



Key Facts

Application fees have been introduced to ensure that Australian taxpayers no longer fund the administration cost

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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From 1 December 2015, all foreign investors must now pay a fee before their foreign investment application will be processed and stricter penalties have been ramped up by the Australian Taxation Office for those who breach the rules.

Overview

The current Australian foreign investment framework for residential property is designed to generate new housing supply. The construction of new houses and apartments is aimed to increase the opportunity for people to purchase, as well as, stimulate economic activity with the employment of builders and suppliers.

The recent changes introduced by the Federal Government are designed not to deter foreign investment into Australia, rather ensure the current rules that limit foreign investment in established dwellings are enforced. Until this time, there has been poor policing by the small team at the Foreign Investment Review Board (FIRB) resulting in limited penalties imposed on those who breach the rules. For a long time, the framework was undermined due to poor data collection, along with a lack of audit, compliance and enforcement. Given no fees were collected on application, it made it quite difficult for the FIRB to justify

committing more Australian tax-payer resources, despite the number of foreign investment applicants growing almost three-fold over the course of 2013-14. Over the same time, residential property prices rose significantly in many suburbs across the country. As a result, the Australian public became increasingly concerned that the influx of foreign purchasers were having a direct impact on mainstream (established) house prices. This placed pressure on the now former Treasurer, Hon Joe Hockey MP, to provide clarification on the role foreign investment plays in residential property. On the 19 March 2014, he commissioned a study to be undertaken by the House of Representatives Standing Committee on Economics. After a lengthy and comprehensive eight month inquiry, the House Economics Committee found that the current foreign investment structure should be retained but made 12 practical recommendations to ensure there is better compliance within the existing framework.

A consultation process followed with the

ADDITIONAL FOREIGN INVESTOR FEES WHEN BUYING IN VICTORIA

The Victorian State Government has also introduced two new taxes in 2015 that are applicable for foreign purchasers, including those in the capital city of Melbourne.

As of 1 July 2015, **foreign investors** buying residential property in Victoria will now be **taxed an additional duty of 3% of the purchase price**, whether acquired directly or indirectly, that is, through a company or trust that purchases the residential property.

For off-the-plan sales, the additional 3% 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.

As at 1 January 2016, an **absentee person**, considered to be a foreign purchaser not residing in the property (purchased by the foreign purchaser in Victoria) **will be charged an extra 0.5% land tax rate** in addition to the general land tax rates and the surcharge rates for trusts. This is intended for properties that remain vacant for extended periods throughout the year.

These state-based taxes are in addition to the recently introduced fee payable to the Australian Government.

At this stage no other states have announced any steps towards introducing a similar tax.

Source: Office State Revenue Victoria

public and key industry bodies. It was proposed that all property administration functions were transferred to the Australian Taxation Office (ATO). The ATO was seen to be well-placed to utilise its data-matching systems to identify possible breaches with an increase in penalties.

The Government then introduced the legislation into Parliament in the Spring sitting. It was slated in late November 2015 with the changes taking effect from 1 December 2015.

Current rules for foreign investors

The current rules around foreign

investment in residential property **aims to 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 vacant residential land for development and newly constructed dwellings in Australia.

Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia. However, temporary residents can apply to purchase one established dwelling to use as their residence while they live in Australia, although on the condition the property is sold when it ceases to be their principle place of residence.

FOREIGN INVESTOR APPLICATION FEES NOW APPLICABLE

- Applicants will **pay a fee to the ATO** before their foreign investment application is processed.
- The fees apply for **each application** and is **uncapped if the property is valued over AUD\$1 million**.
- If an application falls into a number of categories, the category with the highest fee would apply.
- The fee on application does not provide any assurance of securing the property.

TABLE 1

Fees Payable by Foreign Investors, Residential Property

Based on Property Value

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

Source: Australian Government, FIRB

ENHANCED COMPLIANCE AND ENFORCEMENT

- The Government has provided \$47.5 million over four years to the **ATO to improve compliance and strengthen the enforcement of the rules**.
- The ATO has the capacity to cover more than 600 million transactions annually through its data-matching programs. The ATO matches its own taxpayer data with a variety of third party sources, including FIRB, immigration, AUSTRAC, banking data and state and territory land title data.
- Suspected breaches are then followed up by around 50 investigative compliance officers.
- Investors who have breached the rules risk being identified by the ATO as part of its compliance activities. **These investors may then face criminal and/or civil prosecution.**

REVISED PENALTIES FOR BREACHING THE FOREIGN INVESTMENT RULES

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
Foreign person acquires new property without approval > where approval would have normally been granted Temporary resident acquires established property without approval > where approval would normally have been granted	Maximum criminal penalty of:  750 penalty units (AUD\$135,000) or 3 years imprisonment.  3,750 penalty units (AUD\$675,000). 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 addition to the relevant application fee. Tier 1 Infringement Notice > Voluntary complied by coming forward.  12 penalty units (AUD\$2,160) plus the relevant application fee.  60 penalty units (AUD\$10,800) plus the relevant application fee. Tier 2 Infringement Notice > Identified through compliance activities.  60 penalty units (AUD\$10,800) plus the relevant application fee.  300 penalty units (AUD\$54,000) plus the relevant application fee. Note: Either an infringement notice or civil penalty would be sought, but not both.
Non-resident acquires established property or temporary resident acquires more than one established property > where not normally approved Temporary resident fails to sell established property when it ceases to be their principal residence > breach of conditional approval Temporary resident rents out an established property > breach of conditional approval Failure to complete construction within 4 years without seeking an extension > breach of conditional approval of vacant land/redevelopment	Maximum criminal penalty of:  750 penalty units (AUD\$135,000) or 3 years imprisonment.  3,750 penalty units (AUD\$675,000). 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.
Foreign person fails to comply with reporting condition which requires them to notify of actual purchase and sale of established properties	Maximum civil penalty of:  250 penalty units (AUD\$45,000)  1,250 penalty units (AUD\$225,000) Tier 1 Infringement Notice > Voluntary complied by coming forward.  12 penalty units (AUD\$2,160) plus the relevant application fee.  60 penalty units (AUD\$10,800) plus the relevant application fee. Tier 2 Infringement Notice > Identified through compliance activities.  60 penalty units (AUD\$10,800) plus the relevant application fee.  300 penalty units (AUD\$54,000) plus the relevant application fee. Note: Either an infringement notice or civil penalty would be sought, but not both.
Third party assists foreign investor to breach rules	Maximum civil penalty , the same as the primary breach, of:  250 penalty units (AUD\$45,000)  1,250 penalty units (AUD\$225,000) 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).

Source: Australian Government, FIRB



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

Source: Australian Government, FIRB

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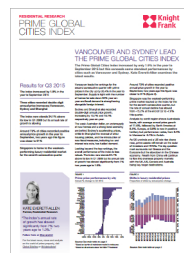
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