

Article Information

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Changing foreign investment framework in Australia

Tony Abbott, Prime Minister of Australia, issued a media release on 11 February 2015 which outlined that the Government was in the process of better scrutinising our foreign investment laws and was considering changes to the foreign investment processes in Australia

Since then a number of events have occurred, some changes have become effective and future changes would seem imminent. It is now more important than ever for foreign investors in Australia to be aware of these changes.

The events and new changes that have occurred since February 2015 and a brief summary of them are set out below:

- Effective from 1 March 2015, it became a requirement that if a Foreign Person's cumulative holdings in Rural Land are equal to or exceed \$15 million dollars, the Foreign Person must obtain Foreign Investment Review Board (FIRB) approval to acquire or purchase any additional Rural Land.
- On 3 March 2015 the Hon Joe Hockey MP issued a media release which stated that he had made an order under FATA for Golden Fast Foods Pty Ltd to divest its interest in an established residential property at 63-67 Wolseley Road Point Piper as the company did not follow the correct approval process under FATA when it acquired the property.
- From 2 May 2015 the Australian Taxation Office ('ATO') commenced compliance activities to ensure that Foreign Persons who have invested in Australian residential property are meeting their obligations under FATA.
- The ATO will be responsible for a register related to foreign ownership of agricultural land. Any Foreign Persons who buy or acquire an interest in agricultural land from and including 1 July 2015 must notify the ATO of the acquisition (within 30 days of the acquisition) and go onto the foreign ownership register.

Any Foreign Persons who prior to 1 July 2015 have:

- an existing interest in agricultural land
- a new interest in agricultural land
- no longer have an interest in agricultural land,

must notify the ATO by no later than 31 December 2015 of their interest or otherwise so that this information can be put on the foreign ownership register.

For more information on the forms that need to be completed by the ATO in this regard please [click here](#).

Foreign Persons should keep in mind that registration on this foreign investment register does not eliminate the requirement for a foreign person to obtain FIRB approval (as it is presently known) pursuant to FATA.

It is further anticipated that the following changes will occur in the future:

- The ATO will be responsible for the collection of fees in relation to all foreign investment applications. This may mean that fees will no longer be payable to FIRB.

The ATO will also be responsible for administering FATA in respect of residential real estate.

These changes are expected to occur from 1 December 2015.

- The ATO will be responsible for a register related to foreign ownership of residential property. This is expected to occur from 1 July 2016.

Penalties for breaches of FATA are severe and may include fines or imprisonment. In his press release of 2 May 2015 Tony Abbott stated that stricter penalties would be imposed which included criminal penalties of up to \$127,500 for individuals or three years imprisonment or penalties of up to \$637,500 for companies on parties not complying with FATA. It appears that these penalties have not yet been implemented and additionally FIRB have stated that the penalties under FATA will be increased to \$135,000 for individuals. There is no timeframe specified for these amendments.

Tony Abbott's press release also claimed that penalties may also be imposed on third parties who knowingly assist Foreign Persons. As has already been demonstrated by the Treasurer, the Government may require foreign persons to divest their interests in properties that were illegally obtained.

Tony Abbott in his press release of 2 May 2015 also stated that Foreign Persons will now pay higher fees for foreign investment applications and did specify that for a foreign investment application for residential property which is \$1 million or less, the application fee will be \$5,000. FIRB have stated that these fees will commence on or around 1 December 2015 when the ATO takes over the collection of fees.

The frequency of foreign investment in Australia is continuing to increase. It is now more important than ever for Foreign Persons to ensure that they have obtained all the approvals and requirements necessary in order for them to acquire property, business and other assets in Australia.