



## Foreign Investment Reforms Factsheet: Residential real estate

### The Government is taking action to restore confidence in Australia's foreign investment framework

Foreign investment is important to help grow our economy and provide jobs. In the case of residential real estate, the current foreign investment system aims to channel foreign investment into new homes for Australians to purchase or rent. The Government's changes will ensure that this aim is fulfilled, and that the current rules<sup>1</sup> that limit foreign investment in established dwellings are enforced.

#### Enhanced compliance and enforcement

The Government has provided \$47.5 million over four years to the Australian Taxation Office (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 compliance officers. The ATO will have around 50 compliance officers investigating suspected breaches.

Investors who have breached the rules have until 30 November 2015 to voluntarily come forward and identify themselves or they risk being identified by the ATO as part of its compliance activities. These investors may then face criminal prosecution.

#### New application fees

From 1 December 2015, applicants will pay a fee before their foreign investment application is processed.

The fees apply for each application. If an application falls into a number of categories, the category with the highest fee would apply.

Type of investment	Fee
Property valued under \$1 million	\$5,000
Property valued over \$1 million	\$10,000 then \$10,000 incremental fee increase per additional \$1 million in property value.
Advanced off-the-plan-certificates	\$25,000 upfront, with a six monthly reconciliation of properties sold to foreign persons based on above rates.

1. The rules around foreign investment in residential real estate seek to channel investment into new housing to increase housing supply and support economic activity. All foreign persons (temporary residents and nonresidents) 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 a residence while they live in Australia, on condition the property is sold.



## Advanced off-the-plan-certificates

Property developers can apply for an advanced off-the-plan certificate to sell new dwellings in a development of 100 or more residences to foreign investors. The Government will tighten the rules around the use of advanced off-the-plan-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.

## New penalties

Currently, only divestment orders and criminal penalties apply for breaches of the Act. The maximum penalties that may be applied by the Courts to individuals on conviction for a breach of the Act is a fine of 500 penalty units, imprisonment of two years, or both. In the case of a corporation, a multiplier of five applies to the maximum fine for an individual.

Breach of rule	New penalties
<b>Foreign person acquires new property without approval</b> (approval would normally have been granted) <b>Temporary resident acquires established property without approval</b> (approval would normally have been granted)	<p>There is currently no civil pecuniary penalty or infringement notice regime under the Act for these breaches.</p> <p><b>Increased Criminal Penalty</b></p> <p>Maximum criminal penalty of</p> <ul style="list-style-type: none"><li>• Individual — 750 penalty units (\$135,000) or 3 years imprisonment.</li><li>• Company — 3,750 penalty units (\$675,000).</li></ul> <p><b>Civil Penalty</b></p> <p>Maximum civil penalty is the greater of the following:</p> <ul style="list-style-type: none"><li>• 10 per cent of purchase price in addition to the relevant application fee; or</li><li>• 10 per cent of market value of the property in addition to the relevant application fee.</li></ul> <p><b>Tier 1 Infringement notice — Voluntary complied by coming forward</b></p> <ul style="list-style-type: none"><li>• Individual — 12 penalty units (\$2,160) plus the relevant application fee.</li><li>• Company — 60 penalty units (\$10,800) plus the relevant application fee.</li></ul> <p><b>Tier 2 Infringement notice — Identified through compliance activities</b></p> <ul style="list-style-type: none"><li>• Individual — 60 penalty units (\$10,800) plus the relevant application fee.</li><li>• Company — 300 penalty units (\$54,000) plus the relevant application fee.</li></ul> <p>Either an infringement notice or civil penalty would be sought but not both.</p>



Breach of rule	New penalties
<p><b>Non-resident acquires established property or temporary resident acquires more than one established property</b> (not normally approved)</p> <p><b>Temporary resident fails to sell established property when it ceases to be their principal residence</b> (breach of conditional approval)</p> <p><b>Temporary resident rents out an established property</b> (breach of conditional approval)</p> <p><b>Failure to begin construction within 24 months without seeking extension</b> (breach of conditional approval of vacant land/redevelopment applications)</p>	<p>There is currently no civil pecuniary penalty under the Act for these breaches.</p> <p><b>Increased Criminal Penalty</b></p> <p><b>Maximum criminal penalty of</b></p> <ul style="list-style-type: none"><li>• Individual – 750 penalty units (\$135,000) or 3 years imprisonment.</li><li>• Company – 3,750 penalty units (\$675,000).</li></ul> <p><b>Civil Penalty</b></p> <p><b>Maximum civil penalty is the greater of the following:</b></p> <ul style="list-style-type: none"><li>• the capital gain made on divestment of the property;</li><li>• 25 per cent of purchase price; or</li><li>• 25 per cent of market value of the property.</li></ul>
<p><b>Developer fails to market apartments in Australia</b> (breach of advanced off the plan certificate)</p>	<p>There is currently no civil pecuniary penalty or criminal penalty under the Act for this breach.</p> <p><b>Criminal Penalty</b></p> <p>Maximum criminal penalty of:</p> <ul style="list-style-type: none"><li>• Individual – 750 penalty units (\$135,000) or 3 years imprisonment.</li><li>• Company – 3,750 penalty units (\$675,000).</li></ul> <p><b>Civil Penalty</b></p> <p>Maximum civil penalty of:</p> <ul style="list-style-type: none"><li>• Individual - 250 penalty units (\$45,000)</li><li>• Company - 1,250 penalty units (\$225,000)</li></ul>



Breach of rule	New penalties
<p><b>Property developer fails to comply with reporting conditions associated with approval (breach of advanced off the plan certificate)</b></p> <p><b>Foreign person fails to comply with reporting condition which requires them to notify of actual purchase and sale of established properties</b></p>	<p>There is currently no civil pecuniary penalty or infringement notice regime under the Act for these breaches.</p> <p><b>Civil penalty</b></p> <p><b>Maximum civil penalty of:</b></p> <ul style="list-style-type: none"><li>• Individual - 250 penalty units (\$45,000)</li><li>• Company - 1,250 penalty units (\$225,000)</li></ul> <p><b>Tier 1 Infringement notice — Voluntarily complied by coming forward</b></p> <ul style="list-style-type: none"><li>• Individual — 12 penalty units (\$2,160) plus the relevant application fee.</li><li>• Company — 60 penalty units (\$10,800) plus the relevant application fee.</li></ul> <p><b>Tier 2 Infringement notice — Identified through compliance activities</b></p> <ul style="list-style-type: none"><li>• Individual — 60 penalty units (\$10,800) plus the relevant application fee.</li><li>• Company — 300 penalty units (\$54,000) plus the relevant application fee.</li></ul> <p>Either an infringement notice or civil penalty would be sought but not both.</p>
<p><b>Third party assists foreign investor to breach rules</b></p>	<p>There is currently no civil pecuniary penalty under the Act for knowingly assisting breaches of the Act.</p> <p><b>Civil penalty</b></p> <p>Maximum civil penalty, the same as the primary breach, of:</p> <ul style="list-style-type: none"><li>• Individual - 250 penalty units (\$45,000)</li><li>• Company - 1,250 penalty units (\$225,000)</li></ul> <p><b>Criminal Penalty</b></p> <p>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).</p>