



FAQs on Foreign Residents Purchasing Residential Land/Dwelling in Western Australia

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Frequently Asked Questions

Foreign Residents Purchasing Residential Land/Dwelling in Western Australia

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This information is current at 16 July 2021.

This information is only intended as a guide and is **NOT** a substitute for professional advice.

Frequently Asked Questions

Foreign Residents Purchasing Residential Land/Dwelling in Western Australia

1 What is FIRB?

- FIRB stands for Foreign Investment Review Board.
- An Australian Government department that assesses applications from foreigners who would like to invest or buy land/dwelling in Australia.

2 Do I need FIRB approval to invest in property in Western Australia?

- YES. Foreign Persons generally require foreign investment approval before acquiring an interest in residential land/dwelling, regardless of its value.
- Approval for an acquisition of vacant land for residential development will generally be conditional on the construction being completed within four years and the dwelling not being sold until the construction is complete.
- Approval for an acquisition of a new (or near-new) dwelling is not usually subject to any conditions concerning its usage.
- Property developers looking to sell their newly developed dwellings to Foreign Persons can also apply for foreign investment approval on behalf of their foreign customers. Where a developer holds such an approval, the Foreign Person will generally not need to seek their own foreign investment approval.
- A residential real estate includes new or near new dwellings, established dwellings to live in, properties for redevelopment, off-the-plan properties and vacant residential land.

3 Do I need FIRB approval to buy an established dwelling?

- YES. Foreign Persons are generally prohibited from purchasing established dwellings in Australia. However, approval may be granted if a proposal to redevelop an established dwelling will genuinely increase Australia's housing stock.
- Foreign controlled companies can apply, in limited circumstances, to purchase an established dwelling to house their Australian based staff.

4 What reporting obligations do I have when purchasing new residential property?

- If you're purchasing a property, ensure you have a written notification advising whether or not you have a withholding obligation on the property. Refer to 4.1 & 4.2 below.
- Most purchasers are required to pay a withholding amount from the contract price at the date of settlement. This applies to:
 - new and used residential property;
 - land that could be used to build new residential property (potential residential land).
- There are two withholding amounts when purchasing residential property. These are as follows:
 - 4.1 Goods and Services Tax (GST)**
 - The withholding amount is called GST at settlement payable directly to the Australian Taxation Office (ATO). This withholding amount can either be:
 - 1/11th of the contract price (for fully taxable supplies)
 - 7% of the contract price (for margin scheme supplies)
 - 10% of the GST-exclusive market value of the supply (for supplies between associates for consideration less than GST inclusive market value).
 - Payment is due on the **day of settlement for standard land contract**, or the **day the first settlement is paid for an instalment contract**.
 - GST is on new residential and not used property.
 - 4.2 Foreign Resident Capital Gains Withholding (FRCGW)**
 - If the purchase price is AU\$750,000 or more, the purchaser will be required to withhold 12.5% and remit this amount to the ATO unless a clearance certificate is provided by the ATO.

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5 After acquisition of the land/dwelling, what other government agencies do I need to notify?

- All acquisitions (and sales) of residential land by Foreign Persons must be notified to the Register of Foreign Ownership of Residential Land and be registered within 30 days of settlement. Applications are submitted electronically on the Australian Taxation Office (ATO) website using Residential Real Estate Application Form.
- After you invest, you may need to comply with the following:
 - register your purchase – using the **land and water registration form** no later than 30 days after settlement.
 - lodge a **vacancy fee return** and make a declaration each year on the occupancy of your residential property. The return must be lodged within 30 days of the end of the vacancy year.
- A residential real estate includes new or near new dwellings, established dwellings to live in, properties for redevelopment, off-the-plan properties and vacant residential land.

6 Is there a fee for Foreign Investment Applications?

- YES. Foreign Persons are required to pay a fee for each application.
- For residential land, fees start at **AU\$6,350 for acquisitions of AU\$1m or less**, rising to a maximum of **AU\$503,000 for acquisition of more than AU\$40m**.
- Below is the different fee tiers involving residential land:

Consideration for Residential Land (AUD)	Applicable Fee (AUD)
Less than \$75,000	\$2,000
\$1m or less	\$6,350
\$2m or less	\$12,700
\$3m or less	\$25,000
\$4m or less	\$38,100
\$5m or less	\$50,800
...	...
over \$40m	\$503,000

7 What is Annual Vacancy Fee and am I required to pay it?

- Foreign owners of residential dwellings in Australia are required to pay an annual vacancy fee if their dwelling is not residentially occupied or rented out for more than 183 days (six months) in a year.
- When the property is rented out it must be for a term of at least 30 days. Anything less than 30 days does not qualify.
- The first assessable vacancy year starts on the first day that the person acquires the right to occupy the property.
- Vacancy fee returns are lodged electronically on the ATO website and are to be lodged within 30 days at the end of each vacancy year.
- The vacancy fee is generally the same amount as the foreign investment application fee you've paid at the time you submitted your foreign investment application.
- If you acquire the dwelling under the New Dwelling Exemption Certificate, the vacancy fee payable will be equal to the foreign investment application fee that would have been payable for the dwelling, had the exemption certificate not been in place.
 - A New Dwelling Exemption Certificate provides approval for a foreign buyer to purchase a property covered by the certificate. It minimises regulatory burden by enabling foreign buyers to obtain up-front approval for multiple investments instead of a separate approval for each investment.
- If the application fee is waived, the vacancy fee payable will be equal to the lowest tier foreign investment application fee that would have been payable.

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8 What other costs are to be paid when purchasing residential land/dwelling?

8.1 *Stamp/transfer duty*

- Stamp duty is paid only on the land component, even for Foreign Persons.
- General rate applies to commercial property, rural property that is not also used as residential property and vacant land which doesn't qualify for residential rate.
- Residential rate applies to places of residence, rental dwellings and land on which a residence is constructed within five years from the date the liability to duty arose.
- Foreign buyers duty imposes an additional duty of 7% on the dutiable value for certain transactions and landholder acquisitions involving Foreign Persons or entities acquiring residential property in Western Australia.
- Below is the residential rate dutiable value and thresholds:

Dutiable Value (AUD)	Residential rate of duty (AUD)
\$0 - \$120,000	\$1.90 per \$100 or part thereof
\$121,001 - \$150,000	\$2,280 + \$2.85 per \$100 or part thereof above \$120,000
\$150,001 - \$360,000	\$3,135 + \$3.80 per \$100 or part thereof above \$150,000
\$360,001 - \$725,000	\$11,115 + \$4.75 per \$100 or part thereof above \$360,000
\$725,001 +	\$28,453 + \$5.15 per \$100 or part thereof above \$725,000

- Sample calculation
 - if the purchase price on the land is AU\$1m:
 - Stamp duty payable = [(AU\$1,000,000 - AU\$725,000) x 0.0515 + AU\$28,453] + (AU\$1,000,000 x 7% surcharge)
 - = AU\$42,615.50 + AU\$70,000
 - Total payable = AU\$112,615.50
- Documents for stamp duty are to be lodged within 2 months of contract date.
- Stamp duty is payable within the later of:
 - 1 month after a duties assessment notice is issued;
 - 12 months of the date a transaction is entered into;
 - 3 years of the date of a transaction if it is a subdivision or issue of title agreement.

8.2 *Off-the-plan stamp duty rebate*

- The off-the-plan duty rebate is available to owner-occupiers and investors who enter into a pre-construction contract between 23 October 2019 and 23 October 2021 (inclusive) to purchase a new residential unit or apartment. The rebate applies to both transfer duty and foreign buyers duty surcharge paid on the agreement.
- The rebate amount is 75 per cent of the duty paid, capped at a maximum of AU\$50,000 for the pre-construction contract and AU\$25,000 for a contract under which construction has already commenced.

8.3 *Settlement Agents fees*

- When purchasing a property you require a Settlement Agent to complete the transaction.
- Settlement agents set their own fees which must be disclosed to the client in writing prior to entering into any agreement.
- Costs can vary between AU\$1,500 - AU\$5,000 as an estimate.

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8.4 Land tax

- Land tax is an annual tax which applies to all properties in Western Australia. There are tax-free thresholds and exemptions which exclude a number of properties from land tax.
- Tax is calculated on the unimproved value of the land which is determined by the Valuer-General.
- If you own multiple land holdings, land tax is calculated on the aggregated taxable value of all land held in the same ownership (excluding exempt land) at midnight on 30 June.
- Land tax rates as below for Financial Year 2021-2022:

Aggregated taxable value of land (AUD)	Rate of land tax (AUD)
\$0 - \$300,000	NIL
\$300,001 - \$420,000	Flat rate of \$300
\$420,000 - \$1,000,000	\$300 + 0.25 cent for each \$1 in excess of \$420,000
\$1,000,000 - \$1,800,000	\$1,750 + 0.90 cent for each \$1 in excess of \$1,000,000
\$1,800,000 - \$5,000,000	\$8,950 + 1.80 cents for each \$1 in excess of \$1,800,000
\$5,000,000 - \$11,000,000	\$66,550 + 2.00 cents for each \$1 in excess of \$5,000,000
\$11,000,000 +	\$186,550 + 2.67 cents for each \$1 in excess of \$11,000,000

- Sample calculation
 - if the aggregated taxable value on the land is AU\$1.5m
 - Land tax payable = (AU\$1,500,000 - AU\$1,000,000) x 0.0090 + AU\$1,750
 - = AU\$4,500 + AU\$1,750
 - Total payable = AU\$6,250
- There is no land tax if you are using the dwelling as your sole and principal residence provided it is under your personal name.

8.5 Council rates

- The rates paid on residential property are calculated based on the operating requirements of the Local Government.
- The rates you pay are a proportionate share of what is needed by the Local Government to provide local services and facilities.
- Calculated based on Gross Rental Value (GRV) multiplied by "rate in the dollar" determined by the council.
- Can be paid in 4 instalments.

- Sample calculation
 - if the property has a GRV of AU\$23,400 per annum and "rate in the dollar" of AU\$0.07:
 - = AU\$23,400 x AU\$0.07
 - Total payable = AU\$1,638
 - (+ any other council levies and charges)

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8.6 Water rates

- Service charges include three charges for the service of water, sewerage and drainage which are charged annually.
- The water service charge is **AU\$268.98 for the 2021-22 financial year** and is uniform throughout the State.
- Sewerage charges are based on the property's Gross Rental Value (GRV) multiplied by a rate in the dollar.
- The minimum annual charge for sewerage is **AU\$446.78 for the 2021-22 financial year** for properties with a low GRV.
- Residential drainage charges are based on the property's gross rental value (GRV). Only properties in declared drainage catchments are charged for drainage.
- The minimum annual charge for drainage is **AU\$125.96 for the 2021-22 financial year**.
- Invoices are received every 2 months.

9 Is income tax payable on rental income?

9.1 *Income tax on individual*

- Yes. Income tax is calculated on your Taxable Income, worked out as gross rental income less all tax deductible expenses.
- Some immediately tax deductible expenses on rental property include:
 - advertising
 - bank charges
 - cleaning, gardening and mowing
 - council rates, water rates, land tax
 - body corporate fees and charges
 - insurance
 - interest on loans to purchase property
 - pest control
 - property agent's fees
 - repairs and maintenance
 - depreciation on furnitures and fittings
 - special building write-off (2.5% per annum)
- If the property is purchased in personal name, the income tax rates (2021-22) are as follows:

Foreign Resident tax rates (AUD)	Tax on this income (AUD)
\$0 - \$120,000	32.5 cents for each \$1
\$120,001 - \$180,000	\$39,000 + 37 cents for each \$1 over \$120,000
\$180,001 and over	\$61,200 + 45 cent for each \$1 in excess of \$180,000

- Sample calculation
 - if taxable income is AU\$20,000
 - Income tax payable = AU\$20,000 x 0.325
 - Total payable = AU\$6,500
- If the tax deductible expenses exceed the rental income, the net loss can be offset against other income or capital gain in the same year. Any remaining net loss is carried forward indefinitely until it is offset against other future income or capital gain.

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9.2 Income tax on Company

- If the property is purchased under a company's name, the company income tax rate is 30%.
- The after-tax profit in a company that is declared as a fully franked dividend (from which the company has paid income tax) to a foreign shareholder will not attract any further tax in Australia.
- Unfranked dividends will attract 30% withholding tax.
- In a company, if the interest paid (subject to 10% withholding tax for payments to overseas loan), bank charges and borrowing costs in any year is greater than AU\$2m (locally and overseas) the Thin Capitalisation Rules will apply, which may reduce the tax deductible amount of interest paid, bank charges and borrowing costs.
- The company is required to lodge an Income Tax Return each financial year ending 30 June and prepare annual financial statements.

10 Is Goods and Services Tax (GST) payable?

- NO GST will apply for Residential rental income.

11 Is Capital Gains Tax (CGT) payable on disposal of an Australian property?

- Yes. Capital gains tax will apply if the property is intended to be held long term and rented out.
- The capital gains is the difference between the net sale price (gross sales less sales costs) and the original cost (including acquisition costs).
- The CGT arises in the financial year the contract date is accepted by the vendor.
- If the property is owned by a company, a 30% tax rate will apply.
- If the property is owned by an individual, the foreign resident tax rates will apply.

12 Do I need to incorporate a company in Australia?

- No. You can have your foreign company. The two options are:

Option One: Australian Company

- An Australian company will require at least 1 Australian resident Director, all other directors can be non-residents and all shareholders can be non-residents.
- The cost of a new company is currently AU\$820. Annual Australian Securities and Investment Commission (ASIC) fee is currently AU\$273.

Option two: Overseas Company

- The foreign company registers in Australia as an Australian Recognised Foreign Company and receives an Australian Registered Body Number (ARBN). The current application fee is AU\$506.
- Each year, the foreign company must lodge with ASIC the financial statements that are prepared by law in the company's place of origin. This would include all the business operations including Australia. The current fee to ASIC is \$1,260.
- Each year, the foreign company lodges an annual return to ASIC. The current fee to ASIC is also AU\$1,260.
- A tax file number is applied for in order to lodge the tax return each year for only the Australian Operations.
- The company tax rate for rental income and capital gain is 30% for the Foreign company (same as Australia).
- An Australian Agent is required (such as an Accountant) to lodge the annual documents.

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13 What records do I need to keep in acquiring Australian property?

- All records from the contract of purchase, contract of sale, settlement statement for 5 years from the time of sale.
- All records on rental income and expenses to be kept for 5 years from when you lodge the income tax return.

14 Example Calculation for Foreigners Buying Land/Dwelling in Western Australia

Scenario:	(1)	(2)
	(AUD)	(AUD)
Assume the following:		
House + Land	3,000,000	4,000,000
Land Only	1,500,000	2,000,000
Gross Rental Value	70,000	90,000

14.1 Stamp Duty	(1)	(2)	Notes
Normal	68,366	94,116	
7% surcharge	105,000	140,000	
Total Payable	173,366	234,116	Only on acquisition
14.2 Land Tax	6,250	12,550	Annual and subject to change in future years
14.3 Council Rates	4,900	6,300	(+ any other council levies and charges); Annual and subject to change in future years