

INTRODUCTION

The Urban Development Institute of Australia (UDIA) is the peak industry body representing the property development industry throughout Australia, acting on behalf of over 2,000 member companies across the country from a variety of fields and professions in the development industry. Established at a state level in 1963, the Institute evolved to become a national body with a number of state-based divisions in 1970.

UDIA aims to secure the economic success and future of the development industry in Australia, recognising that national prosperity is dependent on our success in housing our communities and building/rebuilding cities for future generations.

UDIA welcomes the opportunity to provide this submission to the Commonwealth Treasury on the Foreign Investment Framework – 2017 Legislative Package Consultation Paper.

Foreign investment has long been a key driver of economic growth and opportunity in Australia, creating jobs and enhancing productivity. In particular, the additional demand for dwellings created by foreign investors generates billions of dollars of economic activity and jobs in the construction and development industries, increases tax revenue at all levels of governments, and also adds to Australia's dwelling stock.

Foreign investment into new residential property also has the desirable outcome of adding to Australia's dwelling stock, and increasing the number of properties in the private rental pool. The existing foreign investment regime provides a sound framework for expanding Australia's housing stock, by restricting foreign investment into existing properties, and directing it into new supply. This is a particularly valuable outcome in the context of Australia's ongoing housing affordability problems.

UDIA remains fundamentally of the opinion that foreign investment into residential property should continue to be supported due to its role in stimulating Australia's housing and construction industries.

Issues for Consultation

The foreign investment review framework is set by the legislative framework through the Foreign Acquisitions and Takeovers Act 1975 (FATA) and the Foreign Acquisitions and Takeovers Fee Imposition Act 2015 (Fees Act). Changes to the FATA are not being considered in this process.

1. Residential Land

1.1 Unintended consequences of the Legislative Framework

- Inconsistent exemption certificate framework – foreign persons wishing to purchase a new dwelling or vacant residential land need to apply individually for each property they are considering and these arrangements may incentivise non-compliance.

- Treatment of failed off-the-plan settlements – where a person enters a contract to acquire an off-the-plan dwelling and that contract becomes binding, the dwelling is considered sold under the FATA. If the parties do not complete the settlement, the dwelling is considered to be an established dwelling and this precludes most foreign purchasers from purchasing the dwelling. On 26 November 2016 the Treasurer announced that foreign buyers would be allowed to purchase an off-the-plan dwelling in these circumstances as a new dwelling, however these purchases remain legally in breach of the FATA if they do not have a separate approval.
- Residential land used for commercial purposes – Currently land meets the definition of ‘commercial land’ under the FATA if a dwelling is not located on the land, or the dwelling located on the land is considered a ‘commercial residential premises’, which excludes some land that for the purposes of the foreign investment framework would be considered commercial in nature including, aged care facilities, retirement villages and certain student accommodation. Therefore, foreign owners of commercial developments in this sub-sector face more onerous treatment from other commercial sectors.

1.2 Policy Options

The UDIA supports Option 5 which would introduce all of the amendments from Options 2-4, reducing the incidence of non-compliance, improving efficiency and costs:

- Option 2 – Introduce a new exemption certificate(s) for new dwellings and vacant residential land.
- Option 3 – Introduce new exemption certificate(s) for failed off-the-plan settlements.
- Option 4 – Amend the treatment of residential land used for commercial purposes.

2. Non-vacant Commercial Land

2.1 Unintended consequences of the Legislative Framework

Part of the policy intent of the 2015 reforms was to reduce the number of routine cases from the system, which included raising the monetary threshold for non-vacant commercial land to \$55 to \$252 million (\$1,094 million threshold applies for agreement country investors). However, non-vacant commercial land continues to have the lower \$55 million threshold if the land is considered sensitive, including; land under prescribed airspace, buildings where all or part of the building will be leased to an Australian Government agency or body; or land where public infrastructure will be located.

In practice, the lower threshold land definition has had the effect of capturing more applications than intended and this is imposing an unnecessary regulatory burden on applicants, in particular the inclusion of land under prescribed airspace means that most buildings in capital cities are subject to the lower threshold.

2.2 Policy Options

The UDIA supports Option 3 which would remove the requirement to notify for ‘low threshold’ land and non-vacant land would only be screened at the \$252 or \$1,094 million thresholds.

3. Low sensitive Business Investment

3.1 Unintended consequences of the Legislative Framework

Foreign persons must get approval before acquiring a substantial interest (at least 20%) in an Australian entity that is valued above \$252 million (\$1,094 million threshold applies for agreement country investors). An important change in the 2015 reforms was to incorporate foreign government investor specific requirements into the legislative framework. The foreign investment framework necessarily casts a broad net in relation to actions required to be notified to the Treasurer for review, however in practice a small percentage of acquisitions that are required to be notified actually raise national interest concerns.

3.2 Policy Options

The UDIA supports Option 3 which would remove the requirement to notify the Treasurer for low sensitivity business proposals from notification, where consideration is \$100 million or less.

4. Commercial Fees

4.1 Unintended consequences of the Legislative Framework

A key change that took effect on 1 December 2015 was the introduction of application fees. The experience with the fee system indicates that it is unnecessarily complex and in some circumstances where the transaction is low value, the fee represents a relatively large impost and may discourage certain types of investment.

Another area where there are disproportionate fee outcomes is for businesses acquiring residential land for commercial purposes, which is aimed at individuals purchasing residential land and where a developer seeks to acquire multiple titles of residential land for commercial purposes the fees apply to each title and are uncapped.

4.2 Policy Options

The UDIA supports Option 3b which would streamline and provide a tiered fees structure for all business transactions (including residential transactions).

5. Miscellaneous technical issues and ideas for further reform

Please don't hesitate to contact UDIA National to discuss this submission as follows:

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