

# **List of Recommendations**

## **Recommendation 1**

**1.16** The committee recommends that the government further strengthen Australia's tax regulations in order to protect against the erosion of Australia's tax revenue. In particular, the government should develop more rigorous approaches to prevent tax revenue leakage that may occur due to the business structures and practices used by foreign investors in relation to:

- **transfer pricing;**
- **capital gains;**
- **passive income;**
- **thin capitalisation; and**
- **any other relevant tax mechanisms.**

## **Recommendation 2**

**1.17** The committee also recommends that the government continue to work towards international reforms to address tax revenue leakage, including issues relating to transfer pricing. The committee notes the current progress by the government, the OECD and the G20 in this area and urges the government to continue pursuing international taxation reforms through these organisations.

## **Recommendation 3**

**2.25** The committee recommends that the government establish an Independent Commission of Audit into Agribusiness, or similar body, to develop a comprehensive policy approach to Australian agriculture. Furthermore, the government should use this inquiry's interim report and final report, and the submission from Mr Farley (referred to above) as the basis for consultations with industry stakeholders aimed at establishing the terms of reference and general structure of the commission (including relevant commissioners and powers for information gathering).

## **Recommendation 4**

**2.47** The committee recommends that, given the future challenges arising from the global food task and the changing approaches to the regulation of foreign investment that have occurred in countries comparable to Australia, the government should commission an independent and wide-ranging review of Australia's foreign investment regulatory framework. In particular, the review

should examine the ways that the government can ensure that foreign investments in Australian agriculture:

- are made on a genuinely commercial basis;
- *do not* distort the capital market;
- *do not* distort the trade in agricultural products; and
- compete fairly with domestic Australian farmers and agribusinesses.

2.48 The review should take into account the issues raised, and the recommendations made, in this report and the committee's interim report of November 2012.

2.49 The review should be used as a reference point for the government's strengthening of the national interest test, improvement of relevant compliance regimes, and the other policy and legislative changes recommended in this report.

## Recommendation 5

3.44 The committee recommends that the ABS does *not* conduct future ABS agricultural surveys on foreign investment. The committee considers that the national register for foreign ownership of agricultural land should be the primary mechanism for collecting and publishing information about foreign investment in Australian agriculture (as per the recommendations below).

## Recommendation 6

3.60 The committee recommends that when establishing the agricultural land register, the government conduct an initial stocktake of foreign ownership of agricultural land, agribusiness and water entitlements. In addition to numbers of businesses, land size and volume of water entitlements, the value of foreign investment acquisitions should be captured. The initial stocktake should be comprehensive, as far as possible consistent across states, and take into account complex company structures including foreign trusts, "shell companies", ownership of agricultural assets by foreign mining companies, and debt structuring and ultimate liability.

3.61 Furthermore, on the basis of this initial stocktake, the government should commission independent modelling of the level of foreign investment in Australian agriculture in 20 years' time if current trends and regulatory arrangements are assumed to remain. The modelling should also include estimated costs to the industry over the same period based on current constraints to domestic capital investment in Australian agriculture. Finally, the modelling should have regard to the future opportunities provided by the growing global food task over this period.

### **Recommendation 7**

**3.62** The committee recommends that the ongoing information collected in the register include the information that the committee recommended be included as part of the stocktake of foreign ownership (as per recommendation 6).

### **Recommendation 8**

**3.63** The committee recommends that the register include divestments as well as investments. This will ensure that the information from the register remains current and can reflect changes over time.

### **Recommendation 9**

**3.64** The committee recommends that participation in the register be a legal requirement for foreign investors and that appropriate mechanisms for compliance apply in cases where such participation is avoided.

### **Recommendation 10**

**3.65** The committee recommends that the register *not* use the current definition of 'rural land' in the FATA. Instead the definition adopted should be that which results from the update of 'rural land' as per recommendation 25. This would maintain consistency with the regulatory framework for foreign investment in Australian agriculture.

### **Recommendation 11**

**3.66** The committee recommends that there be no minimum threshold for reporting and that all foreign investment should be captured in the agricultural land register. However, this data should be collected in a manner that can clearly delineate foreign investments in terms of value and business size.

### **Recommendation 12**

**3.68** The committee recommends that the register's data be held in a manner that is centralised and can provide comprehensive information about all foreign ownership that is recorded.

### **Recommendation 13**

**3.69** The committee recommends that levels and trends of foreign ownership of land, agribusiness and water entitlements should be published annually by the national register for foreign ownership of agricultural land. Aggregate level data about the respective value and level of interest of foreign government investors and private foreign companies should be included. The data should also be made available in categories such as state, sub-industry (ANZSIC levels), water catchment areas, and local shires.

### **Recommendation 14**

**3.70** The committee recommends that country of origin of all foreign government investors and specific foreign government investments should be published annually by the national register for foreign ownership of agricultural land.

### **Recommendation 15**

**3.71** The committee recommends that, in order to prevent possible disincentives for foreign investment, the country of origin details for private foreign companies should be published by the national register for foreign ownership of agricultural land at aggregate levels only. However, country of origin details for specific private foreign investments should be made available to parliamentarians, parliamentary committees, and any relevant government agency upon request.

### **Recommendation 16**

**4.64** The committee recommends that, in line with recommendation 4, the government develop a stronger, more rigorous and more transparent system for examining cases of foreign investment in Australia, including Australian agriculture. Particular focus should be made on forensically examining:

- company structures (including management relationships in joint Australian/foreign ventures);
- the relationship between a foreign government's acquisitions strategy (such as food security) and the commercial operation of their subsidiary businesses in Australia; and
- ways of setting clear and auditable ongoing undertakings that are in the 'national interest'.

### **Recommendation 17**

**4.65** The committee recommends that the government amend the FATA to create more effective compliance mechanisms for companies that do not rigorously and continually adhere to the undertakings and conditions of FIRB approval. In addition, the government should develop further mechanisms to improve compliance with FIRB policy and decisions. Any new compliance regime should provide the Treasurer and relevant officials with a wide variety of compliance tools, in addition to forced divestiture, so that compliance matters can be resolved more efficiently and in proportion to the severity of any breaches.

### **Recommendation 18**

**4.66** The committee recommends that the government increase the transparency and public awareness of the national interest test so that it has the following two clear aims:

- providing precise and unambiguous instructions to prospective foreign investors about their obligations to FIRB and the Treasurer, and how the national interest test is conducted; and
- building the confidence of the public, FIRB stakeholders and the Parliament that the national interest test is being rigorously and fairly applied and takes in to account all relevant factors including impacts on rural communities and the agriculture industry.

### **Recommendation 19**

**4.67** This recommendation relates to water entitlement buybacks conducted under the government's *Restoring the Balance Program* and the *Sustainable Rural Water Use and Infrastructure Program* as part of the water recovery process under the Murray-Darling Basin Plan. The committee recommends that any such water buybacks that are from companies that have had acquisitions subject to FIRB review (including Cubbie Station) should be forwarded to the Australian National Audit Office (ANAO) for review. The ANAO should publicly report on whether water buybacks in such cases represent value-for-money for Australian taxpayers. The committee accepts that any review by the ANAO would occur after a water buyback has occurred.

### **Recommendation 20**

**5.31** The committee recommends that the threshold for private foreign investment in agricultural land be lowered to \$15 million.

## **Recommendation 21**

**5.32** The committee also recommends that once cumulative purchases of \$15 million of private investment in agricultural land has been reached by a private business or associated entities, any further investment by that business or entity be required to receive FIRB approval regardless of value.

## **Recommendation 22**

**5.33** The committee recommends that FIRB reviews any proposed foreign acquisition of an agribusiness where investment exceeds 15 per cent or more in an agribusiness valued at \$248 million (indexed annually) or exceeds \$54 million.

## **Recommendation 23**

**5.34** The committee recommends that the zero trigger required for approval by FIRB for any purchase of agricultural land or an agribusiness by a state owned enterprise will continue to apply.

## **Recommendation 24**

**5.35** The committee recommends that Australia's Foreign Investment Policy (AFIP) be amended to clearly define the "interests of local economies" and the "interests of local communities". Furthermore, there should be a greater requirement for FIRB to take into account these local interests in the assessment of foreign purchases of agricultural assets.

## **Recommendation 25**

**5.51** The committee recommends that the government update the definitions of 'Australian rural land' and 'Australian urban land' in the FATA with the aim of more accurately reflecting the common understandings of these terms.

## **Recommendation 26**

**6.14** The committee recommends that the Australian government commission an extensive and independent review of possible incentives and barriers for long-term capital investment in major Australian agricultural developments by Australian investors, including superannuation funds and other domestic investors with long-term horizons. The review should make a comparative analysis with the incentives for foreign investors to invest in major Australian agricultural developments.

**6.15** Based on the findings of the review, the Australian government should develop, publish and implement policies to encourage long-term domestic capital

investment in Australian agriculture. The policies should specifically identify opportunities for Australian superannuation funds and other domestic investors with long-term horizons and where appropriate, the policies should be coordinated with relevant state governments and agencies.

#### **Recommendation 27**

**6.18** The committee recommends that, as part of the review and policies established under recommendation 26, and with appropriate consultation with the banking industry, the agricultural sector and other interest parties, the government should consider appropriate avenues for improving access for Australian agricultural businesses to domestic finance from Australian banks.

#### **Recommendation 28**

**6.25** The committee recommends that the Australian government encourage the Western Australian and Northern Territory governments to consider possibilities for establishing a water market (including tradable water entitlements) for irrigation developments, including the Ord, in Australia's north. The information about foreign ownership of any water entitlements established under this regime should be included in the national foreign ownership register for agricultural land.

#### **Recommendation 29**

**6.34** The committee recommends that the commonwealth, state and territory governments work together to consider appropriate policy options for consulting with FIRB in cases of proposals for significant foreign acquisitions from respective governments bodies.

