



GUIDANCE NOTE 7

Last Updated: 1 July 2017

RESIDENTIAL REAL ESTATE — ESTABLISHED DWELLINGS FOR AUSTRALIAN-BASED EMPLOYEES

Foreign persons that operate a substantial Australian business generally need to apply for and receive foreign investment approval to purchase established dwellings in Australia to house Australian-based employees.

This Guidance Note sets out the factors considered when assessing an application and the conditions that will normally apply to an approval.

ELIGIBILITY

Foreign persons will be required to show 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 following:

- The type of business being operated.
- The location of the business operations. 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.

Conditions

Approvals will normally be subject to the conditions that:

- the dwelling is to be used solely to accommodate Australian-based employees of the business; and
- the foreign person sells the dwelling if it is expected to remain vacant, or has remained vacant, for six months or more.

Example 1

A foreign-owned, Queensland-based coal mining company is expanding its operations in a remote Queensland location and will be increasing the number of employees working on the site. The supply of rental accommodation is already tight and there are limited opportunities to purchase new dwellings or vacant land for development in the area.

The company applies for foreign investment approval to purchase an established dwelling to house a number of its Australian-based employees and pays the relevant application fee. The company is able to demonstrate a genuine need to purchase the established dwelling in order to provide suitable accommodation for its employees. In assessing the application, the decision maker considers the scale and remote location of the company's operation and the number of staff to be employed in the operation. The decision made is to allow the purchase of the dwelling subject to the standard conditions outlined above.

Example 2

A foreign-owned company owns and operates a factory and showroom business in western Sydney. The company applies for foreign investment approval to purchase an established dwelling in a nearby suburb to house Australian-based employees.

It is unlikely that the company would be able to demonstrate a genuine need to purchase an established dwelling for Australian-based employees, as the location of the business operations is not remote, there is likely to be appropriate rental accommodation available nearby, and there is a supply of new dwellings and vacant land for development in the area. This proposal would not normally receive foreign investment approval. The company would be eligible to apply for foreign investment approval to purchase new dwellings or vacant land for development.

FEES

An application for approval to purchase residential property will not be considered until the relevant application fee has been paid in full.

For more information on fees, see Guidance Note 29.

PENALTIES

Strict penalties (including civil and criminal penalties and disposal order) may apply for breaches of Australia's foreign investment rules. For more information, see Guidance Note 11.

Cases of non-compliance with Australia's foreign investment framework may also be brought to the attention of law enforcement agencies and other Commonwealth departments such as the Department of Immigration and Border Protection.

HOW TO APPLY

If you would like to apply for foreign investment approval for:

- A new dwelling
- Vacant residential land
- A second hand or established dwelling
- An exemption certificate for established dwellings
- An exemption certificate for residential land (other than established dwellings)

Please use the [Australian Taxation Office's foreign investment application form](#).

Foreign persons should take care to ensure they supply the correct details and all required information as part of their application, as changes to details such as name or property address after an approval has been granted may require foreign persons to seek a new approval and be subject to further fees.

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au 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.
