2019

A Foreign Buyer’s Guide to the Purchase of Australian Residential Property
A Guide for Foreign Citizens buying Australian Residential Property

Introduction

Exfin has been involved in assisting foreign citizens purchase Australian property for over a decade. The following pages are intended as providing a relatively short, concise guide to the issues and practicalities involved in the selection, financing and purchase of Australian property for foreign citizens resident outside Australia who are neither Australian citizens or permanent residents.

The intention is not to be exhaustive in our coverage of the various areas; there are a very wide range of circumstances and we strongly believe that a successful purchase should involve professional advice at one or more stages of the purchase process. Indeed, whilst we have taken all reasonable care in preparing this guide, it is not intended as constituting professional advice or to be relied upon.

This Guide also only covers the purchase of residential property; different rules apply to the purchase of commercial (office, retail, industrial) property.

We take a timeline approach to the process. First examining the restrictions applying to the purchase of property by foreign citizens and then the tax treatment applicable. Whether tax is a major driver will depend mainly upon whether the purchase is for investment or family reasons, but nevertheless there needs to be a broad understanding of the tax treatment in Australia before any investment is made. Thereafter, we examine how you may go about the selection of property, the actual acquisition and both the purchase costs and the ongoing costs of maintaining/renting the property, if applicable.

What Property can you Purchase?

In normal circumstances, no purchase of Australian property by a foreign citizen can be made without prior approval from the Foreign Investment Review Board (FIRB). You must not commit yourself to any purchase without such an approval, although contracts may be signed if they are clearly subject to FIRB approval, and we strongly recommend the involvement of a solicitor in these situations. Approvals can be applied for online and a response will generally be received within 30 days.

Foreign citizens cannot normally purchase any interest in established (i.e. second-hand) properties as either homes or investment properties. Two relatively narrow exceptions exist. Firstly, foreign citizens may, if given approval, buy established dwellings for re-development (involving a demolition of the existing dwelling and a new build) where this involves an increase in Australia’s housing stock. Approvals in this situation are usually subject to specific conditions.

Secondly, foreign citizens who operate substantial businesses in Australia may obtain approval to purchase established dwellings to house their Australian based staff, but these approvals are normally given subject to conditions requiring the sale of the property in circumstances where, for example, the dwelling is unused for a certain period of time.

Foreign citizens can however apply to purchase new dwellings and these proposals are normally approved without conditions. Proposals for the purchase of vacant land will also normally be approved, subject to the construction of a dwelling within a period of 4 years.
What is a “New” Dwelling?

“A dwelling that has not been previously sold by the developer and has not been previously occupied (such as, by tenants) for more than 12 months.”

New dwellings include those that are part of extensively refurbished buildings where the building’s use has undergone a change from non-residential (for example, office or warehouse) to residential. It does not include established residential real estate that has been refurbished or renovated.

Note the following:

- FIRB rules become more complicated when foreign citizens purchase a property in partnership with an Australian citizen, permanent resident or New Zealand citizen. Review the FIRB website for more guidance, but remember to make no commitment regarding a purchase until you have clarity regarding FIRB rules and receive approval, if required. We strongly suggest that you use a solicitor, rather than a conveyancer, for the purchase to ensure that you are compliant with FIRB requirements. We expect that the monitoring of transactions for compliance will increase and the Australian Tax Office (ATO) have powers to both fine and prosecute offenders; as well as unwind transactions.

- You do not need FIRB approval if you purchase a new dwelling from a developer who has already received pre-approval to sell them to foreign residents. If you are in any doubt, contact the FIRB to confirm that approval is not required.

- For those considering purchasing property through an Australian company or trust, note that “Australian incorporated companies or trusts where a substantial proportion of the shares or units are beneficially held by a foreign person are themselves considered to be ‘foreign’ and require approval.” There may however be situations where, because of recent changes to the tax law which we will cover later, it may be more beneficial or effective to now purchase property through a trust or corporate structure rather than directly as an individual.

- Some foreign investors in Australian real estate have the incorrect impression that only “off the plan” properties are available for foreign citizens. This is a consequence of Australian property developers constantly running offshore seminars focussed on the sale of these sorts of properties. Developers often trumpet stamp duty savings on these sorts of sales, and we will cover these later, but potential purchasers are not just limited to this relatively narrow section of the new property market.

FIRB Application Fees

In May 2015 the Australian Government announced the introduction of application fees for FIRB approvals with effect from 1 December, 2015 and that henceforth the Australian Tax Office (ATO) would be responsible for managing compliance in terms of foreign investment in residential real estate and the enforcement provisions - including significantly higher penalties for breaching foreign investment laws. These new application fees are illustrated in the Table below and came into effect on December 1, 2015.

<table>
<thead>
<tr>
<th>Investment Value (AUD)</th>
<th>FIRB Application Fee (AUD)</th>
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</thead>
<tbody>
<tr>
<td>Less than $1M</td>
<td>5000</td>
</tr>
<tr>
<td>$1M to $1,999,999</td>
<td>10000</td>
</tr>
<tr>
<td>$2M to $2,999,999</td>
<td>20000</td>
</tr>
<tr>
<td>$3M to $3,999,999</td>
<td>30000</td>
</tr>
<tr>
<td>$4M to $4,999,999</td>
<td>40000</td>
</tr>
<tr>
<td>$5M +</td>
<td>$50,000, then a $10,000 incremental fee increase per additional $1M in property value</td>
</tr>
</tbody>
</table>

Note that you must seek separate approval in relation to each potential purchase you wish to make - with the price entered into the application being the highest price you expect to pay for the property.

The government has also announced the implementation of what are called “exemption certificates”, that allow foreign persons to obtain approval to purchase one unspecified dwelling up to a specific value over a predetermined period – normally six months. The exemption certificate is really designed to enable individuals to bid at auctions - and the fees attaching are the same fee that would apply for acquiring an interest in residential land according to the table above.

Further fees apply for any variation to an exemption certificate, and you are again recommended to utilise a solicitor to manage this process, particularly given that the certificates will include a condition that the foreign
person reports back to the FIRB once they have completed a purchase or if the period specified in the certificate ends without them making a purchase.

No provision would appear to exist to apply for an exemption certificate by foreign investors in relation to the purchase of new property.

### Income and Capital Gains Taxation

A little surprisingly, we often find that many investors only investigate the tax treatment of the Australian property they purchase after they have purchased the property. If you are buying the property for family use, or eventual retirement, then the tax treatment is only a little less important than if you do so for investment.

Nonetheless, it is something you need to understand in general terms prior to any purchase, and we recommend a discussion with a tax advisor prior to any purchase because it may have a bearing on how the property is best financed.

### The Treatment of Investment/Rental Income

You will need to complete an Australian tax return in any year in which your property earns income and include all rental, or rental related, income in the tax return. Generally, you can claim an immediate deduction for expenses related to the management and maintenance of the property, including interest on loans.

You may also be able to claim a depreciation expense in relation to the property in two ways: first through “capital works deductions” which reflects the depreciation of the building itself, and secondly for depreciable assets such as carpets, furniture and appliances. You should utilise the services of a quantity surveyor to establish a depreciation schedule, which your tax advisor will use to complete your tax return.

How you are taxed will depend whether:

- Your rental income exceeds all of your deductible expenses, including your interest expense – this is referred to as being “positively geared”
- Your rental income equates to your deductible expenses – “neutrally geared”, or
- Your rental income is less than all your deductible expenses, including your interest expense – this is referred to as being “negatively geared”.

If your investment is positively geared then the net income will be subject to the tax rates appearing in the Table below - these are non-resident tax rates for the years 2019-2022 and they differ from normal resident tax rates in that there is no tax-free allowance. As you can see, net income attributed to foreign residents attracts a minimum tax rate of 32.5%.

Conversely, if your investment is negatively geared then any loss you make can be used to offset other income earned in Australia, or in the absence of other income it will simply accrue indefinitely and be available to offset income in the future, or any capital gains tax that arises on sale of the property.

Because of the relatively high rates of non-resident tax, and the access to tax losses, most Australian expatriates and foreign residents have investment properties which are either neutrally or negatively geared. Consequently, and this should be the subject of discussion with a tax advisor, some amount of gearing (borrowing) when it comes to the purchase of Australian property is usually advisable.

### The Treatment of Capital Gains

Australia has had a Capital Gains Tax (CGT) since 1985 and, unlike some other countries, there is no special tax rate applying to capital gains - capital gains are simply added to your taxable income in the year in which you made the gain and taxed at the appropriate marginal rate. Hence, for nonresidents it will be between the 32.5% and 47%.

Working out the capital gain on the sale of an asset can sometimes be complex, but in most situations you work out the gain or loss by subtracting your ‘cost base’ (what it cost you to acquire the asset) from your ‘capital proceeds’ (what you received when you disposed of it). With property, the cost base is generally what the property cost you plus any buying and selling costs (e.g.

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax on this Income (as a Non Resident)</th>
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<tbody>
<tr>
<td>$0-$90,000</td>
<td>32.5c on each $1</td>
</tr>
<tr>
<td>$90,001 - $180,000</td>
<td>$29,250 plus 37c for each $1 over $90,000</td>
</tr>
<tr>
<td>$180,001 and over</td>
<td>$62,550 plus 45c for every $1 over $180,000</td>
</tr>
</tbody>
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stamp duty, legal fees, buyers’ agent fees, inspection fees).

The cost base of the property may need to be adjusted to reflect any capital works deductions you have claimed or are entitled to claim. Note that when an asset is typically held for one year or more, a discount of 50% for individuals or 33 1/3% for superannuation funds applies to any capital gains. However, in the 2012 Federal Budget the Government announced that non-residents (including Australian expatriates and temporary residents in Australia) would cease to qualify for the discount on capital gains earned after May 8, 2012 on taxable Australian property. Non-residents are also now liable to have 12.5% tax withheld from any sale of property valued at more than $750,000.

As mentioned previously, there may be situations - and this applies particularly to significant real estate investments - where it may be better to purchase property through Australian resident trusts and companies. You should approach your tax advisor if you have questions in this regard.

Selecting a Property

Many books have been written on the subject of selecting property, and the relative importance of location and other attributes. That is not our focus, except perhaps in relation to one particular issue of importance, and that is ensuring that you obtain “value” when it comes to acquiring a property.

Most foreign residents who are looking to purchase property in Australia will not have the advantage of living in the environment in which they wish to purchase a property, and therefore will not have developed a network of contacts or a “feel” for the local market, nor have learned how to negotiate the best financial arrangements.

Perhaps more than any other buyer we feel that they should consider using a Buyers’ agent to both shortlist and purchase properties for them - particularly if they are purchasing investment properties, rather than long-term family residences.

We believe that no foreign investor, unless they have substantial personal experience or the ability to spend a considerable time in Australia familiarising themselves with the market, should purchase without expert advice. Advice based on thorough market research and assistance in the purchase process will cost up to 3% of the purchase price, with these costs included in the cost base for capital gains tax purposes. If you would like to discuss your situation with a research-based property buying organisation please provide your details in our Inquiry Form and we will make arrangements accordingly. No cost or commitment attaches to any initial discussion.

In terms of doing your own research, an exceptionally high proportion of Australian properties are included within the major real estate websites:

- Domain.com.au
- Realestate.com.au

Note that one of the perennial problems with the advertising of Australian real estate, and one which almost all the State governments have struggled unsuccessfully with, is the issue of under-quoting the indicative price for properties.

Real estate agents regularly under-quote advertised prices for housing to stimulate interest and this wastes the time of an enormous number of individuals trying to buy within a cost range, or who are time poor. Only a personal knowledge of the market, and perhaps a one-to-one dialogue with the agent, will give you a more accurate feel for the likely selling range. And advice is particularly important in terms of auctions, given the application process.

“Off the Plan” Property Purchases

A substantial industry in Australia has grown up around the sale of “off the plan” apartments to offshore investors. The major selling points tend to be a low initial deposit (usually 10%), stamp duty savings and guaranteed rental returns, usually for one to three years. We regard investments in these apartments as more akin to gambling than investment - with developers and middlemen the only sure winners in the process.

We see no reason whatsoever why foreign investors should restrict themselves to purchasing “off the plan”, as opposed to properly researched individual purchases. Properly researched investment purchases come at a cost - as mentioned previously - but bear in mind the following when considering an “off the plan” purchase:

- You are typically buying a “box” - often one of hundreds in the same building sharing the same general characteristics and coming onto the market at the same time. In a difficult market, both in terms of sales and rentals, you have no point of differentiation when competing in the market with other apartments other than price. Selection is perhaps the most important part of the process.
Investor roadshows, rental guarantees and substantial sales commissions cost significant amounts of money - they effectively require a “rising tide” to ensure investors are “in the black” at the time of settlement. A relatively recent survey suggests that, “nearly 44% of apartment purchases in Australia’s most populous cities are below the sale price at the time of completion”.

Financing can be a problem. From May 2016 most of Australia’s major banks withdrew from providing mortgage finance to foreign investors - and although local finance can still be obtained, it is relatively expensive and requires high deposits.

Any rental guarantees offered are frequently not an accurate representation of the market rent the property will attract - and effectively you are paying for these guarantees in your purchase price.

In summary, resist the temptation to gamble or be lazy, and either research this investment yourself directly - by visiting Australia for enough time to research the market and buy accordingly - or engage an appropriately experienced property professional to conduct the search, negotiation and purchase.

Also, as stressed elsewhere, you should employ a suitably experienced solicitor to ensure you meet FIRB compliance requirements and thoroughly review the contractual documentation. Remember that the initial documentation will often have been prepared by the vendor’s lawyer and may contain, for example, a warranty that you have already obtained FIRB approval - whereas, unless the property is subject to an FIRB exemption certificate (and developers should provide a copy of the new property exemption certificate to each purchaser) you may actually want a clause they provides that any sale is “conditional on FIRB approval”. Getting this wrong can be very expensive.

In terms of beginning any search for property, you should also normally arrange for pre-approved finance from a bank or other lender, particularly given our comments above regarding current access to finance in Australia. Which leads to our next section.

**Arranging Mortgage Finance**

Apart from using their own funds to purchase property, which may not be tax effective in Australia, foreign residents have two broad options when it comes to arranging property finance. They can choose to arrange a foreign currency loan, probably in the currency in which they earn their income, or arrange an Australian dollar denominated mortgage to purchase a property.

The main advantage of a foreign currency loan, at least at present, is that it may be available at a lower interest rate than applies in the Australian mortgage market. The major disadvantage is the potential foreign currency exposure; meaning that if there is a significant reduction in the value of the Australian dollar versus the currency in which the loan is made, then the lending bank may request a capital injection to ensure that the loan to valuation ratio does not exceed the agreed maximum rate.

This is akin to a margin call. In addition, there may be a high minimum mortgage size and you will be normally be limited to a variable rate mortgage, with no access to fixed interest rates.

The advantages of an Australian dollar loan are that a foreign resident may potentially borrow up to 70 - 75% of the valuation of the property and that there is no foreign currency exposure - you have an Australian dollar loan secured against an Australian asset. Interest rates for foreign residents are currently considerably higher than those applying to many overseas loans, but there is also much greater flexibility in the type of loans available - including fixed rate and interest only loans which are typically not available for foreign currency loans.

As we mentioned earlier, most of Australia’s banks have withdrawn from lending to foreign investors and access to finance for foreign investors is currently very limited and expensive compared to mortgages available to citizens and permanent resident. In particular, potential foreign borrowers who are “self employed” will struggle to arrange finance in Australia, regardless of the lender.

Note that using an Australian mortgage broker is usually free of charge, except in unusual circumstances - and this may apply with overseas investors. The bank will pay the broker a commission for organizing the finance and it will not affect the cost of your loan in anyway. Look for an independent, licensed mortgage broker with wide accreditation; they should be able to cover virtually every bank and lending institution in Australia and be experienced in submitting loans for foreign citizens. If you would like Exfin to assist in arranging mortgage finance for you please complete our [Mortgage Inquiry Form](#).

**Property Purchase Costs**

The direct purchase costs attaching to buying real estate in all the Australian states, including Government stamp duty, mortgage registration and the land transfer fees, can be quite substantial, as you can see from the Table

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below, and need to be included in your financing considerations. In 2015 the Victorian Government announced the introduction of additional stamp duty fees for foreign investors and this has now been followed by NSW, Queensland and SA (from January, 2018). See the Stamp Duty Table below for details and some examples.

In a number of States stamp duty concessions apply to properties bought “off-the-plan”. A buyer will pay stamp duty only on the proportion of the property already completed. For example, if the contract is signed when approximately 30% of building work has been completed, then the investor pays stamp duty only on the value of the land plus the 30% of the building that has been completed.

As we mentioned earlier, these stamp duty savings form one of the major selling planks of Australian property developers in overseas sales forums. They can constitute real savings, but there is invariably a risk attaching to the purchase of any property on the basis of plans and computer simulations - compared to the purchase of existing property, which is capable of being physically inspected. What is more questionable is where developers offer rental guarantees as part of the enticement to purchase. There is a direct cost attaching to these rental guarantees, which is included in the capital cost of the purchase.

They can also give investors an overoptimistic view of the likely rental return on the property - with Australia traditionally being a market more focussed on capital rather than income return. It pays to do your research on rental returns being generated in the open market for comparable properties, rather than relying upon the guaranteed returns offered as indicative of the market.

There are a number of other costs attaching to purchase a property which need to be taken into account; these include legal/conveyancing fees, loan application fees, insurance cover and pro-rata adjustments for services, such as council and water rates, and architectural and pest inspection fees.

As we mentioned previously, in our opinion, foreign citizens should use solicitors to carry out the conveyancing work, rather than dedicated conveyancers. The cost may be slightly higher, but there are some additional complexities for foreign citizens - in particular FIRB requirements - that you need to be aware of and ensure that you are compliant with. Otherwise, penalties can be significant.

**Indicative Stamp Duty Rates in Australia for Foreign Buyers: Two Examples**

<table>
<thead>
<tr>
<th>$600,000 Purchase with $420,000 (70%) Mortgage - 2019</th>
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<tr>
<td><strong>Stk</strong></td>
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<tr>
<td>Stamp Duty</td>
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<td>Mortgage Reg</td>
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<td>Land Tsfer</td>
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<td>Total</td>
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<table>
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<tr>
<th>$1,000,000 Purchase with $700,000 (70%) Mortgage - 2019</th>
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<tr>
<td><strong>Stk</strong></td>
</tr>
<tr>
<td>Stamp Duty</td>
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</tr>
<tr>
<td>Land Tsfer</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

(1) VIC: Includes 7% Stamp Duty Surcharge for Foreign Investors from July 1, 2016
(2) NSW: Includes 8% Stamp Duty Surcharge for Foreign Investors from July 1, 2017
(3) QLD: Includes 7% Stamp Duty Surcharge for Foreign Investors from July 1, 2018
(4) WA: Includes 7% Stamp Duty Surcharge for Foreign Investors from January 1, 2019
(5) SA: Includes 7% Stamp Duty Surcharge for Foreign Investors from January, 2018
(6) TAS: Includes 3% Stamp Duty Surcharge for Foreign Investors from July 1, 2018
Renting your Property

Most foreign purchasers will rent their Australian property at some stage - and if they do not make property available for rent, or occupy it themselves - then they be liable to pay significant new Government charges. We have partners who can assist in managing these properties in Melbourne, Sydney, Brisbane and Adelaide; with Perth to follow shortly.

Management fees vary across the different states, between 7.7% and 8.8% of gross rental, with some variability dependent on the property value and location. The management fees are normally tax deductible and the manager provides annual reports in terms of income and expenditure which allow the efficient preparation of the annual Australian tax returns, and these need to be lodged in any year that a property earns rental income in Australia.

Please contact us at Exfin for more details regarding property management services.

Selling a Property

We would only make two specific comments in relation to the sale of a property.

Firstly, from July 1, 2017 the buyers of Australian real property with a market value of AUD750,000 or more are required to withhold and pay to the ATO a non-final 12.5% withholding tax on payments made to “foreign residents” - this includes Australian expats and foreign citizens. In effect, the withholding tax must be paid to the ATO unless the seller can demonstrate that they are residents by providing the purchaser with a clearance certificate from the ATO, or a variation certificate.

Secondly, and particularly if the seller is likely to make a capital gain on the sale of any property, they should seek professional advice to ensure that any sale is as tax effective as possible.

Banking

Overseas purchasers of Australian property may use mortgages provided by the branches of Australian banks in places such as Singapore, Hong Kong and London. This is perfectly satisfactory, but it may be costly from two perspectives.

Firstly, you have no guarantee that the mortgage product provided by the bank is competitive in the Australian market. As we mention earlier, there is no reason why you cannot use an Australian based mortgage broker to consider all the mortgage products available and suitable in your situation. Bank accounts can often be established at this stage to manage mortgage payments and also the transactions associated with the management of a rental property.

Secondly, any money transfers made through the bank to Australia and involving a conversion into Australian dollars will often not be made at the most competitive rates available. In this latter case we normally suggest that individuals compare bank transfer rates with those provided by specialist companies, listed on the ASX, such as OFX. Potential savings can be substantial and it is relatively easy to arrange for regular money transfers into Australia, if necessary, to meet mortgage or other obligations.

Conclusion

Arranging the purchase of Australian property is not difficult as long as you rely upon appropriate professional advice at different points in the process. It is absolutely necessary that you meet the FIRB requirements and seek appropriate prior approval for any purchase where required. In this context, it is not necessary that you restrict yourself to purchasing one of the “off the plan” properties marketed overseas by Australian developers, and nor do you need to directly utilize the services of Australia’s major banks.

You should not however consider the purchase of a property unless you have a clear understanding of the tax issues, both in terms of income and capital gains, associated with owning property in Australia. The focus should always be upon ensuring that you do not experience any “surprises”.

About Exfin

Exfin was established in 2005 to provide professional services for Australian expatriates, expatriates in Australia and foreign residents seeking to invest in Australia. Exfin can offer access to experienced advice and services throughout the entire property purchase chain, including:

- Property Selection, Purchase and Management
- Mortgage Broking
- Tax Advice and Services
- Financial Planning
- Investment, Business and Retirement Visas

We invite you to Contact Us if you believe that we can assist in any respect with a future property purchase in Australia, or in respect of any other professional matter.