on divestment of the property; 25% of the purchase price; or 25% of the market value of the property.</p>
<p>Foreign person fails to comply with reporting condition which requires them to notify of actual purchase and sale of established properties</p>	<p>Maximum civil penalty of:</p> <p> 250 penalty units (AU\$45,000)</p> <p> 1,250 penalty units (AU\$225,000)</p> <p>Tier 1 Infringement Notice > Voluntary complied by coming forward.</p> <p> 12 penalty units (AU\$2,160) plus the relevant application fee.</p> <p> 60 penalty units (AU\$10,800) plus the relevant application fee.</p> <p>Tier 2 Infringement Notice > Identified through compliance activities.</p> <p> 60 penalty units (AU\$10,800) plus the relevant application fee.</p> <p> 300 penalty units (AU\$54,000) plus the relevant application fee.</p> <p>Note: Either an infringement notice or civil penalty would be sought, but not both.</p>
<p>Third party assists foreign investor to breach rules</p>	<p>Maximum civil penalty, the same as the primary breach, of:</p> <p> 250 penalty units (AU\$45,000)</p> <p> 1,250 penalty units (AU\$225,000)</p> <p>Criminal penalty is: Knowingly assisting another person to commit a criminal offence is an offence under Section 11.2 of the Criminal Code (maximum penalty is the same as the primary offence).</p>

Source: Australian Government, FIRB



APPLICATION FEES AND PENALTIES FOR DEVELOPERS

Property developers can apply for a new dwelling exemption certificate to sell new dwellings in a development of 50 or more residences to foreign investors. The fee for a new dwelling exemption certificate for a developer is AU\$25,000 upfront, with a reconciliation of properties sold to foreign persons based on the above rates.

The Government has tightened the rules around the use of new dwellings exemption certificates by **limiting the value of all apartments that can be bought by a single foreign investor to AU\$3 million in the one development**. If foreign investors want to purchase apartments above this value, they will have to seek individual approval.

TABLE 3

Penalty Regime for Developers, Residential Property

Under Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015



Breach of Rule	New Penalties
Developer fails to market apartments in Australia > breach of new dwelling exemption certificate	Maximum criminal penalty of:
	<ul style="list-style-type: none"> 750 penalty units (AU\$135,000) or 3 years imprisonment. 3,750 penalty units (AU\$675,000). Maximum civil penalty of: <ul style="list-style-type: none"> 250 penalty units (AU\$45,000). 1,250 penalty units (AU\$225,000).
Property developer fails to comply with reporting conditions associated with approval > breach of new dwelling exemption certificate	Maximum civil penalty of:
	<ul style="list-style-type: none"> 250 penalty units (AU\$45,000) 1,250 penalty units (AU\$225,000)
	Tier 1 Infringement Notice > Voluntary complied by coming forward.
	<ul style="list-style-type: none"> 12 penalty units (AU\$2,160) plus the relevant application fee. 60 penalty units (AU\$10,800) plus the relevant application fee.
	Tier 2 Infringement Notice > Identified through compliance activities.
<ul style="list-style-type: none"> 60 penalty units (AU\$10,800) plus the relevant application fee. 300 penalty units (AU\$54,000) plus the relevant application fee. Note: Either an infringement notice or civil penalty would be sought, but not both.	

For more detailed information please refer to the FIRB website www.firb.gov.au

Source: Australian Government, FIRB

Knight Frank Research provides strategic advice, consultancy services and forecasting to a wide range of clients worldwide including developers, investors, funding organisations, corporate institutions and the public sector. All our clients recognise the need for expert independent advice customised to their specific needs.

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