



Australian Government

Australian Government response to the
House of Representatives Standing Committee on Economics
report:

Foreign Investment in Residential Real Estate

AUGUST 2015

House of Representatives Standing Committee on Economics

Foreign Investment in Residential Real Estate

Government Response

Recommendation 1

The Committee recommends that the current foreign investment framework applying to foreign purchases of residential real estate be retained in its current form, utilising the existing legislated prohibitions and restrictions on purchases of established dwellings, and encouraging foreign investment to increase Australia's supply of new housing.

Agree. Australia's foreign investment framework allows the Government to review foreign investment proposals on a case-by-case basis to ensure that they are not contrary to the national interest. The framework, as it applies to residential real estate, seeks to channel investment into new housing to increase housing supply and support economic activity.

All foreign persons (temporary residents and non-residents) can apply to purchase vacant residential land for development and newly constructed dwellings in Australia. Applications to purchase new dwellings are usually approved without conditions.

Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia. However, temporary residents can apply to purchase one established dwelling to use as a residence while they live in Australia, conditional that they sell the property upon leaving Australia. Foreign persons cannot buy established dwellings as investment properties or as holiday homes.

Recommendation 2

The Committee recommends that the Foreign Investment Review Board and the Foreign Investment and Trade Policy Division of Treasury put in place appropriate processes for the purpose of audit, compliance and enforcement of the foreign investment framework. Such processes must accurately capture audit, compliance and enforcement data for the purpose of oversight of the Foreign Investment Review Board and the Treasury.

Agree. The Government will significantly increase compliance around foreign investment in residential real estate by transferring responsibility for residential real estate to the Australian Taxation Office. This will include the collection of fees, upfront screening, compliance and enforcement for foreign investment in residential real estate.

Having the Australian Taxation Office as the body performing all residential real estate functions will lead to a stronger compliance and enforcement regime that will deter non-compliance, increase detection of breaches of the foreign investment rules, and maintain the overall integrity of Australia's foreign investment framework — aided by the Australian Taxation Office specialised staff with the necessary skills, sophisticated data-matching systems and experience in pursuing court action.

The Foreign Investment Review Board and the Treasurer will still be involved in significant compliance cases.

Recommendation 3

The Committee recommends that the Government apply a modest administrative fee to the current screening for all foreign purchases of residential real estate, including purchases by temporary residents. Fees collected should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

Agree in principle. From 1 December 2015, the Government will levy an application fee on all foreign investment proposals to ensure that Australian taxpayers are no longer required to cover the costs of administering the framework. The level of the application fee will be based on the type of investment.

The ATO will be given responsibility for collecting all application fees (including residential real estate, business, agriculture and commercial real estate applications) as this will streamline the fee collection process.

Recommendation 4

The Committee recommends that the Government introduce a civil penalty regime for breaches of the foreign investment framework as it applies to residential real estate, with the following features:

- pecuniary penalty orders imposed under this penalty regime to be calculated as a percentage of the property value to act as an effective deterrent; and
- the regime to apply to foreign investors and any third party who knowingly assists a foreign investor to breach the framework.

Pecuniary penalty orders collected should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

Agree in principle. The Government will introduce a civil pecuniary penalty regime (including infringement notices) for residential real estate applications by amending the *Foreign Acquisitions and Takeovers Act 1975*. Introducing civil penalties will supplement the criminal penalties and divestment orders which currently exist and will make it simpler for court action to be undertaken. Infringement notices will provide the ATO with an additional tool to enforce the residential real estate rules.

The Government will also introduce civil pecuniary penalties on business, commercial real estate and agricultural investment applications.

The Government also proposes to increase the existing criminal penalties in the Act to 750 penalty units for individuals, imprisonment of 3 years or both with corporations subject to a multiplier of 5.

Tougher penalties together with the increased compliance and enforcement regime will help deter non-compliance.

Recommendation 5

The Committee recommends that the Government amend the *Foreign Acquisitions and Takeovers Act 1975* to provide that the criminal penalties for breaching the foreign investment framework as it applies to residential real estate, apply equally to any third party who knowingly assists a foreign investor in residential real estate to breach the foreign investment framework.

Agree. The Government will amend the *Foreign Acquisitions and Takeovers Act 1975* to introduce civil pecuniary penalties for third parties that knowingly assist foreign investors to breach foreign investment rules. Provisions currently exist under the Criminal Code for knowingly assisting another person to commit a criminal offence.

Tougher penalties together with the increased compliance and enforcement regime will help deter non-compliance with Australia's foreign investment rules.

Recommendation 6

The Committee recommends that in any instance where a foreign owner divests an illegally held established property, any capital gain from the sale of that property be retained by the Government. Funds collected by this measure should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

Agree in principle. The Government will amend the *Foreign Acquisitions and Takeovers Act 1975* so that significant penalties apply to foreign persons who are ordered to divest a property.

Foreign investors that breach the foreign investment rules will not be allowed to profit from selling an illegally acquired property. Tougher penalties together with the increased compliance and enforcement regime will help deter non-compliance.

Recommendation 7

The Committee recommends that Australia's Foreign Investment Policy be amended to explicitly require a temporary resident to divest an established property within three months if it ceases to be their primary residence.

Agree. The Government has amended Australia's Foreign Investment Policy to clearly articulate the requirement that a temporary resident divest an established property within three months if it ceases to be their primary residence.

Temporary residents are already required to divest their one established property as a condition of their approval. Greater transparency of this condition will improve understanding of the framework and encourage temporary residents to divest property in a timely manner.

Recommendation 8

The Committee recommends that the Government, in conjunction with the States and Territories, establish a national register of land title transfers that records the citizenship and residency status of all purchasers of Australian real estate. This information should be accessible by relevant agencies from a single database.

Agree. The Government is working with the states and territories to establish a foreign ownership register of land to include land title transfer information from existing state and territory land title

collection processes. Using state data will avoid duplication and regulatory costs for purchasers of property.

In the interim, the ATO will establish a foreign ownership register that will start collecting information on agricultural investments from 1 July 2015. The ATO will also commence a stocktake of existing agricultural land ownership by foreign persons. Once the state based data collections are established, these will replace information sourced directly from property owners.

Once established, the register will provide essential information to assist Government to better understand foreign investment trends and aid in the detection of non-compliance with the foreign investment rules.

Recommendation 9

The Committee recommends that the Government establish an alert system for the expiry of temporary visas that can be used by the Treasury to issue property divestment orders in cases of non-compliance:

- by amending the Migration Act 1958 so that the Department of Immigration and Border Protection must inform FIRB when a temporary resident departs Australia upon expiry of their visa; and
- by establishing effective and timely internal processes at the Treasury to receive and cross-check this information against its property databases to screen for compliance with the foreign investment framework.

Agree. The Government will seek to amend the *Foreign Acquisitions and Takeovers Act 1975*, the *Taxation Administration Act 1953*, an Instrument under the *Migration Act 1958*, and any other relevant legislation to allow greater sharing of data relating to foreign investment in residential real estate between relevant regulatory and law enforcement agencies.

Ensuring that the Australian Taxation Office is able to receive accurate and timely information on the departure of temporary residents who own property in Australia is critical to an effective compliance and enforcement framework. These legislative changes will help ensure better use is made of existing data sources to detect and deter non-compliance.

Recommendation 10

The Committee recommends that the Government amend the *Foreign Acquisitions and Takeovers Act 1975* to provide that residential property sold under off-the-plan certificates that is marketed for sale overseas, must be marketed in Australia for the same period of time. Breaches of this requirement should be subject to sanctions under the Act ranging from fines to the cancellation of a sale.

Agree in principle. Property developers (Australian or foreign) can apply for an advanced-off-the-plan certificate to sell all new dwellings in a development of 100 or more dwellings to foreign persons, provided the development is marketed locally as well as overseas. Foreign persons purchasing dwellings in a certified development do not require separate approval.

These certificates are granted on the condition that the apartments are marketed in Australia, as well as overseas. This is to ensure that domestic buyers have the same opportunity to purchase the apartments.

There are currently no penalties for breaching this condition other than refusing to approve further advanced off-the-plan applications from that developer. To provide greater options to enforce this requirement on property developers it is proposed that criminal penalties, civil pecuniary penalties and infringement notices be introduced into the Act, in line with penalties for other breaches of the Act.

The Government will also tighten the rules around advanced off-the-plan certificates by limiting the value of all apartments that can be bought by a single foreign person to \$3 million. If foreign investors want to purchase apartments above this value, they would have to seek individual approval.

Recommendation 11

In light of the expected finalisation of the statutory review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in early 2015, the Committee recommends that the Government consider the purchase of residential property by foreign investors as a possible area of investigation when considering amendments to the legislation.

Agree. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* was introduced to make Australia more hostile to money laundering, terrorism financing, serious and organised crime and other related crime threats.

Broadly, the regime works by requiring regulated entities to enrol with the Australian Transaction Reports and Analysis Centre (AUSTRAC), implement programs to mitigate money laundering and terrorism financing risk, keep records and report all international funds transfer instructions (transactions over \$A10,000 (or foreign currency equivalent)) and suspicious matters to AUSTRAC.

The regime imposes obligations on the financial, remittance, gambling and bullion sectors. International standards set by the Financial Action Task Force recommend coverage to also include lawyers, accountants, real estate agents, trust and company service providers and certain high value dealers.

On 4 December 2013, the Government announced a review of the regime with a series of public and industry consultations. The review will consider the application of regime to businesses and professions designated by the international standards, including residential real estate agents.

Recommendation 12

The Committee recommends that Treasury's Foreign Investment and Trade Policy Division make greater use of the databases held by AUSTRAC, and also of other relevant Federal and State Government databases, to assist the Foreign Investment Review Board in its duties and responsibilities.

Agree. As noted in Recommendation 9, the Government will seek to facilitate greater sharing of foreign investment information with regulatory and law enforcement agencies to help ensure better use is made of existing data sources to detect and deter non-compliance. The Australian Taxation Office and AUSTRAC already have well established data sharing relationships. The Australian Taxation Office will be able to use this to assist in its compliance and enforcement activities. The arrangements will be deepened by a Memorandum of Understanding should they require any enhancing.

Greater data sharing will assist in the monitoring of foreign investment in residential property, ultimately aiding compliance and enforcement activities.