



# Foreign Acquisitions and Takeovers (Commissioner of Taxation) Delegations 2020

made under the *Foreign Acquisitions and Takeovers Act 1975*

## Compilation No. 01

**Compilation date:** 8 March 2022

**Includes amendments up to:** *Foreign Acquisitions and Takeovers Amendment  
Delegations (No. 1) 2022*

Prepared by The Treasury

## About this compilation

### This compilation

This is a compilation of the *Foreign Acquisitions and Takeovers (Commissioner of Taxation) Delegations 2020* that shows the text of the law as amended and in force on 08 March 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This instrument is the *Foreign Acquisitions and Takeovers (Commissioner of Taxation) Delegations 2020*.

### 3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Act 1975*.

### 4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Foreign Acquisitions and Takeovers Act 1975* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

**APS6 employee** means an APS employee who has been allocated an APS Level 6 classification.

**Commissioner** means the Commissioner of Taxation.

**EL1 employee** means an APS employee who has been allocated an Executive Level 1 classification.

**EL2 employee** means an APS employee who has been allocated an Executive Level 2 classification.

**functions or powers** means the functions or powers of the Treasurer under the provisions of the Act or the Regulation specified in the table in Schedule 1.

**internal reorganisation** has the same meaning as in the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020*.

**land entity** has the same meaning as in the Regulation.

**the Act** means the *Foreign Acquisitions and Takeovers Act 1975*.

**the Regulation** means the *Foreign Acquisitions and Takeovers Regulation 2015*.

## Part 2—Delegations

### 5 Delegations—general

Under section 137 of the Act, each item of the table in Schedule 1:

- (a) specifies a function or power that is delegated to the Commissioner; and
- (b) sets out any limitation on the delegation covered in that item in the table; and
- (c) sets out any direction the delegate must comply with in exercising powers, or performing functions delegated in that item in the table.

### 6 Delegations—Regulatory Powers Act

- (1) Under subsection 101F(2) of the Act, the Commissioner is delegated the Treasurer's powers and functions under Part 6 of the Regulatory Powers Act (as it applies in relation to the Act) in relation to the matters covered by subsection (2).

Note: Part 6 of the Regulatory Powers Act is about enforceable undertakings.

- (2) The following matters are covered by this subsection:
  - (a) an action to acquire an interest in residential land;
  - (b) an action to acquire an interest in commercial land;
  - (c) an action that constitutes an internal reorganisation;
  - (d) an action to acquire an interest in a land entity or a corporate trustee of an Australian land trust where the entity or trustee only holds interests in one or more of the following:
    - (i) residential land;
    - (ii) commercial land;
  - (e) an action to acquire an interest in assets of an Australian business where the assets are one or more of the following:
    - (i) residential land;
    - (ii) commercial land;
  - (f) an action by a foreign government investor to acquire a direct interest in:
    - (i) land entity or a corporate trustee of an Australian land trust where the entity or trustee only holds interests in one or more of the following:
      - (A) residential land;
      - (B) commercial land; or
    - (ii) an Australian business where the interests in assets being acquired are only in one or more of the following:
      - (A) residential land;
      - (B) commercial land;
  - (g) any other matter relating to a matter covered by paragraphs (a) to (f).

## Schedule 1—Delegations

Note: See section 5.

Item	Function or power	Description of the function or power	Limitations	Directions
1	section 57 of the Act	exemption certificate for new dwellings	none	<p>if the Commissioner subdelegates the function or power under subsection 137(4) of the Act to an employee in the Australian Taxation Office, the subdelegate is not to exercise the function or power unless the subdelegate is:</p> <p>(a) an SES employee; or</p> <p>(b) an EL2 employee; or</p> <p>(c) an EL1 employee</p>
2	section 59 of the Act	exemption certificate for established dwellings	none	<p>if the Commissioner subdelegates the function or power under subsection 137(4) of the Act to an employee in the Australian Taxation Office, the subdelegate is not to exercise the function or power unless the subdelegate is:</p> <p>(a) an SES employee; or</p> <p>(b) an EL2 employee; or</p> <p>(c) an EL1 employee;</p> <p>(d) an APS6 employee where all of the following are satisfied:</p> <p>(i) the exercise of the function or</p>

**Schedule 1** Delegations

Item	Function or power	Description of the function or power	Limitations	Directions
				power relates to residential land with a value of \$4 million or less; and (ii) the exercise of the function or power does not relate to a person acquiring an interest in an established dwelling for redevelopment
4	subsection 62(1) of the Act	the Treasurer may vary or revoke an exemption certificate if satisfied that the variation or revocation is not contrary to the national interest	the Commissioner may only exercise the function or power if both of the following are satisfied: (a) the exemption certificate relates to actions to acquire interests in residential land; and (b) the application for the exemption certificate was not made under section 58 of the Act (about exemption certificates for foreign persons)	if the Commissioner subdelegates the function or power under subsection 137(4) of the Act to an employee in the Australian Taxation Office, the subdelegate is not to exercise the function or power unless the subdelegate is: (a) an SES employee; or (b) an EL2 employee; or (c) an EL1 employee; (d) an APS6 employee where all of the following are satisfied: (i) the exercise of the function or power relates to residential land with a value of \$4 million or less; and (ii) the exercise of the function or power does not relate to a person acquiring an interest in an established dwelling for redevelopment; and (iii) the exercise of the function or



Item	Function or power	Description of the function or power	Limitations	Directions
				power is to vary an exemption certificate
5	section 62A of the Act	variation or revocation of exemption certificates where false or misleading information or documents given	<p>the Commissioner may only exercise the function or power if both of the following are satisfied:</p> <p>(a) the exemption certificate relates to actions to acquire interests in residential land; and</p> <p>(b) the application for the exemption certificate was <i>not</i> made under section 58 of the Act (about exemption certificates for foreign persons)</p>	if the Commissioner subdelegates the function or power under subsection 137(4) of the Act to an employee in the Australian Taxation Office, the subdelegate is not to exercise the function or power unless the subdelegate is an SES employee
6	section 67 of the Act	order prohibiting proposed actions	the Commissioner may only exercise the function or power if the proposed action is an action to acquire an interest in residential land	the same as for item 5
7	section 68 of the Act	interim orders	<p>the Commissioner may only exercise the function or power in relation to one of the following:</p> <p>(a) an action to acquire an interest in residential land;</p> <p>(b) an action to acquire an interest in commercial land;</p> <p>(c) an action that constitutes an internal reorganisation;</p> <p>(d) an action to acquire an interest in a land entity or a corporate trustee of</p>	the same as for item 1

**Schedule 1** Delegations

Item	Function or power	Description of the function or power	Limitations	Directions
			<p>an Australian land trust where the entity or trustee only holds interests in one or more of the following:</p> <p>(i) residential land;</p> <p>(ii) commercial land;</p> <p>(e) an action to acquire an interest in assets of an Australian business where the assets are one or more of the following:</p> <p>(i) residential land;</p> <p>(ii) commercial land;</p> <p>(f) an action by a foreign government investor to acquire a direct interest in:</p> <p>(i) land entity or a corporate trustee of an Australian land trust where the entity or trustee only holds interests in one or more of the following:</p> <p>(A) residential land;</p> <p>(B) commercial land; or</p> <p>(ii) an Australian business where the interests in assets being acquired are only in one or more of the following:</p> <p>(A) residential land;</p> <p>(B) commercial land</p>	
8	section 69 of the Act	disposal orders	the Commissioner may only exercise the function or power if the proposed action is an action to acquire an interest in residential land	the same as for item 5

<b>Item</b>	<b>Function or power</b>	<b>Description of the function or power</b>	<b>Limitations</b>	<b>Directions</b>
9	section 74 of the Act	no objection notification imposing conditions	the same as for item 7	the same as for item 2
10	section 75 of the Act	no objection notification <i>not</i> imposing conditions	the same as for item 7	the same as for item 2
11	subsection 76(4) of the Act	longer period may be given for taking actions specified in a no objection notification	the same as for item 7	the same as for item 1
12	subsection 76(8) of the Act	the Treasurer may vary a no objection notification if the Treasurer is satisfied that the variation is not contrary to the national interest or national security (as appropriate)	the same as for item 7	the same as for item 2
13	section 76A of the Act	revocation of no objection notification	the same as for item 7	the same as for item 5
15	section 77A of the Act	Treasurer may extend decision period by up to 90 days	the same as for item 7	the same as for item 2
16	section 78 of the Act	anti-avoidance	the Commissioner may only exercise the function or power if the scheme relates to acquiring an interest in residential land	the same as for item 5

**Schedule 1** Delegations

<b>Item</b>	<b>Function or power</b>	<b>Description of the function or power</b>	<b>Limitations</b>	<b>Directions</b>
17	section 79 of the Act	Treasurer may make order that persons are taken to be associates of each other for specified purposes	the same as for item 7	the same as for item 1
18	section 79L of the Act	variation or revocation of orders not contrary to the national interest or national security (as appropriate)	the same as for item 7	the same as for item 5
19	section 79R of the Act	directions to persons contravening a provision of the Act	the Commissioner may only exercise the function or power if the relevant contravention relates to an interest in residential land	the same as for item 5
20	subsection 79S(2) of the Act	decision that publishing a direction is not in the national interest	the Commissioner may only exercise the function or power if the direction is a direction made by the Commissioner as delegate under item 19	the same as for item 5
21	section 79U of the Act	varying or revoking directions	the Commissioner may only exercise the function or power if the direction is a direction made by the Commissioner as delegate under item 19	the same as for item 5
22	section 79V of the Act	interim directions to persons contravening a provision of the Act	the Commissioner may only exercise the function or power if the relevant contravention relates to an interest in residential land	the same as for item 5
23	section 79Y of the Act	varying or revoking interim directions	the Commissioner may only exercise the function or power if the direction is a	the same as for item 5

Item	Function or power	Description of the function or power	Limitations	Directions
			direction made by the Commissioner as delegate under item 22	
24	subsection 101(6) of the Act	infringement notices tiers	<p>the Commissioner may only exercise the function or power if the relevant contravention relates to one of the following:</p> <ul style="list-style-type: none"> <li>(a) an action to acquire an interest in residential land;</li> <li>(b) an action to acquire an interest in commercial land;</li> <li>(c) an action that constitutes an internal reorganisation;</li> <li>(d) an action to acquire an interest in a land entity or a corporate trustee of an Australian land trust where the entity or trustee only holds interests in one or more of the following: <ul style="list-style-type: none"> <li>(i) residential land;</li> <li>(ii) commercial land;</li> </ul> </li> <li>(e) an action to acquire an interest in assets of an Australian business where the assets are one or more of the following: <ul style="list-style-type: none"> <li>(i) residential land;</li> <li>(ii) commercial land;</li> </ul> </li> <li>(f) an action by a foreign government investor to acquire a direct interest in: <ul style="list-style-type: none"> <li>(i) land entity or a corporate trustee of an Australian land</li> </ul> </li> </ul>	the delegate is not to exercise the function or power unless the delegate is also an infringement officer referred to in paragraph 100(2)(a) of the Act

**Schedule 1** Delegations

Item	Function or power	Description of the function or power	Limitations	Directions
			trust where the entity or trustee only holds interests in one or more of the following: (A) residential land; (B) commercial land; or (ii) an Australian business where the interests in assets being acquired are only in one or more of the following: (A) residential land; (B) commercial land	
25	subsection 101D(2) of the Act	decision that publishing an undertaking is not in the national interest	the Commissioner may only exercise the function or power if the undertaking is accepted by the Commissioner as delegate under section 6	the same as for item 5
26	section 105 of the Act	Treasurer's declaration relating to charge	none	the same as for item 1
27	section 106 of the Act	Treasurer has power to do or authorise the doing of anything necessary or convenient to obtain the registration of a charge on a land register	none	the same as for item 5
28	section 107 of the Act	vesting of interest in land	none	the same as for item 5
29	section 109 of the Act	disposing of interests in land	none	the same as for item 5

<b>Item</b>	<b>Function or power</b>	<b>Description of the function or power</b>	<b>Limitations</b>	<b>Directions</b>
30	section 110 of the Act	exemption from stamp duty and other State or Territory taxes and fees	none	the same as for item 5
31	subsection 113(5) of the Act	a fee payable under this Act that does not relate to an application made or a notice given by the person may be recovered by the Treasurer, on behalf of the Commonwealth, as a debt due to the Commonwealth in a court of competent jurisdiction	none	the same as for item 1
32	section 115 of the Act	waiver and remission of fees	the same as for item 7	the same as for item 1
33	section 115H of the Act	vacancy fee liability—waiver and remission	none	the same as for item 1
34	section 115L of the Act	vacancy fee recovery—Treasurer's declaration relating to charge over land	none	the same as for item 1

**Schedule 1** Delegations

<b>Item</b>	<b>Function or power</b>	<b>Description of the function or power</b>	<b>Limitations</b>	<b>Directions</b>
35	section 115M of the Act	vacancy fee recovery—effect of charge on land	none	the same as for item 1
36	section 115P of the Act	vacancy fee recovery—vesting of interest in land	none	the same as for item 1
37	section 115R of the Act	vacancy fee recovery—disposing of interests in land	none	the same as for item 1
38	section 115S of the Act	vacancy fee recovery—exemption from stamp duty and other State or Territory taxes and fees	none	the same as for item 1
39	paragraph 119(1)(c) of the Act	Treasurer notifies the person that the person does not need to make or keep the record	the same as for item 7	the same as for item 5
40	section 132 of the Act	powers of courts to enforce Treasurer's orders	the same as for item 7	the same as for item 5
41	section 133 of the Act	Treasurer may require information	the Commissioner may only exercise the function or power in relation one of the following: (a) an action to acquire an interest in residential land; (b) an action to acquire an interest in	the same as for item 2



Item	Function or power	Description of the function or power	Limitations	Directions
			commercial land;	
			(c) an action that constitutes an internal reorganisation;	
			(d) an action to acquire an interest in a land entity or a corporate trustee of an Australian land trust where the entity or trustee only holds interests in one or more of the following:	
			(i) residential land;	
			(ii) commercial land;	
			(e) an action to acquire an interest in assets of an Australian business where the assets are one or more of the following:	
			(i) residential land;	
			(ii) commercial land;	
			(f) an action by a foreign government investor to acquire a direct interest in:	
			(i) land entity or a corporate trustee of an Australian land trust where the entity or trustee only holds interests in one or more of the following:	
			(A) residential land;	
			(B) commercial land; or	
			(ii) an Australian business where the interests in assets being acquired are only in one or more of the following:	
			(A) residential land;	

## Schedule 1 Delegations

Item	Function or power	Description of the function or power	Limitations	Directions
			(B) commercial land; (g) an exemption certificate that relates to actions to acquire interests in residential land	
42	section 43A of the Regulation	exemption certificates for residential land (near-new dwelling interests)	none	the same as for item 1
43	section 43B of the Regulation	exemption certificates for residential land (other than established dwellings)	none	the same as for item 1

Note: The descriptions of the functions or powers in the table are to assist readers only. They are not intended to affect the interpretation nor limit the function or power referred to in the table.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

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## Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Foreign Acquisitions and Takeovers (Commissioner of Taxation) Delegations 2020	18 December 2020 (F2020N00165)	19 December 2020	—
Foreign Acquisitions and Takeovers Amendment Delegations (No. 1) 2022	07 March 2022 (F2022N00045)	08 March 2022	—

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## Endnote 4—Amendment history

Provision affected	How affected
section 2	rep s48D LA
section 4	am F2022N00045
<b>Part 3</b>	rep s48C LA
<b>Schedule 1</b>	
table item 2	rs F2022N00045
table item 3	rep F2022N00045
table item 4	rs F2022N00045
table item 14	rep F2022N00045