



VACANCY FEES FOR FOREIGN ACQUISITIONS OF RESIDENTIAL LAND

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On 7 September 2017, the *Treasury Laws Amendment (Housing Tax Integrity) Bill 2017* was introduced in the House of Representatives as a measure to address housing affordability issues. A key component of this legislation is the implementation of an annual vacancy fee on foreign owners of residential real estate. The vacancy fee will provide a financial incentive for foreign owners to make their property available on the rental market. Any foreign owner that submitted an application to the Foreign Resident Investment Review Board after 7:30pm (AEST) on 9 May 2017 will need to consider the impact of these new rules.

WHO WILL THE VACANCY FEE APPLY TO?

Foreign owners of residential real estate will be liable to pay the vacancy fee where a residential property is not occupied or genuinely available on the rental market for at least six months in a 12 month period.

A dwelling will be considered genuinely available for occupation as a residence (with a term of 30 days or more) if the dwelling is:

- made available on the rental market;
- advertised publicly; and
- available at a market rent.

It is important to note that indirect interests held via companies and trusts will also be captured when determining who is a 'foreign owner'.

WHEN WILL THE VACANCY FEE NOT APPLY?

To avoid being liable for the vacancy fee, the relevant property must be:

- occupied for 183 days or more in a 12 month period by the owner or their relatives;
- subject to lease(s) or licence(s) with a minimum duration of 30 days, which total 183 days in a 12 month period; or
- made genuinely available on the rental market, with minimum durations of 30 days, for a total of 183 days in a 12 month period; or
- residential land, without a dwelling.

ADMINISTRATION OF THE VACANCY FEE

Foreign owners of residential land will be required to lodge a 'vacancy fee return' to the Australian Tax Office after the end of each year during which the residential dwelling may be liable for the fee.

The Australian Tax Office will then issue a notice to the foreign person if a vacancy fee is payable, explaining why the liability has arisen.

If the vacancy fee is payable, it will equal the amount that was payable at the time the foreign owner submitted their Foreign Investment Review Board application.

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These new laws are yet to come into effect. The potential implications of them however, should still be considered by any foreign owner who has invested or is looking to invest in the Australian residential housing market.

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