



EXEMPTION CERTIFICATES FOR A PROGRAM OF ACQUISITIONS OF INTERESTS IN KINDS OF LAND

Under the foreign investment framework it is a requirement that each proposed acquisition of an interest in land by a foreign person be separately notified, unless otherwise exempt. However, a longstanding feature of the framework is that foreign persons making multiple acquisitions can apply for an up-front approval for a program of land acquisitions without the need to seek separate approvals.

Section 58 of the *Foreign Acquisitions and Takeovers Act 1975* allows a foreign person to apply for a certificate in relation to acquisitions of one or more kinds of interests in Australian land, and the Treasurer to grant such a certificate, if satisfied that the acquisitions of the kinds of interests by the foreign person is not contrary to the national interest.

This Guidance Note sets out the factors that will typically be considered for each kind of land when assessing an application for an exemption certificate and the types of conditions that an exemption certificate will generally specify.

GENERAL GUIDELINES

When may an exemption certificate be applicable?

The certificate is a mechanism available to minimise the regulatory burden of foreign investment screening that would otherwise apply to each acquisition covered by a certificate. It is intended for foreign persons with a high volume of acquisitions of interests in land (this generally would not include individuals). A certificate will not usually be granted where the number of likely acquisitions is small and it would be reasonable for the foreign person to notify the acquisitions separately.

A certificate will generally specify the maximum value of interests that can be acquired and also the period during which acquisitions can be made. While certificates have previously been for a default 12 months, certificates may now be issued for shorter or longer periods depending on the circumstances.

An open and transparent sale process

A certificate can only be used where a foreign person is acquiring land that has been offered for sale publicly and 'marketed widely'¹ for a minimum of 30 days. Conditions will be imposed on all exemption certificates to ensure this requirement is met. That is, unless an applicant is acquiring land that has been subject to an open and transparent sale process an exemption certificate cannot be used for that particular acquisition.

¹ Marketed widely means that the property must be listed/advertised on widely used real estate listing websites or in regional/national media.

Example 1

AutoCo is a foreign person that has received a land exemption certificate with conditions to ensure that they can only acquire land that is subject to an open and transparent sales process.

AutoCo acquires land that has been publicly advertised for a period of 60 days. As this acquisition would meet the conditions of their exemption certificate, AutoCo could use the exemption certificate to make the acquisition.

How will applications be considered?

Applications will be considered on a case-by-case basis to ensure they are not contrary to the national interest. This will take into account factors such as the identity of the applicant and the nature of its Australian business, the purpose and scope of proposed acquisitions, acquisitions history, and compliance standing (for example, meeting reporting requirements and any existing conditions).

If an applicant, or any related person or entity, has held an exemption certificate previously and has not complied with its conditions, or has not met conditions attached to individual acquisitions, this compliance history will be taken into account when assessing the applicant's suitability to hold an exemption certificate. For exemption certificates relating to interests in agricultural land, compliance with the Agricultural Land Register administered by the Australian Taxation Office (ATO) may be taken into account. Non-compliance with conditions of a certificate or more generally, may also lead to revocation of a certificate by the Treasurer.

A foreign person who has had an application for a certificate declined, may still apply for individual acquisitions.

Conditions

An exemption certificate may be given subject to conditions. Standard development conditions will apply to **all** agricultural land exemption certificates that are for residential development. That is, the exemption certificate would be conditional on development commencing within a five year period.

Reporting

Foreign persons granted an exemption certificate must report periodically (for example, quarterly), on the acquisitions made during the period under their certificate, as per their specific reporting condition. The frequency of reporting will depend on factors such as the period the certificate is in force and the nature of the acquisitions covered by the certificate. As part of this reporting, a certificate holder will also need to confirm that all foreign persons covered by the certificate are meeting all ongoing conditions attached to the certificate and earlier individual approvals and certificates.

AGRICULTURAL LAND

Foreign persons (including foreign government investors) are able to apply for an exemption certificate to cover a program of acquisitions of interests in agricultural land.

Exemption certificates for agricultural land would generally be considered where:

- the total proposed value of acquisitions over a three year period does not exceed \$100 million;

- the regions or localities where the agricultural land in which interests are to be acquired are defined clearly.

Exemption certificates would generally be granted subject to a condition that limits the maximum value for a single transaction (i.e. the value of the property, not the value of individual titles) to \$10 million.

The above limits are to be used as a guide only. The actual limit granted may be lower than these limits depending on factors, including but not limited to:

- the location restrictions on the exemption certificate;
- the track record of the acquiring party;
- the future usage of the land including any capital investment plans;
- The total value of recent FIRB approvals, either individually or via an exemption certificate.

Standard development conditions will apply to **all** agricultural land exemption certificates that are for residential development. That is, the exemption certificate would be conditional on development commencing within a five year period.

Foreign persons acquiring interests that require notification for the Agricultural Land Register administered by the ATO should comply separately with their notification requirements under the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*, for any applicable acquisitions and disposals made while an exemption certificate is in place.

MINING AND PRODUCTION TENEMENTS

Foreign persons (including foreign government investors) are able to apply for an exemption certificate to cover a program of acquisitions of interests in tenements.

Exemption certificates for mining or production tenements would generally be granted subject to conditions that:

- specify the geographic region of the tenement; and
- specify the type of minerals that can be exploited under the tenement.

Foreign government investors

Foreign government investors may apply for an exemption certificate to cover exploration, or mining or production tenements. However, exemption certificates will generally not be granted to foreign government investors that cover a mixture of these tenements over substantially the same area and target resource.

- If a foreign government investor is granted an exploration tenement exemption certificate and would also like a mining or production tenement exemption certificate to cover later potential related mining or production tenements, the inclusion of such tenements in the certificate would generally be considered contrary to the national interest.
- The related mining or production tenements would normally be expected to be covered by a later exemption certificate application or notice, once the exploration activities have been substantially progressed.

COMMERCIAL LAND

Foreign persons are able to apply for an exemption certificate to cover a program of acquisitions of interests in commercial land.

Conditions contained in exemption certificates for interests in commercial land will apply in the same way as if the land was being acquired individually. For example, if vacant commercial land is covered in the exemption certificate, the certificate would be conditional on development commencing within the standard five years.

Exemption certificates for commercial land will generally not cover low threshold commercial land. For more information, see Guidance Note 14.

RESIDENTIAL LAND

Eligibility requirements for residential land differ by the type of residential land. For more information, see Guidance Note 1. Exemption certificates for a program of acquisitions of interests in residential land will have regard to the eligibility requirements in relation to the type of residential land to be included in the certificate. Conditions imposed on exemption certificates will generally include the standard conditions that would have applied to an individual approval of an acquisition.

FOREIGN GOVERNMENT INVESTORS

Foreign government investors may seek approval to get an exemption certificate for a program of acquisitions of interests in Australian land. These will be considered on a case-by-case basis.

EXEMPTION CERTIFICATES FOR DIFFERENT KINDS OF INTERESTS IN LAND

Foreign persons can apply for an exemption certificate for different types of land in the same certificate. This will be considered on a case-by-case basis and consistent with guidance included above.

INFORMATION THAT NEEDS TO BE SUPPLIED IN THE APPLICATION

Applications are considered on a case-by-case basis and should include the information outlined below. Additional information may also be requested during the assessment.

- Information on who will be making the acquisitions, including ultimate ownership, whether the investor is a foreign government investor, and details of business activities in Australia.
- If there will be more than one entity, information on each entity.
- If the applicant wishes to include a yet to be established entity, details of intended ownership, entity type and where this will be established;
- Details of the proposed program of acquisitions including the kind of land. For each kind of land specify the:
 - ~ Nature of the interests to be acquired (for example, legal interests in property, securities in an Australian land entity or a mix of these);
 - ~ Proposed location of acquisitions (e.g. State or Territory, central business district metropolitan or rural, region or local government area);
 - ~ Budget for acquisitions with [indicative] breakdowns as categorised above;

- ~ Intentions in relation to the interests to be acquired;
- ~ Acknowledgement that if a standard condition would apply to an individual acquisition, the applicant will comply with such a condition if imposed by any certificate granted; and
- ~ Confirmation of good compliance standing for foreign investment purposes (that is, that the applicants and any other entities with common ultimate ownership, are meeting all conditions that are applicable for earlier acquisitions or certificates).

FEES

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

For more information on the fees applying to foreign investment applications, see [Guidance Note 30](#).

If an application for an exemption certificate for a program of land acquisitions was not granted by the Treasurer, fees to the value of the original application will be waived for any subsequent applications for an interest in land. If the entity that paid the fee is a holding entity or subsidiary, the fee may be credited towards separate notices of other entities within the same group, with the written consent of an authorised officer of the entity that initially applied for the certificate that was not given.

PENALTIES

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

VARIATIONS AND REVOCATIONS

The Treasurer may vary or revoke an exemption certificate given to a person if the Treasurer is satisfied that the variation or revocation is not contrary to the national interest.

A variation may be made on application in writing or by the Treasurer's own initiative.

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.