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Practice Group(s):

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New Obligations for Foreign Investors in Agricultural Land in Australia

Australia Corporate and Transactional Alert

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The Australian Government has demonstrated its commitment to create greater transparency around foreign investment in agricultural land by introducing a national Foreign Ownership of Agricultural Land Register (Register).

Introduction of the Register follows a reduction in the screening threshold for foreign investment in rural land (from AUD252 million to AUD15 million) implemented from 1 March 2015 and the proposed AUD55 million threshold for screening foreign investment in agribusiness from 1 December 2015.

Introduction of Register of Foreign Ownership of Agricultural Land

Australia's Foreign Investment Review Board (FIRB) has updated Australia's Foreign Investment Policy (Policy) to include additional obligations on foreign investors who currently hold, or will in the future hold, interests in agricultural land in Australia.

Existing Interests in Agricultural Land

From 1 July 2015, the Policy requires that all foreign persons (and foreign government investors) that currently hold interests in agricultural land must register those interests with the Australian Taxation Office (ATO) by 31 December 2015.

New Interests in Agricultural Land

Any new interests in agricultural land acquired after 1 July 2015 must be registered with the ATO within 30 days of the acquisition.

No Threshold Applies

The obligation to register interests in Australian agricultural land applies irrespective of the value of the land and whether or not the acquisition was (or is) subject to FIRB approval.

Wide Definition of Agricultural Land

Agricultural land is defined in the policy as "land in Australia that is used, or that could be reasonably used, for a primary production business".

This definition is wider than the definition of Australian rural land under the Foreign Acquisitions and Takeovers Act 1975 which requires the relevant land is used wholly and exclusively for carrying on a business of primary production.

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Agricultural Land Register

While the above registration requirement currently applies as a matter of policy, the Australian Government has stated its intention to introduce supporting legislation by 1 December 2015.

There is currently no penalty for failing to register an existing or new interest. However, it is expected penalties will be imposed when the policy changes are incorporated into legislation.

Registration can be processed at www.ato.gov.au/aglandregister.

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