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RESIDENTIAL REAL ESTATE – RESIDENTIAL LAND (OTHER THAN ESTABLISHED DWELLINGS) EXEMPTION CERTIFICATE

Under Australia’s foreign investment framework, foreign persons generally need to apply for and receive foreign investment approval before purchasing any residential real estate in Australia. See Guidance Note 1 for a general overview.

Foreign persons can

- seek approval to purchase a specific new (or near-new) dwelling or title of vacant land; or
- may apply for a residential land (other than established dwellings) exemption certificate to allow them to purchase a single new (or near-new) dwelling or title of vacant residential land within a specified state or territory.

This Guidance Note sets out the factors that are considered when assessing an application for a residential land (other than established dwellings) exemption certificate and outlines the conditions that will normally apply to such a certificate.

This certificate will allow a foreign person to make multiple attempts to acquire residential land (other than an established dwelling) by any method (such as auction, ballot, private offer, expression of interest or tender) without having to seek individual approval for each specific property they are interested in.

The exemption certificate will generally be valid for six months from the date of approval and will be subject to standard conditions applicable to a purchase of residential land .

ELIGIBILITY

WHO IS ELIGIBLE FOR A RESIDENTIAL LAND (OTHER THAN ESTABLISHED DWELLINGS) EXEMPTION CERTIFICATE?

All foreign persons are eligible for a residential land (other than established dwellings) exemption certificate. However no agreements (even conditional agreements) can be entered into before the exemption certificate is given.

Residential land (other than established dwellings) exemption certificates provide a foreign person with approval to purchase one unspecified vacant land title or new (or near-new) dwelling in the state or territory specified and up to the value specified on the 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 dwellings) 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 six 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.

Example 2

A foreign person wants to purchase a new dwelling in Queensland to rent out. They apply for a residential land (other than established dwellings) 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 six 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 strict penalties.

CONDITIONS

Certificates will normally be approved subject to the same standard conditions (if any) applicable to a foreign person who purchases a new (or near-new) dwelling or vacant residential land title by applying for approval for a specific property. The certificates will also reflect the treatment of residential property in certain circumstances to maintain the national interest (for example treating vacant land that had previously had a dwelling on it as if it were an established dwelling).

The Certificates will also include a condition requiring that the foreign person register the property on the Australian Taxation Office's Land Register (registration is available at: www.ato.gov.au) once they have purchased a dwelling under the certificate.

Foreign persons who do not comply with the conditions on the certificate (for example, by purchasing a property above the specified value or purchasing more than one new (or near-new) dwelling or vacant land title) will have breached the foreign investment rules and may be subject to strict penalties.

Foreign persons may apply to vary the conditions of the exemption certificate. A fee will apply for this.

FEES

An application for a residential land (other than established dwellings) exemption certificate will not be considered until the relevant application fee has been paid. The application fee is based on the same tiered fee structure as applies if seeking individual approval to purchase a specific new (or near-new) dwelling or vacant land title.

Fees will generally not be waived or remitted if a foreign person purchases a property for a price that is less than the amount specified in the exemption certificate, or if they are unsuccessful in purchasing a property before the exemption certificate expires. For more information on fees, see Guidance Note 29.

PENALTIES

Strict penalties (including civil and criminal penalties and disposal orders) 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 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.