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Manager
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The Treasury
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Dear Mr Earl

Implementing Foreign Investment Reforms – Exposure Draft Bills

HIA welcomes the opportunity to provide submissions in response to the Exposure Draft *Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015* and the supporting draft regulations.

HIA notes that the purpose of the legislation is to give effect to the reform measures announced by the Treasurer on 2 May 2015.

Foreign investment in residential real estate plays a crucial role in increasing Australia's housing stock. Whilst not limited to these 2 areas, foreign investment in "pre sales" for off the plan and apartment construction is crucial in securing financing for these developments.

HIA support measures which ensure that the rules for foreign acquisition and ownership are being complied with and which strengthen the integrity of the framework and, in principle, HIA supports the Government's draft legislation.

HIA's comments on the draft legislation are focused on the new application costs and certain aspects of the new penalty and enforcement regime.

Costs of administration

Currently, no fees or charges apply to foreign investment applications and the cost of administering the foreign investment review framework is funded through consolidated revenue.

As articulated in our March response to the Government's February 2015 Options Paper, HIA supports the introduction of a modest "user pays" application fee that is based on a cost recovery basis. The fees set out in section 43 of the proposed Regulations appear to go beyond a modest, cost recovery model (even allowing for fees to also fund improved IT infrastructure and support for compliance and enforcement activities).

Further, the costs of enforcement and compliance for a foreign investor acquiring a new residential property or a newly constructed dwelling are less than those costs of policing the acquisition, monitoring and disposal of an established dwelling by a temporary resident, and this is not reflected in the fee structure.

Of particular concern is subsection 43(3) of the Regulation. The subsection impose fees for individual exemption certificates in addition to the \$25,000 fee for an exemption certificate under section 62 of the Act. This additional fee is commensurate with the fee that would otherwise be payable by an individual to acquire residential land.

The concerns raised are threefold - that subsection 43(3) prescribes a six-month duration on a section 62 exemption certificate - a questionable qualification on section 62 and an unwarranted imposition on residential developments which are five years and more in the planning, marketing, construction and commissioning stages – and in doing so provides a mechanism for duplication or double-dipping of fees, and imposes that additional fee on the property developer. HIA is not aware that this was the Government's policy position or that it is now its intention. HIA opposes the subsection.

New offence regime

HIA is concerned with strict liability provisions which do not require intent or unnecessarily extensive "accessorial" liability provisions.

For instance, under section 92 of the draft Act, a developer will commit an offence if the developer disposes of an interest in the dwelling to a foreign person without advertising the dwelling in accordance with the condition of the objection notification, namely advertising the dwelling to Australian residents.

A failure to do so is a strict liability offence, with individuals found guilty facing possible imprisonment of up to three years and/or a fine equivalent to 750 penalty units (currently \$135,000),

In some circumstances strict liability may be appropriate and provide a strong deterrent, but in HIA's submission it appears unfair and unnecessary to not avail the developer of a defence in circumstances where they might face a criminal conviction or the possibilities of significant penalties for breach.

I would be pleased to elaborate on these issues and be contacted on (02) 6245 1361.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



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