



WIND AND SOLAR FARMS

There were changes to the treatment of wind and solar farms, under the *Foreign Acquisitions and Takeovers Regulation 2015* which apply from 1 July 2017. The treatment of developed solar and wind farms was clarified to generally treat the land as developed commercial land rather than possibly being vacant commercial land and agricultural land.

WHAT IS A WIND OR SOLAR POWER STATION?

A “**wind or solar power station**” is defined in the *Foreign Acquisitions and Takeovers Regulation 2015* (Regulation) to mean a wind or solar farm that is recognised as an accredited power station as defined in the *Renewable Energy (Electricity) Act 2000*.

This includes each component that comprises a solar electricity generation system and each component that comprises a wind power station, for example each wind turbine.

Importantly the infrastructure must be used for the purpose of generating electricity for a commercial purpose and, therefore, must be operated as a power station rather than for private use.

Land which contains a wind or solar power station on the surface of the land will **not** be considered vacant. That is, if a component of a wind or solar power station is on the surface of the land, the land will be treated as developed. For example, land that contains a wind turbine will be treated as developed. In contrast, land that only contains a component of a solar farm that is underground (e.g. an underground cable) will still be treated as vacant. This is because the location of the cable is unlikely to affect the use of the surface of the land.

SUMMARY TABLE OF TREATMENT OF LAND WHICH CONTAINS A DEVELOPED WIND OR SOLAR FARM

	Foreign persons		Currently a wind or solar power station owner or operator
	Land is currently used predominately for primary production	Land is not currently used predominately for primary production	In all scenarios
Developed wind farm	Agricultural land (and noting that in addition it is developed commercial land)	Developed commercial land	Developed commercial land

TREATMENT OF DEVELOPED WIND AND SOLAR FARMS

For all foreign persons

For all foreign persons, land that contains a wind or solar power station is **not** considered agricultural land provided the land is **not** currently being wholly or predominately used for a primary production business.

If the land is being predominately used for a primary production business the land is considered agricultural land.

Land that contains a wind or solar power station is considered developed commercial land (in addition to agricultural land if the above exemption doesn't apply).

Example 1

CattleCo is a foreign person but is **not** an owner and operator of a wind or solar power station. CattleCo is seeking to purchase land which currently holds a wind power station. The land is currently being used predominately for a primary production business — cattle grazing.

The land will be treated as agricultural land and developed commercial land. The land remains agricultural land as it is being used predominately for a primary production business, but will be treated as developed commercial land as a wind power station is on the land.

Example 2

FarmCo is a foreign person but is **not** an owner and operator of a wind or solar power station. FarmCo is seeking to purchase land which currently holds a wind power station. The land is **not** being used predominately for a primary production business.

The land will be treated as developed commercial land as it contains a wind power station on the land and will not be considered agricultural land as it falls within the exemption in section 44 of the Regulation.

For owners and operators of wind and solar farms

Different treatment applies for owners and operators of wind or solar farms, (section 40 of the Regulation). Acquisitions of land that contain a wind or solar power station will **not** be considered agricultural land (for threshold purposes) irrespective of whether the land is being currently used predominately for a primary production business, where the land is acquired by an operator for the **sole** purpose of operating a wind or solar power station.

That is, land that contains a wind or solar power station will be considered developed commercial land and agricultural land. However, only the thresholds for developed commercial land will apply.

Example 3

WindCo is a foreign person and is an operator of an existing wind power station in NSW. WindCo is seeking to acquire leasehold interests in land in South Australia that currently contains an operating wind power station.

The current freehold interest holder is a local farming group who is using the land for a beef cattle primary production business and operates alongside the wind farm. The freehold interest holder has leased out a portion of the land to the current wind power station operator.

Consequently, the land is being used for both a primary production business and for an operating wind farm. The predominant use of the land, given the small proportion of the land being used for the operating wind farm, is the primary production business. As such the land would still be considered both agricultural land and developed commercial land. However, when WindCo acquires the land, because it is an owner/operator of a wind power station and intends to only use the land for this purpose, the applicable thresholds are those for developed commercial land.

TREATMENT OF UNDEVELOPED WIND AND SOLAR FARMS**SUMMARY TABLE OF TREATMENT OF LAND WHICH CONTAINS AN UNDEVELOPED WIND OR SOLAR FARM**

	Foreign persons	
	Land is currently used predominately for primary production	Land is not currently used predominately for primary production
<p>Undeveloped wind farm with no substantive permanent building on the land:</p> <p>Either:</p> <p>(a) an application has been made to a government authority for approval to establish a wind or solar farm; or</p> <p>(b) approval is in place allowing a wind or solar power station to be established or operated on the land</p>	Agricultural land (and vacant commercial land if not being used wholly and exclusively for primary production)	Vacant commercial land

For all foreign persons, land will not be considered agricultural land provided the land is **not** currently being wholly or predominately used for a primary production business and the land meets one of the following conditions:

- An application has been made to a government authority for approval (including accreditation) for establishing or operating a wind or solar power station to be located on the land (whether on or beneath the surface);
- An approval of a government authority (including accreditation) is in force allowing a wind or solar power station to be established or operated on the land (whether on or beneath the surface).
- The land was acquired solely, or is used wholly or predominantly, to meet a condition of an approval of a government authority (including accreditation) (that relates to other land) for a wind or solar power station to be established or operated on the land.

The land will be treated as vacant commercial land (provided there is no substantive permanent building on it) and not agricultural land.

If the land is predominately being used for a primary production business the land will remain agricultural land as the exemption in Section 44 of the Regulation will not apply.

FEES

The fee is payable at the time of application. Processing commences when the correct fee is paid.

For more information on fees, see Guidance Note 30.

PENALTIES

Strict penalties (including civil and criminal penalties) may apply for breaches of Australia's foreign investment laws.

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au or by contacting +61 2 6263 3795.

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.