



Treasury Laws Amendment (Housing Tax Integrity) Act 2017

No. 126, 2017

An Act to amend the *Income Tax Assessment Act 1997* and the *Foreign Acquisitions and Takeovers Act 1975*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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[Assented to 30 November 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Housing Tax Integrity) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 November 2017
2. Schedules 1 and 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2018
3. Schedule 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Travel related to use of residential premises

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “travel expenses”)

Omit:

see also *substantiation*

substitute:

travel related to the use of residential premises as
residential accommodation 26-31

see also *substantiation*

2 After section 26-30

Insert:

26-31 Travel related to use of residential premises as residential accommodation

- (1) You cannot deduct under this Act a loss or outgoing you incur, insofar as it is related to travel, if:
 - (a) it is incurred in gaining or producing your assessable income from the use of *residential premises as residential accommodation; and
 - (b) it is not necessarily incurred in carrying on a *business for the purpose of gaining or producing your assessable income.

Exception—kind of entity

- (2) Subsection (1) does not stop you deducting a loss or outgoing if, at any time during the income year in which the loss or outgoing is incurred, you are:
 - (a) a *corporate tax entity; or
 - (b) a *superannuation plan that is not a *self managed superannuation fund; or
 - (c) a *managed investment trust; or
 - (d) a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*); or

- (e) a unit trust or partnership, if each *member of the trust or partnership is covered by a paragraph of this subsection at that time during the income year.

3 After subsection 110-38(4)

Insert:

- (4A) Expenditure does *not* form part of any element of the *cost base* to the extent that section 26-31 prevents it being deducted.

Note: Section 26-31 denies deductions for travel related to the use of residential premises as residential accommodation.

4 After subsection 110-55(9H)

Insert:

- (9J) Expenditure does *not* form part of the *reduced cost base* to the extent that section 26-31 prevents it being deducted.

Note: Section 26-31 denies deductions for travel related to the use of residential premises as residential accommodation.

5 Application

The amendments made by this Schedule apply to a loss or outgoing incurred on or after 1 July 2017.

Schedule 2—Limiting depreciation deductions for assets in residential premises

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “capital allowances”)

Omit:

reducing deductions 40-25, 40-290

substitute:

reducing deductions 40-25, 40-27, 40-290
and 40-291

2 After subsection 25-47(4)

Insert:

- (4A) You must further reduce the amount you can deduct under this section if your deductions for the asset have been reduced under section 40-27 (about second-hand assets in residential property). The reduction is by the same proportion you reduce the balancing adjustment amount for the asset under section 40-291.

3 At the end of subsection 40-25(2)

Add:

Note: You may have to make a further reduction under subsections (3) and (4) or section 40-27.

4 After section 40-25

Insert:

40-27 Further reduction of deduction for second-hand assets in residential property

- (1) In addition to subsections 40-25(2) to (4), you may have to further reduce your deduction for a *depreciating asset for the income year.

- (2) Reduce your deduction by any part of the asset's decline in value that is attributable to your use of it, or your having it *installed ready for use, for the *purpose of producing assessable income:
- (a) from the use of *residential premises to provide residential accommodation; but
 - (b) not in the course of carrying on a *business;
- if:
- (c) you did not *hold the asset when it was first used, or first installed ready for use, (other than as trading stock) by any entity; or
 - (d) at any time during the income year or an earlier income year, the asset was used, or installed ready for use, either:
 - (i) in residential premises that were one of your residences at that time; or
 - (ii) for a purpose that was not a *taxable purpose, and in a way that was not occasional.

Note: Your deduction could be reduced to nil if the purpose to which paragraphs (a) and (b) relate is your only taxable purpose for using the asset or having the asset installed ready for use.

Exception—kind of entity

- (3) Subsection (2) does not apply to you for the asset if, at any time during the income year, you are:
- (a) a *corporate tax entity; or
 - (b) a *superannuation plan that is not a *self managed superannuation fund; or
 - (c) a *managed investment trust; or
 - (d) a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*); or
 - (e) a unit trust or partnership, if each *member of the trust or partnership is covered by a paragraph of this subsection at that time during the income year.

Exception—certain assets in new residential premises

- (4) Paragraph (2)(c) does not apply to you for the asset if:
- (a) the *residential premises referred to in paragraph (2)(a) (the **current premises**) are supplied to you as new residential premises on a particular day (the **current supply day**); and

- (b) the asset is supplied to you as part of that supply of the current premises; and
- (c) at the time you first *hold the asset as a result of that supply, the asset is used, or *installed ready for use, in:
 - (i) the current premises; or
 - (ii) any other real property in which an interest was supplied to you as part of that supply of the current premises; and
- (d) at any earlier time, no entity was residing in any residential premises in which the asset was used, or installed ready for use, at that earlier time; and
- (e) no amount can be deducted under this Division, or under Subdivision 328-D, for the asset for any income year by any previous holder of the asset.

Note: An entity residing at an earlier time in other residential premises in the same complex will not cause paragraph (d) to prevent this subsection from applying.

- (5) However, disregard paragraph (4)(d) for an earlier time if:
 - (a) the asset was used, or installed ready for use, in the current premises at that time; and
 - (b) both that time, and the current supply, happen during the 6-month period starting on the day the current premises became new residential premises.

Exception—low-value pools

- (6) Subsection (2) does not apply to *depreciating assets allocated to a low-value pool.

Note: See Subdivision 40-E for low-value pools.

5 After section 40-290

Insert:

40-291 Reduction for second-hand assets used in residential property

- (1) In addition to section 40-290, you must reduce the amount (the ***balancing adjustment amount***) included in your assessable income, or that you can deduct, under section 40-285 for a

*depreciating asset if your deductions for the asset have been reduced under section 40-27.

- (2) The reduction is the following, as increased under subsection (3) if applicable:

$$\frac{\text{Sum of section 40-27 reductions}}{\text{Total decline}} \times \text{Balancing adjustment amount}$$

where:

sum of section 40-27 reductions is the sum of:

- (a) the reductions in your deductions for the asset under section 40-27; and
- (b) if there has been roll-over relief for the asset under section 40-340—the reductions in deductions for the asset for the transferor or an earlier successive transferor under section 40-27; and
- (c) if you *hold the asset as the *legal personal representative of an individual—the reductions in deductions for the asset for the individual under section 40-27.

total decline is the sum of:

- (a) the decline in value of the *depreciating asset since you started to *hold it; and
- (b) if there has been roll-over relief for the asset under section 40-340—the decline in value of the asset for the transferor or an earlier successive transferor; and
- (c) if you hold the asset as the *legal personal representative of an individual—the decline in value of the asset for the individual.

- (3) If:

- (a) the *cost (for you) of the asset (the **current asset**) was worked out under section 40-205 (Cost of a split depreciating asset) or 40-210 (Cost of merged depreciating assets); and
- (b) you used the *depreciating asset from which the current asset was split, or a depreciating asset that was merged into the current asset, or had it *installed ready for use, for the purpose to which paragraphs 40-27(2)(a) and (b) relate;

the reduction includes an increase equal to such amount as is reasonable having regard to the extent of the use referred to in paragraph (b) of this subsection.

6 Section 40-435

Before “When”, insert “(1)”.

7 At the end of section 40-435

Add:

- (2) For the purposes of subsection (1), disregard a *taxable purpose that is the *purpose of producing assessable income:
- (a) from the use of *residential premises to provide residential accommodation; but
 - (b) not in the course of carrying on a *business;
- if, apart from subsections 40-25(5) and 40-27(6), section 40-27 would reduce your deductions under subsection 40-25(1) for the asset.

8 Paragraph 104-235(1)(b)

Repeal the paragraph, substitute:

- (b) at some time when you held the asset, you used it, or had it *installed ready for use, for:
- (i) a purpose other than a *taxable purpose; or
 - (ii) the purpose to which paragraphs 40-27(2)(a) and (b) relate (about second-hand assets in residential property).

9 Subsection 104-240(1) (paragraph (a) of the definition of *sum of reductions*)

Omit “section 40-25”, substitute “sections 40-25 and 40-27”.

10 Paragraph 250-290(2)(c)

After “40-290,”, insert “40-291,”.

11 After subsection 328-175(9)

Insert:

Exception: second-hand assets used in residential property

- (9A) You cannot deduct amounts for a *depreciating asset under this Subdivision to the extent that section 40-27 prevents you from deducting amounts under subsection 40-25(1) for the asset.

12 Subsection 995-1(1)

Insert:

new residential premises has the same meaning as in the *GST Act.

13 Application of amendments

- (1) The amendments made by this Schedule apply to an entity, for income years commencing on or after 1 July 2017, for assets:
- (a) acquired by the entity under contracts entered into; or
 - (b) otherwise acquired by the entity;
- at or after 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017.
- (2) The amendments made by this Schedule also apply to the entity, for income years commencing on or after 1 July 2017, for any other asset acquired by the entity, if:
- (a) the asset's start time is during the income year that includes 9 May 2017 or during an earlier income year; and
 - (b) no amount can be deducted under Division 40, or Subdivision 328-D, of the *Income Tax Assessment Act 1997* by the entity for the asset for the income year that includes 9 May 2017.

Schedule 3—Vacancy fees for foreign acquisitions of residential land

Part 1—Amendments

Foreign Acquisitions and Takeovers Act 1975

1 Section 4

Insert:

occupation day has the meaning given by section 115C.

residentially occupied has the meaning given by section 115C.

unpaid vacancy fees has the meaning given by section 115K.

unpaid vacancy penalties has the meaning given by section 115K.

vacancy fee has the meaning given by section 115C.

vacancy year has the meaning given by section 115C.

2 Subsection 100(1)

Repeal the subsection, substitute:

Provisions subject to an infringement notice

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) the provisions of Subdivision C of Division 3 (civil penalties relating to residential land);
 - (b) subsection 115D(1) (vacancy fee liability—vacancy fee return);
 - (c) subsection 115G(1) (vacancy fee liability—requirement to keep records).

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

3 At the end of subparagraph 100(5)(b)(iv)

Add:

- ; (v) subsection 115D(1) (vacancy fee liability—vacancy fee return);
- (vi) subsection 115G(1) (vacancy fee liability—requirement to keep records).

4 Part 6 (heading)

Repeal the heading, substitute:

Part 6—Fees in relation to actions

5 Subsection 113(5)

Omit “under this Act”, substitute “under this section”.

6 Section 115

Omit “under this Act”, substitute “under section 113”.

7 After Part 6

Insert:

Part 6A—Vacancy fees for foreign acquisitions of residential land

Division 1—Simplified outline of this Part

115A Simplified outline of this Part

A vacancy fee is payable by a foreign person for any dwelling on residential land, for any year (called a vacancy year), if the dwelling is residentially occupied for less than 183 days in the year.

A dwelling is residentially occupied on a day in any of the following circumstances (or any combination of these circumstances over the vacancy year):

- (a) the foreign person, or a relative of the foreign person, genuinely occupies the dwelling as a residence (whether or not with other persons);

- (b) the dwelling is genuinely occupied as a residence under a lease or licence with a term of 30 or more days;
- (c) the dwelling is genuinely available for occupation as a residence under a lease or licence with a term of 30 or more days.

The amount of the vacancy fee is found in the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*. However, a vacancy fee may be waived or remitted.

The foreign person is required to give a vacancy fee return to the Commissioner of Taxation after the end of each vacancy year for a dwelling. The person must also keep all relevant records for 5 years after disposal of the interest in residential land.

Unpaid vacancy fees for a dwelling may be recovered as a debt, or by the creation of a charge over Australian land in which an interest is held by the foreign person. The charge also secures any unpaid penalties for contraventions of civil penalty provisions under this Part relating to giving annual returns and keeping records.

Division 2—Vacancy fees: liability

115B Scope of this Division—persons and land

- (1) This Division applies in relation to a person if:
 - (a) the person is a foreign person; and
 - (b) the person acquires an interest in residential land on which one or more dwellings are, or are to be, situated; and
 - (c) either:
 - (i) the acquisition is a notifiable action; or
 - (ii) the acquisition would be a notifiable action were it not for section 49 (actions that are not notifiable actions—exemption certificates).

Note: Regulations made for the purposes of section 37 may provide for circumstances in which this Division does not apply in relation to a person or a dwelling.

- (2) The Commissioner of Taxation has the general administration of this Part.

Note: This Part is therefore a taxation law for the purposes of the *Taxation Administration Act 1953* (among other laws). That Act contains a wide range of provisions about gathering, protecting and dealing with information, the exercise of powers and the performance of functions, under taxation laws, and the enforcement of taxation laws.

- (3) However, the provisions of the *Taxation Administration Act 1953* mentioned in subsection 138(2) of this Act do not apply in relation to this Part.

115C Liability for vacancy fees

Main rule

- (1) The person must pay a fee (a **vacancy fee**) in relation to each dwelling on the land that is residentially occupied for fewer than 183 days during each vacancy year for the dwelling.

Note: The amount of the vacancy fee is in Part 2 of the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*.

Vacancy year

- (2) A **vacancy year**, for a dwelling on the land, is the first, and each successive, period of 12 months since the occupation day for the dwelling during which the person has continuously held the interest in land.

Occupation day

- (3) The **occupation day** for a dwelling on the land is:
- (a) if the dwelling is an established dwelling, unless paragraph (c) applies—the first day the person acquires the right to occupy the dwelling; or
 - (b) if the dwelling is a new dwelling, or the interest in the dwelling acquired by the person is a near-new dwelling interest (within the meaning of the *Foreign Acquisitions and Takeovers Regulation 2015*), unless paragraph (c) applies—the later of:
 - (i) the day on which a certificate of fitness for occupancy or use (however described) is issued in relation to the

- dwelling for the purposes of the law of a State or Territory relating to approvals of new dwellings; and
- (ii) the first day the person acquires the right to occupy the dwelling; or
 - (c) a day prescribed by regulations made for the purposes of this paragraph.

Residential occupation

- (4) A dwelling is **residentially occupied** on a day if:
 - (a) the person, or a relative of the person, genuinely occupies the dwelling as a residence on that day (with or without any other persons); or
 - (b) the dwelling is genuinely occupied on that day as a residence under a lease or licence with a term of 30 or more days; or
 - (c) the dwelling is genuinely available on that day for occupation as a residence under a lease or licence with a term of 30 or more days.

115D Vacancy fee liability—vacancy fee return

- (1) Within 30 days after the end of the vacancy year for a dwelling on the land, the person must give a vacancy fee return to the Commissioner of Taxation for the dwelling, in accordance with subsection (2).

Civil penalty: 250 penalty units.

- (2) The return must be in the approved form within the meaning of section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.
- (3) If the Commissioner of Taxation is satisfied that the person has contravened subsection (1), the person is taken to be liable to pay a vacancy fee in relation to the dwelling under section 115C regardless of the number of days during the vacancy year on which the dwelling is residentially occupied.

Note: This section has no application to the person if the person has disposed of his or her interest in the land before the end of the vacancy year.

115E Vacancy fee liability—notice of liability for vacancy fee

- (1) The Treasurer or the Commissioner of Taxation must give written notice to a person liable to pay a vacancy fee for a dwelling in relation to a vacancy year of the amount of the fee, and the reasons why the person is liable to pay the fee.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

- (2) If the Treasurer decides to waive or remit all of the vacancy fee under section 115H, reasons for the waiver or remission are not required to be given under subsection (1).
- (3) A notice given to a person by the Treasurer or the Commissioner of Taxation under this section is prima facie evidence of the matters stated in the notice.

115F Vacancy fee liability—due date

A vacancy fee for a dwelling becomes due for payment on a day specified in the notice under section 115E, which must be at least 21 days after the notice is given to the person.

115G Vacancy fee liability—requirement to keep records

Main requirement

- (1) The person must:
 - (a) keep records, in accordance with subsection (2), that record and explain all transactions and other acts the person engages in that are relevant to the person's liability for vacancy fees for each dwelling on the land in each vacancy year for the dwelling; and
 - (b) retain those records for at least 5 years after the end of each such vacancy year.

Civil penalty: 250 penalty units.

Records in English

- (2) The records must be in English, or readily accessible and easily convertible into English.

Exception

- (3) This section does not require the person to retain a record if:
- (a) the Commissioner of Taxation notifies the person that the person does not need to retain the record; or
 - (b) the person is a company that has been finally dissolved.

115H Vacancy fee liability—waiver and remission

The Treasurer may, on behalf of the Commonwealth, waive or remit the whole or a part of a vacancy fee if the Treasurer is satisfied that it is not contrary to the national interest to waive or remit the fee.

Division 3—Vacancy fees: recovery of unpaid fees

115J Vacancy fee recovery—as a debt

A vacancy fee may be recovered by the Treasurer or the Commissioner of Taxation, on behalf of the Commonwealth, as a debt due to the Commonwealth in a court of competent jurisdiction.

115K Vacancy fee recovery—creation of charge over Australian land

- (1) This section applies in relation to Australian land in which a person has an interest if:
- (a) the person is liable to pay a vacancy fee under section 115C in relation to that land or any other Australian land in which the person holds an interest; and
 - (b) the vacancy fee is due for payment under section 115F, and has not been paid; and
 - (c) the interest in Australian land can be registered on a land register; and
 - (d) the Treasurer makes a declaration under section 115L that this section applies in relation to the interest.

Note: Subsection (4) contains an exception to this section (proceeds of crime orders).

Creation of charge

- (2) A charge is created on the land to secure the payment of the following amounts:
- (a) amounts of vacancy fees (***unpaid vacancy fees***) that are due for payment under section 115F, and have not been paid, in relation to that land or any other interest in land held by the person;
 - (b) any amounts of pecuniary penalties (***unpaid vacancy penalties***) payable for contravention by the person of the following provisions, if the amounts have not been paid:
 - (i) subsection 115D(1) (which deals with vacancy fee returns);
 - (ii) subsection 115G(1) (which deals with the requirement to keep records).
- (3) The charge under subsection (2) is created at the time the declaration under section 115L comes into force.

Exception in relation to proceeds of crime orders

- (4) This section does not apply if at the time mentioned in subsection (3):
- (a) a restraining order is in force in relation to the land under Part 2-1 of the *Proceeds of Crime Act 2002*; or
 - (b) a forfeiture order is in force in relation to the land under Part 2-2 of that Act; or
 - (c) an order (however described) of a kind prescribed by the regulations is in force in relation to the land under a law of the Commonwealth, a State or a Territory.

115L Vacancy fee recovery—Treasurer’s declaration relating to charge over land

- (1) The Treasurer may, by notifiable instrument, declare that section 115K applies in relation to a specified interest in Australian land held by a person if satisfied that the declaration is necessary to secure the payment of:
- (a) unpaid vacancy fees; and
 - (b) unpaid vacancy penalties (if any).

- (2) A declaration under subsection (1) must specify:
 - (a) the time the declaration is to come into force; and
 - (b) the Australian land to which section 115K applies.

115M Vacancy fee recovery—effect of charge on land

- (1) A charge created on land under section 115K in which a person holds an interest has priority over any other interest in the land (even if the interest has been registered on a land register).
- (2) The charge remains in force until all of the following amounts are paid:
 - (a) any unpaid vacancy fees;
 - (b) any unpaid vacancy penalties;
 - (c) any costs incurred by the Commonwealth in relation to recovering unpaid vacancy fees and any unpaid vacancy penalties.
- (3) To avoid doubt, the charge on the land is not affected by any change in ownership of the land.

Powers of Treasurer

- (4) The Treasurer has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the charge on a land register.
- (5) The Treasurer's powers under subsection (4) include:
 - (a) executing any instrument required to be executed; and
 - (b) signing any certificate that:
 - (i) states that a charge is created on land under section 115K; and
 - (ii) specifies the land on which the charge is created.

115N Vacancy fee recovery—court order authorising vesting of interest in Commonwealth

Court order

- (1) The Treasurer or the Commissioner of Taxation may apply to a court of competent jurisdiction for an order authorising the vesting

of an interest in Australian land in the Commonwealth under section 115P.

Note: For service of notices or other documents relating to the application, see section 135A.

- (2) On application under subsection (1), a court may make the order sought if:
- (a) the Australian land is charged under section 115K to secure the payment of unpaid vacancy fees and any unpaid vacancy penalties; and
 - (b) the court is satisfied that it is necessary to make the order to recover the amount of the unpaid vacancy fees and any unpaid vacancy penalties; and
 - (c) the Australian land is not charged under section 104 (which provides for the creation of charges to secure the payment of pecuniary penalties for the contravention of civil penalty provisions); and
 - (d) an order covered by subsection (3) is not in force in relation to the land.

Exception in relation to proceeds of crime orders

- (3) This section covers the following orders:
- (a) a restraining order in force in relation to the Australian land under Part 2-1 of the *Proceeds of Crime Act 2002*;
 - (b) a forfeiture order in force in relation to the land under Part 2-2 of that Act;
 - (c) an order (however described) of a kind prescribed by the regulations in force in relation to the land under a law of the Commonwealth, a State or a Territory.

115P Vacancy fee recovery—vesting of interest in land

- (1) This section applies in relation to a person's interest in Australian land if:
- (a) a court makes an order under section 115N authorising the vesting of an interest in Australian land under this section; and
 - (b) the interest is an estate in fee simple in the land or an interest in a long term lease; and
 - (c) the person holds the interest alone.
-

- (2) When the order is made, or at a later time provided by the order:
 - (a) the interest in the land vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with; and
 - (b) the Treasurer has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in the land; and
 - (c) the Commonwealth is entitled to be registered on a land register as the owner of that property; and
 - (d) the Treasurer has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as the owner.
- (3) The Treasurer's powers under paragraph (2)(d) include:
 - (a) executing any instrument required to be executed; and
 - (b) signing any certificate that:
 - (i) states that land has vested in the Commonwealth under this section; and
 - (ii) specifies the land that has so vested.

115Q When the Commonwealth can begin dealing with interests in land

- (1) The Treasurer, and persons acting on the Commonwealth's behalf, can dispose of, or otherwise deal with, a person's interest in Australian land that vests under section 115P as authorised by a court order under section 115N only after the later of the following times:
 - (a) if the period provided for lodging an appeal against the order has ended without such an appeal having been lodged—the end of that period;
 - (b) if an appeal against the order has been lodged—the appeal lapses or is finally determined.
- (2) However, such disposals and dealings may occur earlier with the leave of a court and in accordance with any directions of a court.

115R Vacancy fee recovery—disposing of interests in land

- (1) The Treasurer must, on behalf of the Commonwealth, dispose of an interest in a person's (the *owner's*) land that vests in the Commonwealth under section 115P as soon as practicable after the time to which section 115Q applies.
- (2) The Treasurer may give full and effective title to the land free of all other interests, which are extinguished at the time title is given.

Dealing with the proceeds of sale

- (3) The Treasurer must apply the proceeds of the disposal of the interest in the land against:
 - (a) any unpaid vacancy fees the person remains liable to pay;
 - (b) any unpaid vacancy penalties the person remains liable to pay;
 - (c) any costs incurred by the Commonwealth in relation to recovering the unpaid vacancy fees and any unpaid vacancy penalties; and
 - (d) any costs incurred by the Commonwealth in relation to the disposal.
- (4) The Treasurer must pay the remainder of the proceeds, if any, to the persons mentioned in subsection (6) in the order in which they appear in that subsection.

Note: Not all of the persons mentioned in subsection (6) may be paid if the proceeds are insufficient.

- (5) If the remainder of the proceeds is insufficient to pay all of the persons mentioned in paragraph (6)(a), the Treasurer must pay each person mentioned in that paragraph proportionately.
- (6) The persons are as follows:
 - (a) a person holding a mortgage, charge or other interest over the land if the mortgage, charge or interest:
 - (i) relates to a debt due by the owner; and
 - (ii) has been registered on a land register;
 - (b) the Commonwealth in relation to any other penalty or debt that is due and payable to the Commonwealth by the owner;
 - (c) the owner.

- (7) Nothing in this section affects the right of the Commonwealth to recover debts or penalties by other means.

115S Vacancy fee recovery—exemption from stamp duty and other State or Territory taxes and fees

No stamp duty or other tax or fee is payable under a law of a State or a Territory in respect of the vesting of an interest in Australian land under section 115P, or anything connected with the vesting of the interest, if the Treasurer, by notifiable instrument:

- (a) declares that the interest in the land has vested under that section; and
- (b) specifies the interest in the land.

115T Vacancy fee recovery—compensation for acquisition of property

- (1) If the operation of this Division would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

Note: For the definitions of *acquisition of property* and *just terms*, see section 4.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

8 After section 135

Insert:

135A Service of notices and other documents on persons who cannot be found, or who are not in Australia

- (1) This section applies if:
- (a) a notice or other document, including (without limitation) a document in respect of a proceeding to recover an amount of a fee or penalty, needs to be served on a person for the purposes of this Act; and

- (b) the Secretary, the Treasurer or the Commissioner of Taxation, after making reasonable enquiries, is unable to find the person, or is satisfied that the person is not in Australia.
- (2) The Secretary, the Treasurer or the Commissioner of Taxation, may, without the leave of a court, serve the document by posting it, or a sealed copy of it, in a letter addressed to the person at any address of the person in Australia or in a foreign country (including the person's place of business or residence), or any electronic address of the person (including a personal or business electronic address of the person), that is last known to the Secretary, Treasurer or Commissioner.

9 Subsection 138(2)

Repeal the subsection, substitute:

- (2) However, the following provisions of Schedule 1 to the *Taxation Administration Act 1953* do not apply in relation to this Act:
 - (a) section 255-10 (to defer the payment time);
 - (b) Subdivision 255-D in that Schedule (security deposits);
 - (c) Part 4-25 (charges and penalties), other than section 288-35 and Division 298 to the extent that it relates to that section;
 - (d) Part 4-50 (release from particular liabilities);
 - (e) paragraph 355-15(c) (application of Division 355);
 - (f) Part 5-5 (rulings);
 - (g) Division 444 (obligations of entities on behalf of other entities).

Taxation Administration Act 1953

10 After note 4 to subsection 250-10(2) in Schedule 1

Insert:

- Note 5: A liability for a fee that is due and payable under subsection 113(5) of the *Foreign Acquisitions and Takeovers Act 1975* is a tax-related liability if the power of the Treasurer to recover the fee under that subsection is delegated to the Commissioner of Taxation under section 137 of that Act (see subsections 138(1) and (2) of that Act).

11 Subsection 250-10(2) in Schedule 1 (after table item 24CA)

Insert:

Vacancy fees for foreign acquisitions of residential land **Schedule 3**
Amendments **Part 1**

24D	fee for an action that does not relate to an application or a notice	113(5)	<i>Foreign Acquisitions and Takeovers Act 1975</i> (but see note 5 to this subsection)
24E	vacancy fee	115F	<i>Foreign Acquisitions and Takeovers Act 1975</i>

Part 2—Application of amendments

12 Application of amendments relating to vacancy fees

- (1) The amendments of the *Foreign Acquisitions and Takeovers Act 1975* in Part 1 of this Schedule apply in relation to an acquisition of residential land by a foreign person if the acquisition is covered by subitem (2).
- (2) This subitem covers an acquisition of residential land by a foreign person if, after 7.30 pm on 9 May 2017:
 - (a) for an acquisition that is a notifiable action:
 - (i) the person gave notice of the action under section 81 of that Act; or
 - (ii) the Treasurer made an order to which item 3 of subsection 67(3) of that Act relates covering the acquisition (directing that an interest in Australian land may be acquired only to a specified extent); or
 - (iii) the Treasurer gave the person a no objection notification under section 74 of that Act that covers the action; or
 - (b) for an acquisition that would be a notifiable action were it not for section 49 of that Act (actions that are not notifiable actions—exemption certificates)—an application is made for any of the following exemption certificates covering the acquisition:
 - (i) an exemption certificate under section 57 of that Act (exemption certificates for new dwellings);
 - (ii) an exemption certificate under section 59 of that Act (exemption certificates for established dwellings);
 - (iii) a residential land (near-new dwelling interests) certificate within the meaning of the *Foreign Acquisitions and Takeovers Regulation 2015*;
 - (iv) a residential land (other than established dwellings) certificate within the meaning of that Regulation;
 - (v) any other exemption certificate prescribed for the purposes of section 63 of that Act that relates to the acquisition of residential land.

- (3) The amendments apply in relation to an acquisition of land covered by subitem (2) regardless of whether the land is acquired before or after 7.30 pm on 9 May 2017.
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*[Minister's second reading speech made in—
House of Representatives on 7 September 2017
Senate on 19 October 2017]*

(191/17)
