Manager
Foreign Investment Policy Unit
The Treasury
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PARKES ACT 2600

By email only: *ForeignInvestmentConsultation@treasury.gov.au*

29 March 2017

Dear Sir/Madam

Submission regarding Foreign Investment Framework 2017 Legislative Package

We refer to the "Foreign Investment Framework 2017 Legislative Package" Consultation Paper dated March 2017 released by Treasury.

We welcome this opportunity to provide our feedback in relation to certain of the issues raised in the Consultation Paper as well as other related matters concerning the *Foreign Acquisitions and Takeovers Regulation 2015 (Cth)* (**Regulations**), the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth)* (**Fees Act**) and the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth)*.

As one of Australia's leading professional services firms, we believe we are well placed to share our perspectives on these important issues. We are committed to positively contributing to the Australian community and supporting and enabling initiatives that will strengthen the future prosperity of our country.

1. Residential Land

We agree with the issues outlined by Treasury in relation to residential land as set out on pages 3 and 4 of the Consultation Paper. We would support Option 5 (paragraph 36 on page 5) which involves introducing all of the amendments outlined in Options 2 to 4.

We note Treasury's comments at paragraphs 24 to 26 in relation to certain commercial residential premises (including aged care facilities, retirement villages and student accommodation) being treated as residential land and support those types of premises being aligned with the non-vacant commercial land screening thresholds. This is because these type of residential premises are often developed, owned and operated by professional investors or large organisations and managed on a commercial basis. Subsequent sales of interests in such premises are often to sophisticated buyers who view these premises as a commercial investment. This can be contrasted with the FIRB rules regarding typical residential land - the policy intent behind which is aimed at private dwellings for domestic use.

The Consultation Paper raises a query as to how student accommodation should be defined. We note that the definition of "commercial residential premises" in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (the **GST Act**) currently excludes certain types of student accommodation by referring to the same as "*premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school*".

This means that property dedicated to providing accommodation to university students would be treated as residential land for the purposes of the Regulations.

We consider that "student accommodation" could be defined so that it captures accommodation that is marketed and intended for, and primarily occupied by, individuals who are enrolled either full-time or part-time in a course delivered by an education institution and provided that the individual dwellings within the property are not separate lots in a strata (or equivalent) scheme. The term "education institution" could be defined by reference to the GST Act which provides that the term has the meaning given in the *Student Assistance Act 1973 (Cth)* (**SA Act**).

The SA Act defines "education institution" as (a) a higher education institution; or (b) a technical and further education institution; or (c) a secondary school; or (d) any other institution (including an educational institution), authority or body, that is in Australia and that, in accordance with a determination by the Minister, is to be regarded as an education institution for the purposes of the SA Act.

2. Non-Vacant Commercial Land

We would support Option 2 (paragraph 53 on page 8) which involves narrowing the scope of the 'low-threshold' non-vacant commercial land definition. We agree that the inclusion of 'land under prescribed airspace' in the current definition causes an unnecessary regulatory burden on applicants by capturing applications that do not necessarily raise national interest concerns.

3. Low Sensitivity Business Investment

We would support changes to help facilitate and streamline foreign investment for low sensitivity business proposals. Accordingly, we consider that Option 2 (paragraph 70 – 75 on pages 10 and 11) which involves new exemption certificates for low sensitivity business proposals would be beneficial to foreign investors whilst still maintaining appropriate oversight by Treasury.

We have been in discussions with Australian Private Equity & Venture Capital Association Limited (**AVCAL**) in relation to its submission in this respect and, having had the opportunity to review their final submission, confirm that we are fully supportive of the suggestions made by AVCAL.

4. Commercial Fees

We agree with the comments outlined in the Consultation Paper that the current fee regime can create complexity and, for some applications, result in a high amount of fees that is not commensurate with the value or complexity of the transaction concerned.

We are supportive of Option 3a (paragraph 101 on Page 16) involving a flat fee structure in order to simplify the current framework.

We also raise the following two points for consideration by Treasury:

- Currently, where a foreign person (such as a property developer) acquires multiple parcels of land a fee is generally payable for each separate acquisition even where the acquisitions are all related to the same project or development, such as the acquisition of adjoining parcels of land from different vendors under separate agreements for the construction or redevelopment of residential or commercial premises. We note Treasury has provided fee dispensation when acquiring multiple titles under the same agreement. When multiple titles are required for a commercial development (whether a residential, commercial or wind farm developments for example), it is common for the promoter of the project to enter into separate option/acquisition agreements to acquire the relevant titles from different vendors.

Treasury may wish to consider adjusting the current fee regime so that only one fee is payable where the separate acquisitions all relate to the same overall project or development. This could be subject to qualifications, such as a requirement that the separate acquisitions occur within a certain time period of each other and the separate titles are all identified within the same application.

- FIRB Guidance Note 27 points out that the definition of "internal reorganisation" in section 4(1) of the Fees Act would not capture top-hatting schemes involving the creation of a new parent company for a corporate group. Top-hatting schemes of this nature are commonly viewed by the market as a type of internal reorganisation as there is generally no change in ultimate control of the group. Such a top-hatting scheme differs significantly from a third party acquisition and therefore, in our view, should not attract the same fee. We consider the definition of internal reorganisation should be broadened to capture top hatting schemes where there is no ultimate change in control of the parent entity.

5. Monetary Threshold for Agricultural Land Investment

We wish to take this opportunity to raise a further issue not directly addressed by the Consultation Paper. The Regulations currently set a cumulative monetary threshold of $15 million for investment in agricultural land by private investors (except for private investors from certain specified countries where a higher threshold applies). We have received general feedback from some clients indicating that this threshold seems unreasonably low, especially given increasing land values in certain parts of Australia and the fact that it is a cumulative threshold. Treasury may wish to consider whether this cumulative threshold should be increased to $50 million (in line with the agricultural land threshold for Singapore and Thailand investors) or to $55 million (in line with the sensitive developed commercial land threshold).

Please do not hesitate to contact the writer if you have any questions or comments.

Yours faithfully

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