

29 March 2017
Manager
Foreign Investment Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

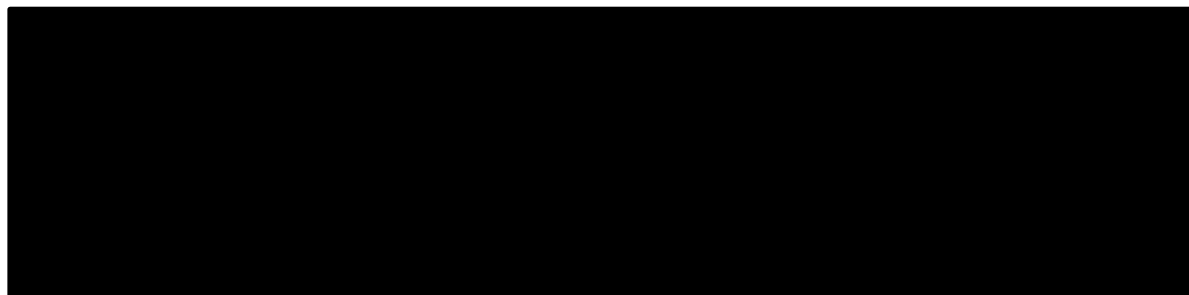
By email: foreigninvestmentconsultation@treasury.gov.au
To the Manager

Foreign Investment Framework 2017 Legislative Package Consultation Paper Submission

Thank-you for the opportunity to provide a submission on the impacts of the new Foreign Investment Legislative package that was introduced in December 2015.

I wish to provide a submission in relation to Consultation Paper Issue #5 'Miscellaneous technical issues and ideas for further reform', specifically in relation to the Agricultural Land Register requirements and the onerous impact on our business to register and update our leasehold interests in land and easements.

Background



The requirements under the *Register of Foreign Ownership of Agricultural Land Act 2015* require a person to register all leasehold land that is Agricultural Land where the lease is likely to exceed 5 or more years (including options to extend), unless the land is exempt from being defined as Agricultural Land through exemptions in the Regulations. Certain easements are also required to be registered.

Impacts

The requirements impose onerous obligations on our business in terms of the amount of time involved in preparing the data for inclusion in the registrations and registering these interests, not to mention updating the register for any changes. We are of the view that the requirement to register our interests in Agricultural Land is an unintended consequence of the legislation because our business cannot and does not use any of the land we lease for conducting a primary production business. The lease contracts stipulate that the only purpose we are entitled to use the land for is the operation of a wind farm.

The impacts are significant to our business including:

- Registering interests in leasehold land on a lot by lot basis on the ATO administered Land Register. We have leasehold interests in over 160 lots across more than 70 titles (most of which are zoned for primary production purposes).
- Registering easements we hold over leased Agricultural Land, which are only used for the purpose of conducting wind farm activities.

- Time taken to collate title information (over 70 titles), leases, and easement information, including land size (particularly for a constructed wind farm) is a substantial exercise involving hundreds of hours of work by numerous staff across the organisation (Land team, Legal team and Tax team) not to mention the time it takes to manually enter the information on the ATO Land Register which is time consuming given it is a manual process and you can only register 20 land interests at once.
- Difficulty in calculating land size per Lot given (for a constructed wind farm) we do not lease the whole Lot in most cases, we just lease sections of land around each turbine (equivalent to the wind swept area of each turbine) and some other sections of land where we have substation assets and buildings. It is not as simple as just checking the Land Data site and calculating the size of the entire Lot. Some of our contracts stipulate the size of the leased area but not on a lot by lot basis, however older contracts do not have this and in some cases only list coordinates. This adds considerable time to the process.

Recommendations

Section 44 in Division 5 of the *Foreign Acquisitions and Takeovers Regulation 2015* details land that is excluded from being Agricultural Land for the purposes of the *Foreign Acquisitions and Takeovers Act 2015* and consequently the *Register of Foreign Ownership of Agricultural Land Act 2015*. We believe that wind farm activities should be exempted from the definition of Agricultural Land assuming the land is not being used by the business for primary production purposes. The exclusions list currently exempts land used for mining activities from the definition of Agricultural Land (Section 44, subdivision (5)). We consider that the policy intent for excluding mining activities equally applies to wind farms.

If this recommendation is not accepted, we recommend a review of the disclosure requirements for the Land Register to make it less onerous for foreign owned wind farm companies to register their interests. Currently the data to be disclosed is very granular. An alternative could be to list the title information only and provide qualitative data about the use of the land and an overall value of the leases or freehold land, rather than broken down by Lot.