

Legislation passed for register of foreign ownership of water rights

In December 2016 the Government passed legislation which requires foreign persons to register interests in certain Australian water rights from **1 December 2017**.

On 1 December 2016 the *Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016 (Cth)* was passed amending the newly titled *Register of Foreign Ownership of Water or Agricultural Land Act 2015 (Cth)*¹. As a result, foreign persons are now required to register their interests in registrable water entitlements and contractual water rights on the newly formed Register of Foreign Ownership of Water Entitlements (Water Register) maintained by the Australian Taxation Office (ATO).

Who needs to register?

Foreign persons will be required to register their interests in certain water entitlements. See our previous briefing note [Foreign Investment Regulation in Australia \(August 2016\)](#) for more information on "foreign persons".

What water entitlements need to be registered?

Foreign persons will need to register their interests in registrable water entitlements and certain contractual water rights (**Registrable Water Interests**). Registrable water entitlements include:

- irrigation rights relating to a water resource in Australia; and

- rights conferred by or under a State or Territory law to either hold water or take water from a water resource in Australia.

However, registrable water entitlements do not include:

- stock and domestic rights;
- riparian rights; or
- water allocations.

A contractual water right is a right under a contract or deed that the foreign person either alone or jointly holds to another person's registrable water entitlement with a remaining term (including any extension or renewal) that is reasonably likely to exceed 5 years at the end of 30 November 2017.

Events that must be notified

Events which trigger notification requirements include:

- a foreign person becoming the holder of, or ceasing to hold a Registrable Water Interest;
- a person becoming or ceasing to be a foreign person whilst holding a Registrable Water Interest; and
- certain changes to the characteristics of the Registrable Water Interest (eg there is a change to the volume of water available under the entitlement or right).

Need to know

- From 1 December 2017 foreign persons are required to register new Registrable Water Interests and changes to those interests on the Water Register on an annual basis.
- Foreign investors with existing Registrable Water Interests will have between 1 July 2017 and 30 November 2017 to register these interests.

When do Registrable Water Interests need to be registered?

Foreign persons holding an Registrable Water Interest as at 1 July 2017 will have until 30 November 2017 to register their pre-existing interests. Accordingly, existing holders of Registrable Water Interests should consider taking stock of their existing interests in order to meet the 30 November 2017 reporting requirement.

From 1 December 2017 foreign persons will be required to register the acquisition of and changes to Registrable Water Interests with the

ATO within 30 days of the end of the financial year in which a notifiable event occurs.

This timing is different to that set out in the exposure draft legislation, which (consistent with requirements relating to the Agricultural Land Register) required notification of events within 30 days of them occurring. The shift to annual

reporting was made in response to concerns regarding the administrative burden of reporting which were raised in the public consultation period for the exposure draft legislation.

¹ Formerly the *Register of Foreign Ownership of Agricultural Land Act 2015* (Cth).

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