

# New foreign investors beware: Co-operate with the Tax Office or be forced to sell-up

Foreign companies investing in Australia will have new obligations to co-operate with the Tax Office, and if they don't keep the tax man happy they could face prosecution, fines and potentially be forced to divest the asset, according to Treasurer Morrison's media release on 22 February.

Significant foreign investment into Australia requires approval by the Foreign Investment Review Board (FIRB) and approvals can have conditions applied. The investor is required to comply with those conditions or face sanctions. The approval requirements depend on a number of factors including:

- Whether the investor is a foreign Government;
- The type of investment (agricultural, business, commercial real estate, etc.);
- Monetary thresholds; and
- Free trade agreement commitments.

With this new initiative, the Government is using these foreign investment review powers to enforce largely pre-existing requirements under taxation laws. The FIRB process will be used to ratchet up tax compliant measures, cracking down on foreign investors. The change substantially increases Tax Office power in its circumstances.

The new requirements are that the foreign investor and associated people or organisations:

- Comply with our taxation laws;
- Provide required documents and information to the Tax Office;
- Notify the Tax Office if there are transactions that may be subject to our transfer pricing or anti-avoidance rules or otherwise specified by the Tax Office;
- Pay taxation debts; and
- Provide an annual report to FIRB on each investment anniversary date.

Where the Tax Office thinks the foreign investor is really risky, there may be additional requirements for the investor to engage in good faith with the Tax office to resolve tax issues that could relate to advance pricing agreements, thin capitalisation requirements or changes of structure and the investor may also be compelled to provide specified information to the Tax Office on a periodic basis including a forecast of tax payable.

The obligations would be implemented by imposing those new requirements on approvals of foreign investment applications.

Over recent years, the Government has been targeting foreign investors with initiatives including:

- Removing the 50% CGT discount;
- Imposing a 10% withholding tax on foreign investors selling Australian real estate;
- Reducing the threshold for foreign investment in agricultural land to \$15 million;
- Establishing a register of agricultural land held by foreign investors;
- Forcing the divestment of assets worth \$76 million previously incorrectly acquired by foreign nationals; and
- Appointing Mr David Irvine (Australia's former top spy) to the Foreign Investment Review Board so that the Board can better consider national security issues.

These initiatives fuel our nationalistic verve but may be prudent. Do we run the risk of scaring foreign investors off?

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