

With effect from the commencement of the new financial year in July 2017, the Australian federal and state governments implemented a range of legal and regulatory changes, which could affect entities undertaking or contemplating investments in Australian land, companies or businesses or who are seeking to establish operations in Australia. We have summarised four of these key changes below. While Australia remains a secure and attractive investment option for many foreign investors and is currently enjoying an incredible 26th consecutive year of annual growth (which is forecast to continue over the next five years), investors should nevertheless be aware of these changes and ensure their investment strategies are optimised to address or accommodate the same.

Foreign Investment: Exemption Certificates and Increased Thresholds for Foreign Investors

As part of the Australian federal government's 2017-18 budget, the government has implemented several key changes to Australia's foreign investment laws. As a result of these changes, from 1 July 2017 foreign investors will be able to apply for a business exemption certificate to obtain pre-approval for multiple investments in a single application rather than applying separately for each investment. This could be particularly useful for foreign investors who are planning to undertake a series of acquisitions and permit these acquisitions to be covered by a single exemption certificate instead of requiring multiple approval applications to the Foreign Investment Review Board.

In addition, the government has also sought to reduce the regulatory burden of global transactions by increasing the approval thresholds for acquisitions which result in an acquisition of Australian interests by a foreign government investor. These thresholds have increased from acquisitions which would result in the acquisition of 1% of the global firm's total assets and/or where the total value of the transaction is AU\$10 million or less, to 5% and \$55 million respectively.

Migration: Replacement of 457 Temporary Work Visas

In a much-publicised reform of Australia's temporary and permanent skilled visa regulations, the Australian federal government announced earlier this year that the subclass 457 temporary work visa would be abolished and replaced with a Temporary Skill Shortage (TSS) visa.

This TSS visa will allow skilled workers to come to and work in Australia for up to two years if the worker's occupation is included on the Short-term Skilled Occupations List (STSOL) and up to four years if the occupation is included in the Medium- and Long-term Strategic Skills List (MLTSSL). Additional reforms to the 457 visa and the TSS visa were effective from 1 July 2017 and include changes to the occupations specified on the STSOL and MLTSSL (including, significantly, the occupation of CEO/Managing Director, which is now included in the MLTSSL) as well as English language requirements, penal clearance certificates and training benchmarks. These reforms, which are to be completed by March 2018, are relevant for companies that have employees in Australia working under subclass 457 visas as well those which are contemplating investing in, or establishing, Australian businesses which rely upon skilled foreign workers.

Taxation: Surcharges for Foreign Investors

In a bid to improve housing affordability for Australian residents, the New South Wales state budget for 2017-18 increased the foreign investor duty surcharge for transfers of residential property from 4% to 8%. This surcharge, which is payable in addition to the duty charged on the transfer of residential property, is relevant for foreign companies that acquire land directly and also applies to the acquisition of indirect interests in land through the acquisition of shares or units in a landholder entity which holds residential property in New South Wales. Acquisitions of shares or units in such a landholder entity by foreign companies may attract the foreign investor duty surcharge. In addition to this change, the New South Wales state budget also increased the land tax surcharge for foreign investors from 0.75% to 2%. Other foreign investor surcharges apply in a number of different states such as Victoria which charges a 7% surcharge.

Corporate Governance: Insolvency Reforms

As part of its National Innovation and Science Agenda, the government has released draft legislation introducing safe harbour reforms which would protect directors of Australian companies from personal liability for insolvent trading by providing a safe harbour from civil liability for insolvent trading when the directors are seeking to restructure a company. The draft legislation also limits the ability of parties to enforce "*ipso facto*" clauses by providing for a stay on the enforcement of provisions which permit a party to terminate or modify a contract upon the occurrence of an insolvency event (such as the appointment of an external administrator or the application for entry into a scheme of arrangement).

These long-awaited reforms are currently before the Senate and the “*ipso facto*” reforms could be introduced as early as 1 July 2018. The safe harbour reforms will come into effect on the day the proposed legislation receives royal assent.

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