

New foreign investment policy and outlook for further reforms

The Australian Treasurer releases new foreign investment policy and signals further change ahead.

New investment policy

The Australian Treasurer has today released a new version of Australia's foreign investment policy which, together with the Foreign Acquisitions and Takeovers Act 1975 (Cth) (and associated regulations) sets out the rules for inbound foreign investment in Australia.

The key change is the anticipated introduction of a new screening policy which will be applied by the Foreign Investment Review Board (**FIRB**) and the Treasurer to agricultural investments. In summary:

- Subject to limited exceptions, private investors must now seek prior approval for a proposed acquisition of an interest in rural land where the cumulative value of rural land that the investor (and any associates) already holds exceeds, or immediately following the proposed acquisition is likely to exceed, A\$15 million (down from A\$252 million). The new requirements extend to acquisitions of interests in corporations or trusts holding more than half their assets in rural land.
- In line with current free trade arrangements, the new threshold on agricultural land does not

apply to private investors from Chile, Singapore, Thailand, New Zealand and United States. Private Singaporean and Thai investors will require prior approval if acquiring a substantial interest in a primary production business valued above A\$50 million. Private United States, New Zealand and Chilean investors will require prior approval if acquiring a substantial interest in a primary production business valued above A\$1,094 million.

- The new Policy confirms that (as was previously the case) all acquisitions of land, including rural land, must be notified by foreign government investors and that exceptions to notification which apply under the Act do not apply to foreign government investors.

Further guidance is given on annual land programs for incidental acquisitions of rural land and on conditions imposed on temporary residents who buy residential land.

Additionally, the Policy now formally includes media within the list of sensitive sectors for screening purposes. The requirement to notify all investments of 5% or more in the media sector remains unchanged.

Key issues

- The updated policy includes a new screening policy which will be applied by the Foreign Investment Review Board (FIRB) and the Treasurer to agricultural investments.
- The media sector is now to be formally included within the list of sensitive sectors for screening purposes.
- The Policy has been updated to reflect the re-indexed monetary thresholds for business investments by private foreign investors.

The Policy has also been updated to reflect the re-indexed monetary thresholds for business investments (applicable since 1 January 2015) by private foreign investors, namely A\$252 million, with a higher threshold of A\$1,094 million applying to preferred private investors from the United States, New Zealand and (more recently following entry into force of recent free trade agreements), Chile, South Korea and Japan. As was previously the case, the more favourable thresholds do not apply to prescribed sensitive sector investments.

In terms of what these changes mean for investors, those looking to invest in the agricultural sector now need to assess the current value of their investments and track changes in value (including disposals) to determine whether or not they are required to notify in future.

Outlook for further reform

The introduction of the new Policy comes amid scrutiny by the current Government on certain aspects of foreign investment regulation. The crack-down sits somewhat at odds with the entry into force of several free trade agreements which have accorded preferred treatment to investors from certain jurisdictions.

Joe Hockey, the Australian Treasurer, (who is ultimately responsible for determining foreign investment applications, acting on advice from FIRB) has again this week put foreign investors on notice that their tax affairs (in particular, profit-shifting having a significant revenue impact) will be taken into account when considering whether a proposal is in the national interest.

On 25 February, the Government released a public consultation paper seeking views on a number of new proposed reforms to strengthen Australia's foreign investment framework, particularly around residential real estate and agriculture. The proposed reforms that form the subject of the consultation include:

- Increasing compliance and enforcement activities around foreign investment in residential real estate through the creation of a specialised, investigative and enforcement area within the Australian Taxation Office.
- Amending the Act to introduce new civil penalties and increased

criminal penalties for foreign investors and third parties who breach the foreign investment rules.

- Introduction of an application fee on all foreign investment proposals, based on the type of investment (applications currently carry no filing fee). In this regard, the Government has proposed a A\$5,000 application fee for foreign buyers for residential properties and rural land worth up to A\$1 million, rising to A\$10,000 and beyond for residential properties and rural land worth more than A\$1 million.
- Business, commercial real estate and agribusiness investments would be subject to application fees between A\$10,000 and A\$100,000 depending on the size and sector (<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Strengthening-Australias-foreign-investment-framework>).
- Such fees are expected to generate around A\$200 million a year, with the expectation they would fund better enforcement activities by FIRB and stop the cost of regulation falling on the Australian taxpayer.
- Introduction of a new A\$55 million screening threshold for foreign investment in Australian "agribusiness" (as distinct from acquisition of rural *land*, to which the new A\$15 million screening threshold in the Policy applies). The term "agribusiness" is currently not used within Australia's foreign investment framework as the system generally treats all non-sensitive sectors the same. Introducing a lower A\$55 million threshold will

require a new definition to be developed. It is expected this may encompass a range of activities, potentially including the processing and sale of agricultural products and manufacturing for the farming industry.

- Establishment of a foreign ownership register that will start collecting information on existing foreign ownership and subsequent transactions of all interests in agricultural land from 1 July 2015.

Submissions on the consultation paper may be made until 20 March 2015, following which some further clarity on the proposed reforms is expected.

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