



RESIDENTIAL REAL ESTATE – ANNUAL VACANCY FEE

OVERVIEW

The annual vacancy fee is part of the Government's comprehensive housing affordability plan, designed to improve outcomes across the housing spectrum.

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

The annual vacancy fee is levied on foreign owners of residential real estate where the property is not occupied or genuinely available on the rental market for at least six months in a 12 month period.

The vacancy fee applies to foreign persons who make a foreign investment application for residential property from 7:30PM (AEST) on 9 May 2017 and to foreign persons who are purchasing in a development that has a New Dwelling Exemption Certificate which was applied for after 7:30PM (AEST) on 9 May 2017.

Foreign owners of residential real estate will be required to [lodge an annual vacancy fee return](#) with the Australian Taxation Office (ATO) after the end of the 12 month period (vacancy year) in which the foreign person may be liable for the vacancy fee for their property.

WHAT DOES RESIDENTIALLY OCCUPIED OR GENUINELY AVAILABLE MEAN?

For the purpose of the vacancy fee, foreign owned residential real estate is considered residentially occupied if for at least 6 months (equivalent to 183 days) in a 12 month period (vacancy year), it can be proved that:

- the property owner or a relative of the owner genuinely occupied the property as a residence; or
- the property was genuinely occupied as a residence subject to lease/s or licence/s (with minimum durations of 30 day terms); or
- the property was made genuinely available as a residence on the rental market (with minimum durations of 30 day terms).

Properties made available for short-term leases of less than 30 days (including via web-based vacation rental sites) are not considered residentially occupied and would be liable for an annual vacancy fee.

Example 1

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. 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.

Within 30 days from 22 August 2018, Sophia and Frederick must lodge a vacancy fee return to the ATO advising the number of the days that the property was occupied in the last 12 months (vacancy year). Following lodgement of the vacancy fee return, the ATO advises Sophia and Frederick that they are liable to pay the vacancy fee due to the property not being residentially occupied for at least 6 months in the vacancy year.

Example 2

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 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 these circumstances, liability for the vacancy fee has arisen because Maria's apartment was not residentially occupied or made genuinely available as a rental property for a continuous period of 30 days or more for at least 6 months in a 12 month period.

FEE PAYABLE

The ATO will assess the vacancy fee amount that is payable following lodgement of the vacancy fee return by the foreign person.

Where a vacancy fee return is not lodged on time (within 30 days of the end of each vacancy year), the foreign owner of the dwelling is taken to be liable to pay a vacancy fee regardless of the number of days during the vacancy year on which the dwelling was residentially occupied.

Generally, the vacancy fee payable will be equivalent to the residential land application fee that was paid by the foreign person at the time the application for foreign investment approval was made to purchase the property. For further information on residential land application fees, see [Guidance Note 29](#).

In the case of joint tenants, only one return needs to be lodged and only one fee will be payable. For tenants in common, each tenant will need to lodge a return and the fee payable

will be 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.

In circumstances where the application fee was waived, the vacancy fee payable will be equal to the lowest tier foreign investment application fee that would have been payable.

Where the property was acquired under a New or Near New Dwelling Exemption Certificate, the vacancy fee payable will be equal to the foreign investment application fee that would have been payable for the property, had the exemption certificate not been in place. The fee payable will be dependent on the value of the property.

The vacancy fee will not apply when a person ceases to be a foreign person.

TIMING

The vacancy fee is an annual fee. Liability for the vacancy fee is assessed by the ATO, usually following lodgement of a [vacancy fee return](#) by the foreign person.

The period for which the ATO will assess liability is the vacancy year, that is the 12 months after the first day the foreign person acquires the right to occupy the property (for example, the date of settlement or receipt of an occupancy certificate). This is also the date from which the liability to pay the fee arises in future years. This means that if the property is settled on 8 August 2017, it will need to be occupied or genuinely available for six months or more from that date to 8 August 2018.

In subsequent years, liability for the annual vacancy fee will be assessed yearly from the date of settlement or receipt of the occupancy certificate.

Example 3

Mateo is a temporary resident and seeks approval to purchase an established dwelling for redevelopment in Northern Sydney. Foreign investment approval is granted subject to standard 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 – he is not required to lodge a vacancy fee return until 12 months and 30 days after the dwelling is complete. Mateo's use of the dwelling he owns will be assessed on 1 November each year, as this is the date which Mateo was able to occupy the property.

EXEMPTIONS

Exemptions from being liable to pay the vacancy fee are listed in the table below. 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
Your property is undergoing substantial repair 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
Your 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
You or your tenant 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

EVIDENCE OF OCCUPATION

To prove that the property was occupied, foreign investors may be required to provide supporting evidence.

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, evidence of the reason for repairs (such as an insurance claim) and evidence of the property being genuinely available for rent.

In order to be able to produce this evidence, a foreign person is required to keep records that are relevant to establishing whether they are liable to pay a vacancy fee for a given 12 month period. These records must be kept for five years, including following the disposal of the property.

REPORTING OBLIGATIONS AND HOW TO PAY THE FEE

The ATO administers the vacancy fee. Foreign persons and developers should notify the ATO of purchases of residential real estate once they have settled as required by the conditions of their approval.

Foreign owners of residential real estate will need to report annually, via lodgement of a [vacancy fee return](#), about the use of their property in the previous 12 months (vacancy year). The vacancy fee return is required to be lodged with the ATO within 30 days of the end of each vacancy year.

To lodge a vacancy fee return, foreign owners of residential real estate need to be [registered on the Land and Water Register](#). This registration will create a Land and Water Register reference number needed to lodge the return.

Foreign owners of residential real estate that have not registered on the Land and Water Register need to submit a [Land and Water Registration form](#). There is no cost involved in registering. Please see the [Vacancy Fee Form and payment instructions page](#) on the ATO's website to lodge your Vacancy Fee Form.

When lodging the annual vacancy fee return, the confirmation page will indicate liability for a vacancy fee and the amount payable. A notice of liability of the vacancy fee payable via email will be provided after you have lodged. The notice will provide information on the reason the fee is being charged, the fee payable, payment details and the due date.

Example 4

André purchases a new apartment in Sydney. He will be entitled to occupy the apartment on 23 September. In this case, the first occupation day is 23 September, and it will be no later than 12 months and 30 days from this day that André will be required to submit a vacancy fee return to the ATO.

PENALTIES

The ATO is able to issue an infringement notice if a person fails to keep the required records for the timeframe specified (five years) or fails to lodge a vacancy fee return by the due date.

If a foreign person fails to submit a vacancy fee return or retain required records then they may be liable to a civil penalty of 250 units.

Further, a failure to submit the vacancy fee return will result in a deemed vacancy for that dwelling in the 12 month period (vacancy year). These measures are designed to encourage compliance with the vacancy fee regime.

Any unpaid vacancy fees for a property may be recovered as a debt or by the creation of a charge over Australian land owned by the foreign person.

FURTHER INFORMATION

Further information is available on the [ATO's website](#) or by contacting 1800 050 377 (within Australia) or +61 2 6216 1111 (from outside Australia).

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.