



BUSINESS | Issue No. 10 | Buyer beware – new FIRB changes from 1 December!

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From 1 December 2015, the Foreign Investment Review Board (FIRB) has implemented new rules aimed at strengthening the regulation of foreign investment in Australia. This article provides a summary of some important highlights.

New Application Fees

Foreign persons wishing to invest in Australia are now required to pay an administrative fee before their investment application is processed. The fees apply for each application lodged on or after 1 December 2015.

Below are the fees in relation to respective investments:

- **Residential properties valued at \$1 million or less:** \$5,000 fee.
- **Residential properties valued over \$1 million:** Fees \$10,000 then \$10,000 incremental fee increase per additional \$1 million in property value.
- **Commercial Real estate:** \$25,000 fee.
- **Vacant commercial land:** \$10,000 fee.
- **Investments in Agribusiness:** Fees of \$25,000 (or \$100,000 where the investment is greater than \$1 billion; threshold is at \$55 million to be indexed annually; exceptions apply for some Free Trade Agreement (FTA) countries).
- **Agricultural land:** Fees of \$5,000 to \$100,000 (threshold is at \$15 million (cumulative) with exceptions for some FTA countries)

In addition to the above, an administrative fee is now payable by developers when applying for advance off-the-plan approval. For developments of 50 or more residences, property developers can now apply for a new dwelling exemption certificate to enable them to sell new residential dwellings to foreign investors without the need to apply for FIRB approval.

The general “substantial interest” threshold for acquisitions requiring notification has been increased from 15% to 20%, consistent with the *Corporations Act 2001* takeovers threshold.

New Compliance Regime

The Australian Taxation Office (ATO) has now been delegated the responsibility to regulate foreign investment in residential real estate, to improve compliance and strengthen the enforcement of the FIRB rules. The ATO now has the capacity to match its own taxpayer data with those from the States and Territories relating to Land Titles, Immigration, FIRB and AUSTRAC.

The ATO plans to establish a register relating to foreign ownership of residential real estate from 1 July 2016. The FIRB has already established a register relating to foreign ownership of agricultural land from 1 July 2015.

New Penalties

The new regime introduces civil penalties and previous criminal penalties have been expanded. Generally, the maximum “criminal” penalty for individuals and companies has been increased to \$135,000 (or three years imprisonment) and \$675,000, respectively.

“Civil” penalties cater for situations where a:

- foreign person makes an acquisition without approval;
- foreign person fails to comply with a condition of approval;
- non resident acquires established residential property;
- temporary resident acquires more than one established residential property;
- temporary resident fails to sell established residential property when it ceases to be their principal place of residence; and
- temporary resident rents out an established residential property.

By way of example, in the case of residential real estate, the maximum “civil” penalty is the greater of:

- 25% of the purchase price in addition to the relevant application fee; or
- 25% of the market value of the property in addition to the relevant application fee.

The civil and criminal penalties are now extended to third parties, who knowingly assist a foreign person to breach the FIRB rules. This raises the level of responsibility for real estate agents, lawyers and others involved in the sale of property to foreign buyers, to take care and provide proper advice in relation to the FIRB rules and requirements.

Foreign investors and advisors need to be aware of their obligations and to abide by the FIRB rules to avoid incurring the significant penalties which may now be imposed. Buyer (and advisors) beware!



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