

On 2 May 2015, Federal Treasurer Joe Hockey released a statement announcing the implementation of several significant changes to Australia's foreign investment framework. The proposed changes were first announced in an Options Paper released by the Australian government on 25 February 2015 entitled "Strengthening Australia's Foreign Investment Framework" (**Options Paper**) which was subject to public comment until 20 March 2015.

The key initiatives in the reform package are outlined below.

Introduction of Application Fees

- Residential and rural properties valued at AU\$1 million or less: AU\$5,000 fee.
- Residential and rural properties valued at greater than AU\$1 million: AU\$10,000 and a further AU\$10,000 per additional AU\$1 million in value (capped at AU\$100,000 for rural land).
- Advanced off-the-plan certificates: AU\$25,000 upfront with six-monthly reconciliation of properties sold to foreign investors based on the residential rate.
- Developed commercial real estate: AU\$25,000.
- Vacant commercial land: AU\$10,000.
- Business or agribusiness acquisitions: AU\$25,000 or AU\$100,000 where the business acquisition is valued at more than AU\$1 billion. AU\$10,000 for an internal reorganization.
- New business proposals by Foreign Government Investors: AU\$10,000.
- Application fees will be indexed to CPI on 1 July annually.

Foreign Investment Register

- From 1 July all foreign investment in agricultural land (rural land) will be listed on a public register administered by the ATO who will collect information directly from investors. This amendment will initially be implemented through the FIRB policy and then legislated by 1 December 2015. Aggregated data due to be released in early 2016.
- The Commonwealth Government is in negotiations with the states and territories to use their land titles data to expand the register to include all land, including residential real estate.

Assistance from the ATO

All residential real estate functions will be transferred to the ATO (roll over to take place between now and 1 December 2015). The ATO will be responsible for policing residential real estate investment through its sophisticated data matching systems.

Stricter Penalties

- Criminal penalties of AU\$127,500 (up from AU\$85,000) for individuals or three years imprisonment and AU\$637,500 for companies.
- Divestment orders supplemented by civil pecuniary penalties and infringement notices for less serious breaches, including recouping any capital gain made on divestment.
- Civil penalties vary depending on whether the investor admitted the breach or the breach was identified through compliance monitoring.
- Third parties who knowingly assist a foreign investor to breach the rules will also be subject to civil and criminal penalties, including fines of AU\$42,500 for individuals and AU\$212,500 for companies.



New Thresholds for Agriculture

- From 1 March 2015, the screening threshold for agricultural land was lowered from AU\$252 million to AU\$15 million (cumulative).
- The screening threshold for agricultural land for Singapore and Thailand is AU\$50 million and AU\$1,094 million for US, NZ and Chile.
- From 1 December 2015, a screening threshold for agribusiness acquisitions will be introduced at AU\$55 million or AU\$1,094 million for US, NZ and Chile. Agribusiness will be defined to include a Primary Production Business (definition discussed below) and certain first stage downstream manufacturing businesses (including meat, poultry, seafood, dairy, fruit and vegetable processing and sugar, grain and oil and fat manufacturing).
- The government will introduce a new broader definition of “agricultural land”, being “land used, or that could reasonably be used, for a primary production business.” The definition of Primary Production Business will be taken from the *Income Tax Assessment Act 1997*, and is broad enough to capture activities such as cultivating or propagating plants, fungi or their products or parts, maintaining animals on a commercial basis, dairy operations and manufacturing dairy products, operations relating to fishing or aquaculture, pearl farming, forestry and transporting timber for milling.

Revamp of the *Foreign Acquisitions and Takeovers Act 1975* (Cth)

The government has also announced that it wants to introduce a modern and simpler foreign investment framework. No doubt, many will welcome a revamp of the current framework under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and Australia’s Foreign Investment Policy so that investors do not inadvertently fall foul of what is currently a very convoluted regime largely based on policy, rather than formal legislation. With investors facing significant penalties and high application fees, it is more important than ever that the current regime is clarified and formalised in legislation.

The government plans to introduce legislation into Parliament in the Spring Sittings to ensure the reforms commence on 1 December 2015.

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