

GENERAL COMMENTS

In short, there is the very real danger of what is happening in the UK at the moment where land has transitioned out of the hands of the country.

What I would suggest as an easy option to provide absolute control back to Australia would be to restrict the land title ownership to permanent residents and citizens only. If foreign owners cannot own the land and only effectively buy a lease to the property, then this control is maintained as easily enforced.

During the period of leasing of the property, end to end auditing of all funds and associated business holdings of the individual / companies, travel habits and tax history will need to be enforced. Any breach is to be dealt with severely.

Should the individuals transition to being citizens / permanent residents, they may be able to apply to transition of the title at an appropriate fee however, this would be solely based on a completely clear record from the preceding 5 years of the enforcement / compliance period.

ATTACHMENT A — CONSOLIDATED CONSULTATION QUESTIONS

NEW COMPLIANCE AND ENFORCEMENT AREA IN THE AUSTRALIAN TAXATION OFFICE

1. The Government seeks feedback on the creation of a new compliance and enforcement area in the Australian Taxation Office, including:
 - a. Is the creation of a new compliance and enforcement area required to address concerns with foreign investment framework compliance?

Yes, a new compliance and enforcement framework is required to address the concerns based on the proposals as written. The compliance framework should report directly into the office of the treasurer and also into the appropriate office within the ATO. The compliance / enforcement framework, however, should be delegated to a state level, then a local council / parish level. A panel should be formed within each council that reviews submissions and investigates potential infringements. The pane should comprise non elected as well as elected as well as federally funded staff. I would suggest that the panel be no more than 5 people. In the event that there is a requirement to escalate situations, then representatives from the state level of the compliance / enforcement board can be called on.

- i. Are there alternative approaches that should be considered?

See general comments above.

2. Are there other legislative impediments preventing data sharing between relevant agencies?
 - a. Should the Treasurer and the Australian Taxation Office have authority to obtain information, documents and evidence that relate to potential breaches of the foreign investment framework?

The treasurer and ATO should have the authority to obtain all information pertaining to it land ownership along with associated components. In addition to the treasurer and ATO, the enforcement / compliance bureau's should also have access to this information. Where appropriate, infringements should be able to be acted on immediately whether by involving the police force or another body.

- i. Are there alternative approaches that should be considered?

See general comments above

- b. Should the creation of a new compliance and enforcement area be funded by Government revenue or through the introduction of application fees on foreign investors?

Initially setup should be federally funded (including federal representation at a state, then a council level). However, based on appropriate penalty rates, this cost should be able to be recovered within 18-24 months.

- i. Are there alternative approaches that should be considered?

See General comments above

- c. Do the proposed changes appropriately balance the need for additional scrutiny on certain foreign investment applications while continuing to streamline the process for approving investments in single developments?

Every investment proposal needs to be investigated and considered on merit. The single question is how does this benefit Australia and not only from a financial perspective. The big issue with foreign investment is that it is removing (potentially) options from other citizens / permanent residents

- i. Are there alternative approaches that should be considered?

See general comments above

PENALTY REGIME

3. The Government seeks feedback on the proposed changes to the civil penalty regime, including:
 - a. Would a civil penalty regime be an effective addition to the rules to ensure compliance and assist with enforcement?

A penalty regime at the appropriate level would be beneficial. Having listened to folk, particularly from China, the issue here is that the penalties proposed are not enough to be an effect deterrent. There would need to be a financial component (at a much higher level) as well

as another component which would include possibly jail time and / or revocation of entry into Australia (even if they attempt to try going via the NZ citizen route).

b. Are the proposed penalty amounts appropriate and likely to serve as a deterrent?

No, the penalties proposed are not enough to be an effective deterrent and would need to be a lot higher in conjunction with jail time and / or revocation of visa to be in Australia.

Being an Australian Permanent Resident / Citizen is a privilege, this should not be cheapened by poor immigration control or people who are not working towards the interests collectively of Australia.

c. Is the proposal to extend accessorial liability an effective way to increase compliance?

In a subset of cases this would serve as a method to increase compliance.

i. Are there alternative approaches that should be considered?

See General comments Above

d. Is it necessary to increase the existing criminal penalties in light of the proposed new civil penalties?

The penalties need to act as per their intention. If the intention is purely increase in revenue, then there is little point. However, if the focus is to increase compliance, then absolutely, the penalties need to be cost prohibitive to any individual who is even considering the option of doing the wrong thing.

4. Should the new penalty regime be extended to business, commercial real estate and agricultural applications?

Yes. What is being discussed here is the lifeblood of the country. It is imperative that all business ownership is controlled adequately to ensure the best interests for Australia, not for folk overseas. Australians have already built up the economy and have done whilst contributing in terms of tax dollars to the country as a whole. Where there is foreign ownership, there is also the option to siphon funds out, withhold company tax and so on. This is not only stealing from the Australian community as a whole, but is also taking money out of the country and there, like England is facing, is losing it's financial core.

INTRODUCING FEES ON FOREIGN INVESTMENT APPLICATIONS

5. The Government seeks feedback on the introduction of fees on foreign investment applications, including:

a. Should the Government charge application fees on foreign investors to fund screening, compliance and enforcement activities?

Every application should be charged for and the cost should be high enough to ensure that only serious applicants who would clearly be opting to work for the better of the country.

i. Are there alternative approaches that should be considered?

In addition to this, in order to put a level of control in place, there should be a bond of an appropriate amount (say \$150,000) that would be payable that will be returned (at the appropriate interest rate) over a period of 5 years. This would also serve to provide a short term option for incremental revenue to the government which can in turn assist in funding the compliance / enforcement body.

- ii. Should there be any exceptions to paying the application fee?

The only exceptions would be where someone / couple have family resident here already that has been in gainful employment for a period of 5 years (where the intended arrivals are parents) or 2 years for a spouse. In these cases, the application fee's should be halved and the bond would also be halved.

- b. Is the level of the fees appropriate?

- i. Will the fees act as a barrier to foreign investment?

The reasons for people investing in Australia are unclear, however, the fee's will be a barrier for those who are looking to exploit the generosity of the Australian Government / people and at the same also provide a greater level of control for the business community.

- ii. What might be the cumulative impact on business reinvestment?

Even if there is an initial drop in business re-investment, this would be preferable to the depletion of opportunities for existing residents / citizens.

- c. What options should be considered to ensure applicants that submit multiple applications (for example, bidders at auctions or business applicants that withdraw and resubmit) are not charged excessive fees?

It is envisaged that with the level of information that will be available to the compliance / enforcement body that these will be captured in the majority of cases. Where something slips through the net, it is a matter of time with the bond option put in place as there will be at least 5 years of direct involvement with the enforcement board from the point of being in Australia.

ADVANCED OFF-THE-PLAN CERTIFICATES

- 6. The Government seeks feedback on the proposed changes to advanced off-the-plan certificates, including:

- a. Should penalties be introduced for developers that fail to comply with obligations to market domestically?

Yes, this should include a financial component as well as the possibility of jail time (as this would be fraudulent business practises)

- i. If so, what should developers be required to do to prove they have marketed domestically?

There should be full submissions to the enforcement board prior to allowing a license for overseas marketing / sales. The licensee would need to be audited on a yearly basis

- ii. What level of penalty would be appropriate for developers that fail to comply with obligations to market domestically?

Revocation of license to operate and if the developers are not citizens / permanent residents deportation could be an option. Clearly this would only be in cases where there is sufficient evidence to prove that the actions were done with appropriate intentionality.

- iii. Are there alternative approaches that should be considered

See general comments above.

IMPLEMENTATION OF AGRICULTURE COMMITMENTS

7. Should the definition capture all primary production businesses as well as certain first stage downstream businesses beyond the farm gate (for example, meat processing, sugar milling and grain wholesaling / storage / milling)?

All levels of industry should be subject to the laws whether primary, secondary or tertiary.

8. If it is decided that the ANZSIC codes be used, which divisions (or sub-divisions, groups) of the ANZSIC codes should be included in the definition for 'agribusiness'?

It should be fully inclusive

9. Is there an alternative approach that should be considered to define agribusiness?

All primary business should be included

10. The Government seeks feedback on the proposed definition for 'agricultural land':

- a. Is the proposed definition of 'agricultural land' consistent with common understanding of the term?

All usable land (arable in any form) should be included. Only desert land may be excluded.

- i. Are there alternative approaches that should be considered?

See general comments above

- b. Would the proposed definition provide sufficient clarity as to what constitutes 'agricultural land' for the purposes of Australia's foreign investment framework?

All arable land should be included

11. The Government seeks feedback on the proposed definition of urban or 'residential land', including:

- a. Is the proposed definition of 'residential land' consistent with a common understanding of the term?

It is a narrow and changing definition as land zones change. Keeping at arable land keeps the whole process simpler.

- i. Are there alternative approaches that should be considered?

See general comments above

- b. Would the proposed definition provide sufficient clarity as to what constitutes 'residential land' and related subcategories (such as new and existing dwellings) for the purposes of Australia's foreign investment framework?

Unnecessary and may overcomplicate it. All arable land should be included.

12. The Government seeks feedback on three possible options for the screening of 'other land':

- a. 'Other land' be defined as all land that is not 'agricultural land' or 'residential land' and continues to be screened from dollar zero;
- b. 'Other land' is not defined and any land that is not 'agricultural land' or 'residential land' no longer requires foreign investment approval; or
- c. 'Other land' is defined as a subset of what is left over from 'agricultural land' or 'residential land' capturing land that remains of interest while excluding some land from screening.
 - i. If option c is pursued, what types of land should continue to be screened?

Again, all arable land should be encompassed around this.

13. The Government seeks feedback on implementation issues around the foreign ownership of land register, including:

- a. the foreign ownership details that would be collected and published by the register;

The process should be transparent, the register to detail all ownership details including residents business interests. Access should be restricted to the enforcement bodies and the individuals concerned.

- b. the two-stage implementation approach to information collection (through self-reporting then through state and territory land titles processes); and

No self reporting takes away control. This should be fully administered.

how lawyers or register conveyancers would verify whether their client is a foreign person?

Reporting to state and federal governing body.

MODERNISING AND SIMPLIFYING THE FOREIGN INVESTMENT FRAMEWORK

14. The Government seeks feedback from interested stakeholders on options to modernise and simplify the Act, Regulations and Policy and streamline interaction between applicants and the Foreign Investment Review Board.

15. Are there harmonisation opportunities with other Acts (e.g. the operation of the *Insurance Acquisitions and Takeovers Act 1991* or the *Financial Sector (Shareholdings) Act 1998*? Should

the definition of 'Associate' in the Act conform with the definition of 'Associate' in the *Corporations Act 2001*?)

16. Is the current regime for enforcement of FIRB conditions effective? What alternative measures could be considered?

Should FIRB provide specific regulatory guidance on approaches to applications and difficult interpretation issues like Australian Securities and Investments Commission and the Takeovers Panel do?

ATTACHMENT B — FOREIGN INVESTMENT THRESHOLD CHANGES

Type of investor	Type of acquisition	Current threshold	Proposed threshold
Privately owned investors from FTA partner countries that have the higher threshold ¹	Developed commercial real estate (including heritage-listed properties)	\$1,094 million (indexed annually)	\$1,094 million (indexed annually)
	Business acquisitions in non-sensitive sectors	\$1,094 million (indexed annually)	\$1,094 million (indexed annually)
	Business acquisitions in sensitive sectors ²	\$252 million (indexed annually)	\$252 million (indexed annually)
	Rural land	\$1,094 million (indexed annually)	\$1,094 million (indexed annually) for US, NZ and Chile. \$15 million (cumulative) for China, Japan and Korea.
Privately owned investors from non-FTA countries and FTA countries that do not have the higher threshold	Developed commercial real estate	\$55 million (indexed annually)	\$55 million (indexed annually)
	Heritage-listed developed commercial real estate	\$5 million	\$5 million
	Business acquisitions in (sensitive and non-sensitive sectors)	\$252 million (indexed annually)	\$252 million (indexed annually)
	Rural land	\$252 million (indexed annually)	\$15 million (cumulative) \$50 million for Singapore and Thailand ³
Foreign Government Investors	All direct investments (regardless of the sector)	\$0	\$0
	New business proposals	\$0	\$0
	Interests in land (including rural land)	\$0	\$0

1 Free Trade Agreement partner countries — the higher threshold currently applies to investors from the US, NZ, Japan, Korea and Chile. It will also apply to Chinese investors once the China-Australia free trade agreement enters-into-force.

2 The prescribed sensitive sectors (where the higher screening threshold does not apply) are: media; telecommunications; transport; defence and military related industries; and the extraction of uranium or plutonium or the operation of nuclear facilities.

3 Consistent with the commitments in the Singapore and Thailand free trade agreements.