

31 August 2020

The Manager
Policy Framework Unit
Treasury
Langton Cres
Parkes ACT 2600

Submitted by email to: FIRBStakeholders@treasury.gov.au

Dear Sir \ Madam

Exposure Draft Bill (Register of Foreign Ownership)

Thank you for the opportunity given to Chartered Accountants Australia and New Zealand (CA ANZ) to contribute to the consultation process on the [Exposure Draft Bill \(Register of Foreign Ownership\)](#). We apologise for the brevity of our response, but CA ANZ is currently dealing with a high volume of matters relating to COVID-19 related measures.

General comments

CA ANZ supports the policy thinking which underpins the draft Bill. It both supports Australia's tax system and provides valuable data for various government and other purposes.

The registrar

The draft Bill provides that the Treasurer may, by notifiable instrument, appoint a Commonwealth body to be the Registrar. In keeping with the thinking behind the modernisation of Australian business registers project, CA ANZ urges the government to embed the foreign ownership process into the processes currently being designed to streamline registrations using easy to access and use online platforms.

One registrar could, in our view, manage the many and varied registration obligations which currently produce substantial compliance burdens.

It is also unclear to CA ANZ what happens to existing registers which contain relevant information, and the extent to which relevant land registry information held at State and Territory level (which is now mostly held online) can be dovetailed into this Federal project.

The importance of plain English guidance material

Many of the definitions and legislative provisions in the draft Bill are not readily understandable, and the draft Explanatory Memorandum (EM) guidance is minimal. More work should be done on the EM.

Outside of the EM, CA ANZ considers that the accompanying public guidance explaining the regime will be very important to inform foreign persons and their advisors, and we urge government officials to develop and publish for consultation the draft materials which will presumably be published on relevant government agency websites.

This published guidance will need to be tailored for both a domestic and foreign audience (in a range of languages) and promulgated locally and internationally, using the various channels available to the Australian government. This in itself will be a substantial project and needs to be appropriately resourced.

Member firms of CA ANZ – especially those with international networks – have an important role to play in the implementation. They should be engaged as part of the roll-out process.

Guidance topics

The key areas on which plain English guidance will be required include the practical meaning of:

- Start to hold
- Ceases to hold
- Becoming a foreign person
- Ceasing to be a foreign person
- Scope of ‘interest in’ various assets and trigger time for change in nature of underlying asset (e.g. goes from being agricultural land to residential)
- Taking an action that is a notifiable action under s47
- Change in registered interest, and calculating whether the percentage interest holding differs by 5% or more;
- What is an equitable interest?
- Ceasing to hold any interest
- Various no objection or exemption provisos

Register commencement day

It seems the Treasurer declares when the Register starts operating (albeit the draft EM infers it could be 1 January 2021). Later on it seems notifiable events only arise if they occur after Register commencement day. However, none of this is currently very clear to the reader.

Information relating to Interests (other than equitable interest) in an Australian entity or an Australian business to be on the register

It is not clear from the draft EM what is the scope of this requirement (albeit presumably it only covers such interests notifiable to FIRB, not all investments).

Foreign persons and their advisors need to be able to more readily appreciate what does, and does not, get reported. As noted earlier, the current draft EM is very “light” on practical guidance.

The form and content of notices to be given

The form and content of notices will be part of the consultations on the Regulations. As noted earlier, CA ANZ is keen to ensure that the processes are not unduly burdensome.

The role of agents

We envisage that intermediaries in the accounting and legal profession will play a key role in ensuring the register is updated.

CA ANZ notes that whilst proposed s130ZC in the draft Bill allows notices to be given on a person's behalf, the way such persons can easily interact with the register is an important practical consideration.

CA ANZ and our members would appreciate early engagement from relevant government officials on this aspect.

Reporting 30 days 'after the event'

Once again, there is little practical guidance on what is the date of the event (e.g. option to acquire/sell; execution date or settlement date?).

CA ANZ queries whether 30 days should really be longer. It seems to us that there will be some circumstances (e.g. on death and companies in liquidation) where the notice period will need to be extended.

One event – Multiple notices

It seems that a single event may trigger multiple notices. Streamlining this would hopefully be part of the hoped-for streamlined registration process.

250 penalty points

Penalties are justified as being consistent with other penalties, but at \$222 per unit this is quite a substantial penalty, particularly if imposed on less sophisticated investors lacking professional assistance.

CA ANZ and our members hope and expect government officials to ameliorate the potential penalty exposure during a lengthy implementation period in which education, not sanctions, dominates regulator thinking. Published penalty remission policies should reflect this.

CA ANZ would be grateful for continued engagement with relevant government officials during the implementation phase of this project.

My email address is michael.croker@charteredaccountantsanz.com and I can also be reached on (02) 9290 5609.

Yours faithfully,



Michael Croker
Australian Tax Leader