

# Release of legislation for register of foreign ownership of water rights

As envisaged, the Government has released exposure draft legislation which would require foreign persons to register interests in certain Australian water rights from **1 July 2017**.

The exposure draft of the Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016 (Cth) released by the Government provides that, from 1 July 2017 foreign persons will need to register their legal interests in registrable water entitlements and contractual water rights with the Australian Taxation Office (ATO).

## Who needs to register?

Foreign persons will be required to register their interests in certain water entitlements. See our previous briefing note [Foreign Investment Regulation in Australia \(August 2016\)](#) for more information on "foreign persons".

However, it is proposed to exempt certain foreign persons (such as irrigation infrastructure operators) from the requirement to register their interests pursuant to rules made under the new legislation.

## What water entitlements need to be registered?

Foreign persons will need to register their interests in registrable water entitlements and certain contractual water rights (**Registrable Water Interests**).

Registrable water entitlements include:

- irrigation rights relating to a water resource in Australia; and
- rights conferred by or under a State or Territory law either hold water or take water from a water resource in Australia.

However, registrable water entitlements would not include:

- stock and domestic rights;
- riparian rights; or
- annual water allocations under an Australian water access entitlement in a 12-month period.

The explanatory material released with the exposure draft indicates that other rights such as harvestable rights will also be excluded.

Contractual water rights are contractual rights to another person's registrable water entitlement which, as a general rule, must have a term exceeding 5 years.

## Events that must be notified

Events which trigger notification requirements include:

- a foreign person becoming the holder of, or ceasing to hold a Registrable Water Interest;
- a person becoming or ceasing to be a foreign person whilst holding a Registrable Water Interest;

## Key issues

- A register is being established to record foreign ownership of registrable water entitlements and contractual water rights.
- Existing foreign investors with Registrable Water Interests will have between 1 July 2017 and 1 December 2017 to register their interests with the ATO.

- a right or entitlement ceasing to satisfy the requirements of a Registrable Water Interest; or
- certain changes to the characteristics of the Registrable Water Interest (eg there is a change to the volume of water available under the entitlement or right).

## When do Registrable Water Interests need to be registered?

Under the exposure draft legislation, foreign persons holding a Registrable Water Interest as at 1 July 2017 will have until 1 December 2017 to register that interest. However, if the Registrable Water Interest is disposed of before 1 December 2017, the interest will not require registration.

After 1 December 2017, foreign persons with a Registrable Water Interest must give notice to the ATO within 30 days after acquiring the interest.

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