



The Australian Taxation Office (ATO) recently announced the introduction of a new Register of Foreign Ownership of Australian Assets (Register). It is expected that the Register will come into effect from 1 July 2023.

The Register is intended to consolidate the existing registers administered by the ATO by providing a streamlined process for foreign investors to manage their Australian investments and support compliance with Australia's foreign investment framework.

At the same time, the Register imposes a number of new reporting obligations for foreign investors in addition to those that are already required under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (Act), including the obligation to report interests in mining and agricultural land, as well as small-scale property transactions. These new reporting obligations are not retrospective and will apply only to events occurring on and from the date the Register becomes effective.

Overview

The introduction of the Register involves the following key changes to the current regime:

- **Replacement of existing registers** – The Register will replace the existing foreign investment registers related to agricultural and residential land, as well as water interests.
- **Expanded scope of assets** – The types of assets that need to be registered now include residential land, commercial land, agricultural land, business and entity-related interests, mining, production and exploration tenements (previously only certain water, residential and agricultural land required registration and approval).
- **Increased government visibility** – One of the primary objectives of the Register is to enhance the government's visibility of foreign investments made in Australia. By consolidating detailed information about foreign ownership of assets, the Register will provide valuable data to the government for policy development and decision-making.
- **Online services for foreign investors** – To facilitate the registration process, online services for foreign investors will be introduced. Foreign investors must give a registered notice to the Registrar and register their assets electronically through the ATO's online services.

“Registrable Events” – Land

It is proposed that once the Register commences, the following new events will need to be reported within 30 days of a “registrable event day”:

Acquisitions by Foreign Persons	<ul style="list-style-type: none"> • A foreign person acquires an interest (other than an equitable interest) in Australian Land. This requirement covers acquisitions of interests in land that may not have required prior approval from the Treasurer. • A foreign person acquires an equitable interest in agricultural land pursuant to a lease or licence with a term likely to exceed five years. • A foreign person acquires an interest (other than an equitable interest) in an exploration tenement. • A foreign person acquires an interest in an Australian entity such that the Australian entity becomes a “foreign person” (e.g. because the foreign investor acquires an interest of at least 20% in the entity). Regardless of value, the Australian entity must report its holdings of: <ul style="list-style-type: none"> – Freehold interests in Australian land or exploration tenements – Leases of Australian land, with a term likely to exceed five years
Disposals by Foreign Persons	<ul style="list-style-type: none"> • Disposals of certain interests in Australian land (regardless of value). • Disposal or sell-down of 5% or more of existing interests in an Australian entity or business or ceasing certain businesses.
Change in the Nature of Ownership	<ul style="list-style-type: none"> • A person becomes a foreign person while holding an interest (other than an equitable interest) in Australian Land; an equitable interest in agricultural land pursuant to a lease or licence with a term likely to exceed five years; or an interest (other than an equitable interest) in an exploration tenement. • A person ceases to be a foreign person or “foreign government investor” while holding Australian land previously notified to the Registrar.
Change in the Nature of Land	<ul style="list-style-type: none"> • Changes in interests in Australian land previously notified to the Registrar.
Exemption Certificate	<ul style="list-style-type: none"> • A foreign person takes action under an exemption certificate.

Online Services

Foreign investors and their representatives may use the new online services to:

- Lodge foreign investment applications for residential land and pay associated fees
- Manage personal foreign investment details
- Register and manage residential and non-residential assets
- Review the history of residential and non-residential assets (from 1 January 2021)
- Lodge vacancy fee returns and pay associated fees
- Monitor the status of their residential foreign investment application
- Review asset registrations
- Review vacancy return lodgements
- Review payment history
- Delegate authority to representatives to act on behalf of individuals or entities without an ABN

In order to access online services, foreign investors will need to create a myGovID, which will be linked to the investors’ Australian Business Number (ABN).

It is expected that further information will be published by the ATO in relation to foreign investor obligations under the Register, and the steps to access the online services platform.

Exemptions

Foreign investors are not required to report on acquisitions that are wholly exempt from the Act. This includes:

- Devolution by operation of law
- Acquisitions from Australian government bodies
- Compulsory acquisitions
- Acquisitions of land by foreign custodian corporations
- Acquisitions by financiers
- Acquisitions pursuant to the easement exemption
- Passive investments of less than 10% in a land-rich entity

Fees

No fees are payable for giving a registration notice.

However, if a foreign investor fails to provide notice within 30 days of a registrable event day (as required under the Act), investors may incur a penalty in the form of a fine. The civil penalty is expected to be 250 penalty units (currently AU\$68,750). This number is expected to increase in July 2023.

Key Takeaways

- The Register is expected to commence on 1 July 2023. Foreign investors should familiarise themselves with the extended reporting obligations required under the Act.
- The ATO has indicated that it expects to make the online services available to foreign investors from 26 June 2023.
- Foreign investors and their representatives will require a myGovID to use the online service.
- Strict penalties may be imposed for non-compliance. The government will adopt a reasonable compliance approach in the first 12 months.

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