



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: BusJEF:lb:1006497

11 June 2015

Manager  
International Investment and Trade Unit  
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The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [ForeignInvestmentConsultation@treasury.gov.au](mailto:ForeignInvestmentConsultation@treasury.gov.au)

Dear Sir or Madam,

**Strengthening Australia's foreign investment framework – options paper**

I am writing on behalf of the Business Law Committee ("Committee") of the Law Society of New South Wales. The Committee represents the Law Society on business law issues, and includes experts drawn from the ranks of the Law Society's membership.

The Committee has reviewed the Treasury options paper *Australia's Foreign Investment Framework: Modernisation Options* ("Options Paper") and appreciates the opportunity to provide comments.

The Committee's submission is confined to the issue of the definition of "foreign person" referred to in Item 3.9 of the Options Paper "Refine the foreign person definition".

The current definition of "foreign person" in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) ("FATA") includes the following:

"foreign person" means:

- (a) a natural person not ordinarily resident in Australia;

It is submitted that the FATA (and Federal Government foreign investment policy) definition of "foreign person" should be amended to expressly exclude any person who is an Australian citizen irrespective of residency. The Committee supports a new definition along the following lines:

'foreign person' means,

- (a) a natural person not ordinarily resident in Australia but does not include a natural person who is an Australian citizen within the meaning of the *Australian Citizenship Act 2007* (Cth);

This is consistent with definitions concerning foreign ownership of land in both the *Foreign Ownership of Land Register Act 1988* (Qld) and with the *State Taxation Acts Amendment Bill 2015* (Vic). The relevant provisions are extracted below:

*Foreign Ownership of Land Register Act 1988* (Qld) - Schedule 1 -- Dictionary:

foreign natural person means a person who is not an Australian citizen within the meaning of the *Australian Citizenship Act 2007* (Cwlth) and.....

*State Taxation Acts Amendment Bill 2015* (Vic) p17:

*foreign natural person* means a natural person who is not any of the following-

- (a) an Australian citizen within the meaning of the Australian Citizenship Act 2007 of the Commonwealth;

The Committee questions whether there is sufficient policy justification for requiring Australian citizens to seek Foreign Investment Review Board approval for investment acquisitions in Australia. From a policy perspective, it is incongruous that a non-resident Australian citizen can return to residency in Australia at any time without any legal requirement for Government approval and yet certain investments by that citizen in Australia require approval.

It is arguably not in Australia's interests to discourage investment by Australian citizens (whether resident in Australia or not) in Australian businesses. There are sound policy reasons for continuing to treat such citizens in the same way as other Australians and not as foreigners for investment purposes. As well as maintaining stronger links and better relations with non-resident citizens, it also provides a greater incentive for Australian investment by non-resident Australian citizens and may ultimately even potentially provide an incentive for those citizens to return to Australian residency. It also avoids unnecessary red tape which the Government is committed to reducing.

There are an increasing number of Australian citizens working overseas who may from time to time, choose to live permanently outside Australia. The current FATA definition was introduced in 1975. It requires modernisation to reflect current times and the fluidity of movement by Australian citizens.

The Committee would welcome an opportunity to be involved any future stakeholder consultation. Questions can be directed to Liza Booth, policy lawyer for the Committee. Ms Booth is available on 9926 0202 or [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au).

Yours sincerely,

John F Eades  
President

