

**10 August 2018**

Committee Secretary  
Joint Committee of Public Accounts and Audit  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

By email: [jcpaa@aph.gov.au](mailto:jcpaa@aph.gov.au)

Dear Sir/Madam

### **Foreign Investment Obligations in Residential Real Estate**

The Foreign Investment Committee of the Business Law Section (**Committee**) welcomes the opportunity to provide a submission to the Joint Committee of Public Accounts and Audit's inquiry based on Auditor-General's *Report 48 regarding compliance with the foreign investment obligations for residential real estate*.

Generally, the Committee believes that the management by the Australian Taxation Office (**ATO**) and the Foreign Investment Division of the Treasury of the foreign investment compliance framework for acquisitions of interests in residential real estate is effective and achieves the Australian Government's policy intentions in relation to foreign investment in the residential real estate sector. However, some issues have been identified regarding the administrative arrangements relating to the processing and screening of certain residential real estate applications.

Specifically, there are issues where applications have been made by significant commercial investors to acquire residential land for broadacre development, or where applications have been made by financiers in circumstances where the moneylending exemption, for one reason or another, did not apply.

These issues appear to arise from the way in which the ATO's residential screening unit's processes are geared towards assessing applications for one-off residential property acquisitions made by individual non-commercial foreign persons, rather than more complex transactions.

For example, in an exercise of ticking the box, in assessing an application made by a significant commercial investor in relation to a large-scale residential development, the ATO case officer requested a copy of the applicant's passport (where the relevant Applicant was a corporate entity). In another application, copies of the passports of each ultimate beneficial owner of the Applicant in a financing transaction (where the Applicant entity was a large listed multi-national financier whose shares were widely held amongst thousands of shareholders) were requested. Queries have also been received in proposals by financiers

seeking approval for secured lending that relate to direct ownership of property rather than taking security over the property.

Such instances are not isolated and suggest that the processes of the ATO residential screening unit are not well suited to assessing residential proposals of a complex commercial nature and are not adapted to understand the drivers of large-scale and complex residential transactions involving sophisticated commercial investors. These systematic inefficiencies lead to delays in processing times and increased overall costs associated with the assessment process. Unfortunately, the delay and inefficiencies cause some commercial investors to reconsider Australia as an attractive investment destination.

We suggest that this issue can be easily avoided if large-scale residential proposals involving sophisticated commercial investors / financiers are screened by the ATO's commercial screening unit. That unit is generally better equipped to assess large-scale commercial and complex transactions.

A further general comment regarding process is that there needs to be a clear policy agenda for the assessment process and a single direction set. A recent issue with the implementation of the Treasurer's "near new dwelling certificates" arose where the ATO applied its processing approach to the issue of such certificates which was inconsistent with the approach set by the Foreign Investment Division at the Treasury. That particular issue has been resolved, however we suggest that to ensure a consistent approach and that such divergence does not recur that it be made clear that the Foreign Investment Division at the Treasury sets the implementation of the policy on assessment and has carriage of the issue of guidance.

If you have any questions in relation to this submission, in the first instance please contact the Committee Chair, Malcolm Brennan, on (02) 6217 6054 or via email: [malcolm.brennan@au.kwm.com](mailto:malcolm.brennan@au.kwm.com).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Rebecca Maslen-Stannage', written in a cursive style.

**Rebecca Maslen-Stannage**  
**Chair, Business Law Section**