

THE ATO'S
SHARPENED FOCUS
ON LAND BANKING BY
FOREIGN INVESTORS

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Foreign investors banking undeveloped land in Australia are a fresh target for ATO enforcement action

In September 2026, the Australian Taxation Office (**ATO**) identified "land banking" by foreign investors as an active enforcement priority. The ATO signalled that its focus is "cracking down on foreign investors who break Australia's strict foreign investment rules by land banking vacant land."

Approvals for foreign investors investing in vacant **residential** land usually have a condition that completion of construction of a residence on the land must be completed within 4 years of the date of the approval.

Conditions for approvals foreign investors investing in vacant **commercial** land are set on a case by case basis.

What is the ATO doing?

Failures to comply with the *Foreign Acquisitions and Takeovers Act 1975* (**FATA**) and non-compliance with the *Foreign Investment Review Board* (**FIRB**) are being rigorously investigated, and in some cases enforced through Federal Court proceedings.

The ATO has stated that it identifies breaches through a specific compliance program targeting land banking. The program uses data matching techniques and audits for foreign investment approvals. Additionally, last year the Treasury committed to bolstering the ATO's focus on foreign investment compliance by funding over \$8.9 million from 2025-26, with additional funding from 2029-2030 to continue developing its audit programs.

What are the consequences of enforcement?

The ATO has indicated that it will continue to pursue stronger enforcement action, including freezing orders and forced sales where appropriate.

In 2026, the ATO has already succeeded in two Federal Court proceedings, securing penalties of \$370,000 and \$508,000 for leaving vacant residential land undeveloped beyond the 4-year deadline.

Unfavourable verdicts can attract civil penalties of up to \$910 million, and criminal penalties up to 10 years' imprisonment and/or \$5.4 million for an individual, or up to \$54.6 million for a corporation.

This marks a significant shift from what was already a clear no-tolerance policy for land banking, where in 2024-25, the ATO forced remediation of 217 breaches of the foreign investment rules, including the disposal of 111 residential properties.

How can foreign investors remain compliant?

For a foreign investor holding undeveloped Australian land, particularly vacant residential land acquired under a FIRB approval, now is an appropriate time to review the approval document to ascertain whether all development conditions and foreign investment obligations are being met.

Foreign investors should:

- review the conditions attached to any FIRB approval;
- monitor development timeframes and milestones;
- maintain records demonstrating compliance with approval conditions;
- ensure ongoing reporting obligations are met; and
- seek advice promptly if delays may affect compliance with development conditions.

Early identification and remediation of compliance issues may significantly reduce regulatory risk and help avoid costly enforcement action.

It is possible to seek an extension of the deadline but extensions are only granted on a case by case basis. If you have any clients needing assistance please let us know.

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